Appendix B: Documentation of Program Changes

Exhibit B-I: Statutes
(House Bills & Senate Bills)

SESSION LAWS

STATE OF ARIZONA

Thirty-eighth Legislature

SECOND REGULAR SESSION

Convened—January 11, 1988

Sine Die—July 1, 1988

1988

7. An independent insurance agent or a person representing an insurance agents association appointed by the speaker of the house of representatives.

8. A representative of a consumer advocate group appointed by the president of the senate.

9. A representative of an insurance company writing private passenger automobile insurance in this state appointed by the speaker of the house of representatives.

C. The members are not entitled to receive compensation but are entitled to reimbursement of expenses in accordance with title 38, chapter 4, article 2, Arizona Revised Statutes.

D. The commission shall meet at times to be set by the chairman.

E. The commission shall prepare and submit a report no later than December 31, 1989 to the legislature and the governor.

Sec. 10. Expiration date

The provisions of section 9 of this act expire from and after December 31, 1989.

Sec. 11. Laws 1986, chapter 128, section 8 is amended to read:

Sec. 8. Delayed repeal

Title 28, chapter 7, article 8, Arizona Revised Statutes, is repealed from and after December 31, ~~1988~~ 1993.

Sec. 12. Emergency [Emergency Not Enacted]

To preserve the public peace, health and safety it is necessary that this act become immediately operative. It is therefore declared to be an emergency measure, to take effect as provided by law.

Approved by the Governor, June 28, 1988.

Filed in the Office of the Secretary of State, June 28, 1988.

TRANSPORTATION AND THE ENVIRONMENT—UNBLENDED GASOLINE SHORTAGES, OXYGENATED FUEL, TRAVEL REDUCTION PROGRAMS, ETC.

CHAPTER 252

HOUSE BILL 2206

AN ACT

RELATING TO TRANSPORTATION AND THE ENVIRONMENT; PROVIDING FOR REIMBURSEMENT OF COSTS TO CERTAIN EMPLOYEES FOR USING VAN POOLS TO AND FROM WORK; REMOVING PRESCRIBED EFFECTIVE DATE FOR INSTITUTIONS UNDER JURISDICTION OF THE BOARD OF REGENTS IN PROHIBITING PARKING IN NONATTAINMENT AREAS; PROVIDING FOR SYNCHRONIZED TRAFFIC-CONTROL SIGNALS ON CERTAIN STATE HIGHWAYS; PRESCRIBING THE USE FUEL TAX ON CLEAN BURNING FUEL; PRESCRIBING FOR REIMBURSEMENT FROM LOSS OF CERTAIN REVENUES TO THE HIGHWAY USER REVENUE FUND FROM THE AIR QUALITY FUND; PRESCRIBING CONDITIONS AND A DETERMINATION FOR AN INCREASE IN THE USE FUEL TAX ON CLEAN BURNING FUEL; PRESCRIBING DEFINITIONS; PRESCRIBING THAT THE DEPARTMENT OF TRANSPORTATION CONDUCT A MONTHLY SURVEY OF AVAILABILITY AND SALES OF UNBLENDED GASOLINE WITHIN A CERTAIN NONATTAINMENT AREA; PRESCRIBING AVAILABILITY OF A CERTAIN REPORT; PROVIDING FOR A CERTAIN DETERMINATION THAT A SHORTAGE OF UNBLENDED GASOLINE EXISTS IN THE CARBON MONOXIDE NONATTAINMENT AREA; PROVIDING FOR A DECLARATION THAT A SHORTAGE OF UNBLENDED GASOLINE EXISTS; PRESCRIBING NOTIFICATION TO EACH PRIME SUPPLIER OF ITS MONTHLY SET-ASIDE PERCENTAGE; PRESCRIBING TOTAL SET-ASIDE VOLUME AVAILABLE FOR ANY PARTICULAR MONTH; PROVIDING THAT THE DEPARTMENT OF TRANSPORTATION MAY ORDER THE CERTAIN ASSIGNMENT OF A PRIME SUPPLIER'S SET-ASIDE VOLUME; PRESCRIBING A REVERSION

OF THE AMOUNT OF SET-ASIDE VOLUME TO THE PRIME SUPPLIER UPON CERTAIN CONDITIONS; PROHIBITING A PRIME SUPPLIER FROM CHARGING A PREMIUM ON SET-ASIDE VOLUMES; PRESCRIBING AN EXCEPTION; PRESCRIBING APPLICATION FOR A SET-ASIDE ASSIGNMENT; PROVIDING FOR AN INVESTIGATION; PRESCRIBING A DECISION FOR DENYING OR GRANTING THE APPLICATION; PROVIDING FOR A REVIEW OF AN APPLICATION BY THE DIRECTOR OF THE DEPARTMENT OF TRANSPORTATION; REMOVING CERTAIN FUNCTIONS FROM THE AGENCY DESIGNATED BY THE GOVERNOR TO ADMINISTER A RIDE SHARING PROGRAM FOR STATE EMPLOYEES; PRESCRIBING SAMPLING AND TESTING OF CERTAIN GASOLINE; PRESCRIBING INSPECTION OF FACILITIES WHERE GASOLINE OR OXYGENATED FUEL IS STORED, SOLD, EXPOSED OR OFFERED FOR SALE; PRESCRIBING ADOPTION OF RULES RELATING TO OXYGENATED FUELS; PROVIDING FOR ENFORCEMENT OF RULES RELATING TO LIQUID FUELS; PRESCRIBING STANDARDS FOR BLENDS OF GASOLINE WITH ALCOHOL; PROVIDING THAT CERTAIN BLENDS OF GASOLINE WITH ETHANOL MAY EXCEED CERTAIN VOLATILITY REQUIREMENTS FOR CERTAIN PERIODS DURING THE YEAR; PRESCRIBING THAT BLENDS OF LEADED OR UNLEADED GASOLINE WITH ALCOHOL OTHER THAN ETHANOL SHALL SATISFY CERTAIN REQUIREMENTS FOR CERTAIN PERIODS DURING THE YEAR; PRESCRIBING OXYGEN CONTENT OF LEADED AND UNLEADED GASOLINE WITHIN AREAS A AND B FOR CERTAIN PERIODS DURING THE YEAR; PRESCRIBING OXYGEN CONTENT OF LEADED GASOLINE WITHIN AREA A UPON APPROVAL OF A CERTAIN WAIVER APPLICATION FOR CERTAIN PERIODS DURING THE YEAR; PRESCRIBING MINIMUM AND MAXIMUM OXYGEN CONTENT OF ALL UNLEADED GASOLINE WITHIN AREA A; PRESCRIBING COLLECTION OF INFORMATION REGARDING TYPES OF OXYGENATED FUELS SOLD WITHIN AREA A DURING CERTAIN PERIODS OF THE YEAR; PRESCRIBING OXYGEN CONTENT OF GASOLINE SOLD WITHIN AREA A DURING CERTAIN PERIODS OF THE YEAR IF CERTAIN MARKETPLACE PERCENTAGE OF OXYGEN CONTENT OF OXYGENATED FUELS IS NOT MET; PRESCRIBING NOTIFICATION TO SUPPLIERS TO MEET CERTAIN REQUIREMENTS; PRESCRIBING SUPPLIERS OF GASOLINE WITHIN AREA A TO REGISTER AND MAKE REPORTS UPON CERTAIN DETERMINATION; PROVIDING FOR CIVIL PENALTIES; PROVIDING FOR AWARD OF COURT COSTS AND CERTAIN FEES TO A PREVAILING PARTY; PRESCRIBING THAT CIVIL PENALTIES OBTAINED BE DEPOSITED IN THE AIR QUALITY FUND; PROVIDING THAT CERTAIN GASOLINE PURCHASED OUTSIDE OF AREA A OR B IS NOT PROHIBITED FOR USE WITHIN AREA A OR B UPON CERTAIN CONDITIONS; PROVIDING FOR A TAXABLE DEDUCTION TO EMPLOYERS FOR PAYMENTS TO EMPLOYEES WHO COMMUTE TO AND FROM WORK WITH A VAN POOL OPERATOR; ESTABLISHING AN ADVISORY COMMITTEE ON AIR QUALITY COMPLIANCE; PRESCRIBING MEMBERS, DUTIES, STAFF, REIMBURSEMENT OF EXPENSES AND A REPORT; PRESCRIBING A DEPARTMENT OF TRANSPORTATION PROJECT ON USE OF OXYGENATED FUELS, COMPRESSED NATURAL GAS AND LIQUID PROPANE GAS; PRESCRIBING TESTING OF CERTAIN FUELS TO EVALUATE IMPACT ON MOTOR VEHICLE EMISSIONS; PRESCRIBING REPORTS AND THEIR SUBMISSION; PROVIDING THAT THE DEPARTMENT OF TRANSPORTATION MAY HIRE CONSULTANTS; PRESCRIBING OXYGENATED FUEL STUDIES OF CERTAIN FLEETS OF VEHICLES BY THIS STATE AND THE CITIES OF PHOENIX AND TUCSON; PRESCRIBING SELECTION OF VEHICLES AND CONDUCT OF TESTS; PRESCRIBING CERTAIN REPORTING REQUIREMENTS; PRESCRIBING CERTAIN CLEAN BURNING REPORTING REQUIREMENTS; PRESCRIBING A DEFINITION OF CLEAN BURNING FUEL; PROVIDING THAT CERTAIN COUNTIES SHALL IMPLEMENT A VOLUNTARY PROGRAM TO ENCOURAGE DRIVERS NOT TO DRIVE ON CERTAIN DAYS; PRESCRIBING THAT A MOTOR VEHICLE DEALER SHALL NOT DELIVER ANY VEHICLE TO THE RETAIL PURCHASER UNTIL THE VEHICLE PASSES ANY INSPECTION OR THE VEHICLE IS EXEMPT; PRESCRIBING CERTAIN EXEMPTION FOR VEHICLES REGISTERED UNDER PROPORTIONAL REGISTRATION PROVISIONS, SALE OF VEHICLES BETWEEN MOTOR VEHICLE DEALERS AND CERTAIN LEASED VEHICLES; PRESCRIBING TESTING REQUIREMENTS FOR DETERMINING COMPLIANCE WITH THE ANNUAL EMISSIONS INSPECTION PROGRAM; PRESCRIBING VIOLATIONS AND CIVIL PENALTIES; PRESCRIBING AMOUNT OF THE AIR QUALITY FEE; PRESCRIBING USE AND DISTRIBUION OF MONIES IN THE AIR QUALITY FUND; PROVIDING FOR GRANTS FROM AIR QUALITY FUND TO PROMOTE USE OF COMPRESSED NATURAL GAS IN VEHICLES; PRESCRIBING NONAPPLICABILITY OF CERTAIN REQUIREMENTS TO AN ELECTRICALLY POWERED GOLF CART OR VEHICLE; PRESCRIBING REPORTS TO THE LEGISLATURE BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY; PRESCRIBING RESEARCH TO QUANTIFY EFFECT OF ALTERNATIVE FUELS ON TOXIC COMPONENTS OF VEHICULAR EMISSIONS; PRESCRIBING ACQUISITION OF EQUIPMENT CAPABLE OF MEASURING EMISSION EFFECTS OF USE OF OXYGENATED GASOLINE BLENDS; PROVIDING THAT THE DEPARTMENT OF ENVIRONMENTAL QUALITY MAY HIRE CONSULTANTS FOR CERTAIN ANALYZATION; ESTABLISHING A TRAVEL REDUCTION PROGRAM REGIONAL TASK FORCE IN CERTAIN COUNTIES; PRESCRIBING MEMBERS, DUTIES AND POWERS OF THE TASK FORCE;

PRESCRIBING STAFF DUTIES; PRESCRIBING POWERS AND DUTIES OF A CERTAIN BOARD; PROVIDING FOR ENFORCEMENT BY CITIES AND TOWNS; PROVIDING FOR VOLUNTARY PARTICIPATION BY CERTAIN EMPLOYERS FOR TRAVEL REDUCTION PLANS; PRESCRIBING REQUIREMENTS FOR MAJOR EMPLOYERS RELATING TO TRAVEL REDUCTION PLANS; PROVIDING PROCEDURES FOR VARIANCES FROM THE TRAVEL REDUCTION PLAN SCHEDULE; PRESCRIBING REQUIREMENTS FOR HIGH SCHOOLS, COMMUNITY COLLEGES AND UNIVERSITIES; PRESCRIBING EXEMPTIONS; PROVIDING FOR APPEALS; PRESCRIBING VIOLATIONS AND CIVIL PENALTIES RELATING TO TRAVEL REDUCTION PROGRAMS; PRESCRIBING CERTAIN COMPATIBILITY RELATING TO UNDERGROUND STORAGE TANKS; PRESCRIBING EVALUATION AND EFFECT OF OXYGENATED FUELS ON CERTAIN UNDERGROUND STORAGE TANKS; PRESCRIBING A DEFINITION OF MAJOR EMPLOYER; PRESCRIBING A PUBLIC EDUCATION PROGRAM REGARDING OXYGENATED FUELS; PROVIDING FOR AN EXEMPTION FROM LAPSING; MAKING TECHNICAL AND CONFORMING CHANGES; AMENDING SECTIONS 11-251, 15-1627, 28-642 AND 28-1552, ARIZONA REVISED STATUTES; AMENDING TITLE 28, CHAPTER 9, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 28-1552.01; AMENDING TITLE 28, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 22; AMENDING SECTIONS 41-101.03, 41-786, 41-2065 AND 41-2066, ARIZONA REVISED STATUTES; AMENDING SECTION 41-2083, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1987, CHAPTER 139, SECTION 2; REPEALING SECTION 41-2083, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1987, CHAPTER 314, SECTION 8 AND LAWS 1987, CHAPTER 365, SECTION 15; REPEALING SECTION 49-455, ARIZONA REVISED STATUTES; REPEALING LAWS 1986, CHAPTER 319, SECTION 8, AS AMENDED BY LAWS 1987, CHAPTER 317, SECTION 44; REPEALING LAWS 1987, CHAPTER 139, SECTIONS 3 AND 4; REPEALING LAWS 1987, CHAPTER 365, SECTIONS 27, 29, 31 AND 32; AMENDING TITLE 41, CHAPTER 15, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 6; AMENDING SECTION 43-1063, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 3, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 49-403 THROUGH 49-406; AMENDING TITLE 49, CHAPTER 3, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 49-506; AMENDING SECTIONS 49-542, 49-550 AND 49-551, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 3, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 49-553; AMENDING SECTION 49-571, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 3, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 8; AMENDING SECTION 49-1009, ARIZONA REVISED STATUTES; MAKING APPROPRIATIONS, AND PROVIDING FOR CERTAIN DELAYED REPEAL AND DELAYED EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 11-251, Arizona Revised Statutes, is amended to read:

11-251. Powers of board

The board of supervisors, under such limitations and restrictions as are prescribed by law, may:

1. Supervise the official conduct of all county officers and officers of all districts and other subdivisions of the county charged with assessing, collecting, safekeeping, managing or disbursing the public revenues, see that such officers faithfully perform their duties, AND direct prosecutions for delinquencies, and, when necessary, require the officers to renew their official bonds, make reports and present their books and accounts for inspection.

2. Divide the counties into such districts or precincts as required by law, change them and create others as convenience requires.

3. Establish, abolish and change election precincts, appoint inspectors and judges of elections, canvass election returns, declare the result and issue certificates thereof.

4. Lay out, maintain, control and manage public roads, ferries and bridges within the county and levy such tax therefor as may be authorized by law.

5. Provide for the care and maintenance of the indigent sick of the county, erect and maintain hospitals therefor and, in its discretion, provide a farm in connection with the county hospital and adopt regulations for working the farm.

6. Provide suitable rooms for county purposes.

7. Purchase, receive by donation or lease real or personal property necessary for the use of the county prison and take care of, manage and control it, but no purchase of real property shall be made unless the value has been previously estimated by three disinterested citizens of the county, appointed by the board for that purpose, and no more than the appraised value shall be paid therefor.

8. Cause to be erected and furnished a courthouse, jail, hospital and such other buildings as necessary, and construct and establish a branch jail, when necessary, at a point distant from the county seat.

9. Sell at public auction, after thirty days' previous notice given by publication in a newspaper of the county, stating the time and place of the auction, and convey to the highest bidder, for cash or contract of purchase extending not more than ten years from the date of sale and upon such terms and conditions and for such consideration as the board shall prescribe, any property belonging to the county which the board deems advantageous for the county to sell, or which the board deems unnecessary for use by the county, and shall pay the proceeds thereof into the county treasury for use of the county, except that personal property need not be sold but may be used as a trade-in on the purchase of personal property when the board deems this disposition of the personal property to be in the best interests of the county. When the property for sale is real property, the board shall have such property appraised by a qualified independent fee appraiser who has an office located in this state. The appraiser shall establish a minimum price which shall in no instance be less than ninety per cent of the appraised value. The notice regarding the sale of real property shall be published in the county where the property is situated and may be published in one or more other counties, and shall contain, among other things, the appraised value, the minimum acceptable sale price, and the common and legal description of the real property. Notwithstanding the requirement for a sale at public auction prescribed in this paragraph, a county may with unanimous consent of the board, without a public auction, sell or lease any county property to any other duly constituted governmental entity, including the state, cities, towns and other counties. A county may with unanimous consent of the board, without public auction, sell or lease any county property for a specific use to any solely charitable, social or benevolent nonprofit organization incorporated or operating in this state. A county may dispose of surplus equipment and materials that have little or no value or are unauctionable in any manner authorized by the board.

10. Examine and exhibit the accounts of all officers having the care, management, collection or disbursement of money belonging to the county or appropriated by law or otherwise for the use and benefit of the county.

11. Examine, settle and allow all accounts legally chargeable against the county, order warrants to be drawn on the county treasurer therefor and provide for issuing the warrants.

12. Levy such tax annually on the taxable property of the county as may be necessary to defray the general current expenses thereof, including salaries otherwise unprovided for, and levy such other taxes as are required to be levied by law.

13. Equalize assessments.

14. Direct and control the prosecution and defense of all actions to which the county is a party, and compromise them.

15. Insure the county buildings in the name of and for the benefit of the county.

16. Fill by appointment all vacancies occurring in county or precinct offices.

17. Adopt provisions necessary to preserve the health of the county, and provide for the expenses thereof.

18. With the approval of the department of health services, contract with any qualified person to provide all or part of the health services,

funded through the department of health services with federal or state monies, that the board in its discretion extends to residents of the county.

19. Contract for county printing and advertising, and provide books and stationery for county officers.

20. Provide for rebinding county records, or, if necessary, the transcribing of county records.

21. Make and enforce necessary rules and regulations for the government of its body, the preservation of order and the transaction of business.

22. Adopt a seal for the board, a description and impression of which shall be filed by the clerk in the office of the county recorder, and the secretary of state.

23. Establish, maintain and conduct or aid in establishing, maintaining and conducting public aviation fields, purchase, receive by donation or lease any property necessary therefor, lease, at a nominal rental if desired, sell such aviation fields or property to the United States or any department thereof, or sell or lease such aviation fields to a city, exchange lands acquired pursuant to this section for other lands, or act in conjunction with the United States in maintaining, managing and conducting all thereof, and, when any such property or part thereof is not needed for the purposes herein mentioned, it shall be sold by the board and the proceeds paid into the general fund of the county.

24. Acquire and hold property for the use of county fairs, and conduct, take care of and manage them.

25. Authorize the sheriff to offer a reward, not exceeding ten thousand dollars in one case, for information leading to the arrest and conviction of persons charged with crime.

26. Contract for the transportation of insane persons to the state hospital or direct the sheriff to transport such persons. The county is responsible for such expense to the extent the expense is not covered by any third party payor.

27. Provide for the reasonable expenses of burial for deceased indigents as provided in section 36-831, maintain a permanent register of deceased indigents including name, age and date of death, and when burial occurs, the board shall mark the grave with a permanent marker giving the name, age, and date of birth, if known.

28. Sell or grant to the United States the title or interest of the county in any toll road or toll train in or partly within a national park, upon such terms and consideration as may be agreed upon by the board and the secretary of the interior of the United States.

29. Enter into agreements for acquiring rights-of-way, construction, reconstruction or maintenance of highways in their respective counties, including highways which pass through Indian reservations, with the government of the United States, acting through its duly authorized officers or agents pursuant to any act of Congress, except that the governing body of any Indian tribe whose lands are affected must consent to the use of its land, and any such agreements entered into prior to June 26, 1952 are validated and confirmed.

30. Do and perform all other acts and things necessary to the full discharge of its duties as the legislative authority of the county government.

31. Make and enforce all local, police, sanitary and other regulations not in conflict with general law.

32. Budget for funds for foster home care during the school week for mentally retarded and otherwise handicapped children who reside within the county and attend a school for the handicapped in a city or town within such county.

33. Do and perform all acts necessary to enable the county to participate in the "economic opportunity act of 1964" (P.L. 88-452; 78 Stat. 508, as amended).

34. Provide a plan or plans for its employees which provide tax deferred annuity and deferred compensation plans as authorized pursuant to title 26, United States Code annotated. Such plans shall allow voluntary participation by all employees of the county. Participating employees shall authorize the board to make reductions in their remuneration as provided in an executed deferred compensation agreement.

35. Adopt and enforce standards for shielding and filtration of commercial or public outdoor portable or permanent light fixtures in proximity to astronomical or meteorological laboratories.

36. Subject to the prohibitions, restrictions and limitations as set forth in section 11-830, adopt and enforce standards for excavation, landfill and grading to prevent unnecessary loss from erosion, flooding and landslides.

37. Make and enforce necessary rules and regulations for the operation and licensing of any establishment not in the limits of an incorporated city or town in which is carried on the business of providing baths, showers or other forms of hydrotherapy or any service of manual massage of the human body.

38. Provide pecuniary compensation as salary or wages for overtime work performed by county employees, including those employees covered by the provisions of title 23, chapter 2, article 9. In so providing, the board may establish salary and wage plans incorporating classifications and conditions prescribed by the federal fair labor standards act.

39. Establish, maintain and operate medical clinics as defined in title 36, chapter 24, article 1.

40. Enact ordinances under its police authority prescribing reasonable curfews in unincorporated areas of the county for persons under the age of eighteen and fines not to exceed the fine for a petty offense for violation of such ordinances on the request or petition of either:

(a) A homeowners' association which represents a majority of the homeowners in the area covered by the association and to which the curfew would apply.

(b) A majority of the residents of the area to which the curfew would apply.

41. Lease or sublease personal property owned by the county to other political subdivisions of this state to be used for a public purpose.

42. In addition to the agreements authorized by section 11-651, enter into long-term agreements for the purchase of personal property, provided that the board may cancel any such agreement at the end of a fiscal year, at which time the seller may repossess the property and the agreement shall be deemed terminated.

43. Make and enforce necessary regulations not in conflict with the laws of this state to regulate off-road recreational motor vehicles operated within the county on public lands without lawful authority, on private lands without the consent of the lawful owner or which generate air pollution. For purposes of this paragraph, "off-road recreational motor vehicle" means three and four wheel vehicles manufactured for recreational nonhighway all terrain travel.

44. Acquire land for roads, drainage ways and other public purposes by exchange without public auction, except that notice shall be published thirty days before the exchange listing the property ownership and descriptions.

45. Purchase real property for public purposes, provided that final payment shall be made not later than five years after the date of purchase.

46. Lease purchase real property and improvements for real property for public purposes, provided that final payment shall be made not later than fifteen years after the date of purchase.

47. Make and enforce regulations for the protection and disposition of domestic animals subject to inhumane, unhealthful or dangerous conditions or circumstances. A regulation enacted pursuant to this

paragraph shall not restrict or limit the authority of the game and fish commission to regulate the taking of wildlife. For the purposes of this paragraph, "domestic animal" means an animal kept as a pet and not primarily for economic purposes.

48. If a part of a parcel of land is to be taken for roads, drainage, flood control or other public purposes and the board and the affected property owner determine that the remainder will be left in such a condition as to give rise to a claim or litigation concerning severance or other damage, acquire the whole parcel by purchase, donation, dedication, exchange, condemnation or other lawful means and the remainder may be sold or exchanged for other properties needed for any public purpose.

49. Make and enforce necessary rules providing for the reimbursement of travel and subsistence expenses of members of county boards, commissions and advisory committees when acting in the performance of their duties, if the board, commission or advisory committee is authorized or required by federal or state law or county ordinance, and the members serve without compensation.

50. Provide a plan or plans for county employee benefits which allow for participation in a cafeteria plan that meets the requirements of the United States internal revenue code of 1986.

51. Make and enforce ~~regulations~~ ORDINANCES which are more restrictive than state requirements to reduce or encourage the reduction of carbon monoxide and ozone levels, provided an ordinance does not establish a standard for vehicular emissions, including ~~regulations~~ ORDINANCES to reduce or encourage the reduction of the commuter use of motor vehicles by employees of the county and employees whose place of employment is in unincorporated areas of the county.

52. Make and enforce ~~regulations~~ ORDINANCES to provide for the reimbursement of up to one hundred per cent of the cost to county employees of public bus OR VAN POOL transportation to and from their place of employment.

Sec. 2. Section 15-1627, Arizona Revised Statutes, is amended to read:

15-1627. Control of vehicles and nonpedestrian devices on property of institutions under jurisdiction of board; sanctions; compliance with emissions inspection; definition

A. The Arizona board of regents may adopt rules for the control of vehicles and nonpedestrian devices on property of the institutions under its jurisdiction with respect to the following only: maximum speed of vehicles and nonpedestrian devices, direction of travel, authorized hours of travel, required stops in traffic, place of parking, method of parking, time of parking, nonparking areas, restricted areas, prohibition of parking in nonattainment areas as defined in section 49-541 of those vehicles which fail to comply with section 49-542 and designation of special parking areas for students, faculty, staff and the general public. The board may prescribe and collect reasonable fees for specially designated parking areas. The board shall cause signs and notices to be posted upon the property for the regulation of vehicles and nonpedestrian devices.

B. The rules adopted by the Arizona board of regents pursuant to subsection A of this section shall be enforced administratively under procedures approved by the Arizona board of regents for each institution under its jurisdiction. As to students, faculty and staff, these procedures may, but need not, involve both student and faculty adjudicating bodies, so long as all procedures give the individual notice and an opportunity to be heard concerning the alleged infractions and any sanction to be imposed upon him. Administrative and disciplinary sanctions may be imposed upon students, faculty and staff for a violation of the rules including, but not limited to: a reasonable monetary penalty, impoundment, regular institutional discipline, withdrawal or suspension of

campus parking privileges, encumbrances of records or grades, or both, and oral or written reprimand. Habitual or flagrant disregard of rules shall be a ground for suspension or expulsion from the institution for a student and may be taken into consideration as to faculty and staff in regard to amount of salary and continuation of employment.

C. Members of the general public who park their vehicles in an unauthorized manner upon the property of an institution under the jurisdiction of the Arizona board of regents shall be warned concerning their unauthorized parking and, if they continue, or if such persons habitually park in such an unauthorized manner, the vehicles so parked may be impounded by the institution and a reasonable fee exacted for the cost of impoundment and storage.

D. Members of the general public who violate a rule adopted by the board pursuant to subsection A of this section regarding the use of nonpedestrian devices upon the property of an institution under the jurisdiction of the Arizona board of regents shall be warned of a violation and any nonpedestrian devices may be impounded by the institution, and a reasonable fee exacted for THE cost of impoundment and storage.

E. Any person who has received a final administrative ruling concerning a sanction imposed upon him as a result of a violation of a rule pursuant to subsection A OF THIS SECTION shall have the right to have that ruling reviewed by the superior court in the county in which the institution involved is situated, in accordance with the provisions of the administrative review act, title 12, chapter 7, article 6.

F. This section shall be considered supplemental in nature to the general common law and statutory powers of institutions under control of the board as to the internal control and activities of their students, faculty and staff.

G. ~~From and after December 31, 1988,~~ An institution under the jurisdiction of the board of regents which is located in a nonattainment area as defined in section 49-541 shall prohibit the issuance of annual permits to park on property under its jurisdiction until the applicant submits an affidavit or shows proof that his vehicle meets the requirements of section 49-542.

H. For the purposes of this section, "nonpedestrian devices" includes bicycles, tricycles, unicycles, skateboards, roller skates and equines.

Sec. 3. Section 28-642, Arizona Revised Statutes, is amended to read:

28-642. Traffic-control signs on state highways

A. The director shall place and maintain such traffic-control devices, conforming to the manual and specifications, upon all state highways as he deems necessary to indicate and to carry out the provisions of this chapter or to regulate, warn or guide traffic.

B. No local authority shall place or maintain any traffic-control device upon any highway under the jurisdiction of the director except by the latter's permission.

C. On a ~~roadway~~ STATE HIGHWAY which has a traffic flow exceeding fifteen thousand motor vehicles per day in a nonattainment area as defined in section 49-541 the director, in cooperation with local authorities, shall synchronize traffic-control signals.

Sec. 4. Section 28-1552, Arizona Revised Statutes, is amended to read:

28-1552. Imposition of use fuel tax; bulk storage

A. For the purpose of partially compensating the state for the use of its highways, an excise tax is imposed ON USE FUEL USED IN THE PROPULSION OF A MOTOR VEHICLE ON ANY HIGHWAY WITHIN THIS STATE at the same rate per gallon as the motor vehicle fuel license tax determined under section 28-1501 ~~on use fuel used in the propulsion of a motor vehicle on any highway within this state~~, EXCEPT THAT THE USE FUEL TAX ON CLEAN

BURNING FUEL IS AS PRESCRIBED BY SECTION 28-1552.01. Such tax ~~to~~ SHALL be collected and remitted to this state or paid to this state as follows:

1. By a vendor, measured by the volume of use fuel either:

(a) Delivered by the vendor into the fuel tank of a motor vehicle not operated by the vendor.

(b) Used by the vendor on the highways of this state in the propulsion of a use class motor vehicle operated by the vendor.

2. By a restricted vendor, measured by the volume of use fuel delivered into the fuel tank of a light class motor vehicle.

3. By a user, measured by the volume of use fuel imported into this state or acquired without payment of tax to a vendor within this state, and used in the propulsion of a use class motor vehicle on the highways of this state.

B. The tax, with respect to fuel acquired by any fuel user in any manner other than delivery by a vendor into a fuel tank of a motor vehicle, attaches at the time of the consumption of such fuel in the propulsion of a motor vehicle upon the highways of this state and shall be paid over to the director by the fuel user with the report required and in accord with other applicable provisions of this article.

C. The tax on light class motor vehicles attaches at the time fuel is delivered in this state into the motor vehicle fuel tank if the fuel is consumed on the highways of this state and is payable to the director by either the vendor or restricted vendor with the report required and in accord with other applicable provisions of this article. If a restricted vendor has both highway and off highway consumption in this state the restricted vendor shall report only highway consumption. With respect to light class motor vehicles, the director shall not issue a refund for use fuel purchased in this state and consumed on the highways of another state nor shall the director tax use fuel acquired in another state and consumed on the highways of this state.

D. The director may authorize a person with bulk storage of use fuel in this state to pay to the director the use fuel tax based upon the gallons delivered into bulk storage. The tax attaches at the time the use fuel is delivered into the bulk storage inventory and is payable to the director by the person with the use fuel vendor's or restricted vendor's report required and in accord with other applicable provisions of this article.

E. For the purposes of the imposition of the use fuel tax on natural gas if used to propel a motor vehicle, 1.25 therms of natural gas is equivalent to one gallon of motor vehicle fuel.

Sec. 5. Title 28, chapter 9, article 2, Arizona Revised Statutes, is amended by adding section 28-1552.01, to read:

28-1552.01. Clean burning use fuel tax; imposition; reports; reimbursement of monies to highway user revenue fund; definition

A. FROM AND AFTER SEPTEMBER 30, 1988 THE USE FUEL TAX ON CLEAN BURNING FUEL IS ONE CENT PER GALLON.

B. BEGINNING NOVEMBER 15, 1988 AND ON THE FIFTEENTH DAY OF EACH CALENDAR MONTH THEREAFTER, THE DIRECTOR SHALL DETERMINE THE NUMBER OF GALLONS OF CLEAN BURNING FUEL SOLD IN THIS STATE DURING THE PRECEDING MONTH AND CALCULATE THE LOSS OF REVENUES TO THE HIGHWAY USER REVENUE FUND BY MULTIPLYING THE NUMBER OF GALLONS SOLD FOR THAT MONTH BY THE THEN EXISTING USE FUEL TAX RATE. THE DIRECTOR SHALL NOTIFY THE STATE TREASURER OF THIS AMOUNT OF MONIES, AND THE STATE TREASURER SHALL REIMBURSE THIS AMOUNT TO THE HIGHWAY USER REVENUE FUND FROM THE AIR QUALITY FUND.

C. IF THE DIRECTOR DETERMINES THAT THE AMOUNT OF MONIES WHICH WOULD HAVE BEEN GENERATED IF CLEAN BURNING FUEL HAD BEEN SUBJECT TO THE THEN EXISTING USE FUEL TAX EQUALS TWO HUNDRED FIFTY THOUSAND DOLLARS FOR ANY PRIOR TWELVE MONTH PERIOD, OR IF THE AMOUNT OF SUCH MONIES EQUALS TWO HUNDRED THOUSAND DOLLARS FOR ANY PRIOR PERIOD OF LESS THAN TWELVE MONTHS, WHICHEVER OCCURS FIRST, THE USE FUEL TAX ON CLEAN BURNING FUELS IS IMPOSED

AT THE FOLLOWING RATE BEGINNING ON THE NEXT JANUARY 1 OR JULY 1, WHICHEVER OCCURS FIRST:

1. FIVE CENTS PER GALLON FOR THE BALANCE OF CALENDAR YEAR IN WHICH THE RATE IS INCREASED PURSUANT TO THIS SUBSECTION.
2. TEN CENTS PER GALLON FOR THE SECOND CALENDAR YEAR.
3. FIFTEEN CENTS PER GALLON FOR THE THIRD CALENDAR YEAR.
4. SEVENTEEN CENTS PER GALLON FOR THE FOURTH AND SUBSEQUENT CALENDAR YEARS.

THE TAX ATTACHES AT THE TIME THE CLEAN BURNING FUEL IS DELIVERED IN THIS STATE INTO THE MOTOR VEHICLE FUEL TANK AND IS PAYABLE TO THE DIRECTOR BY EITHER THE VENDOR OR RESTRICTED VENDOR WITH THE REPORT REQUIRED BY THIS ARTICLE AND IN ACCORDANCE WITH OTHER APPLICABLE PROVISIONS OF THIS ARTICLE.

D. IF THE CLEAN BURNING USE FUEL TAX IS INCREASED PURSUANT TO SUBSECTION C, ON THE FIFTEENTH DAY OF EACH CALENDAR MONTH THE DIRECTOR SHALL DETERMINE THE NUMBER OF GALLONS OF CLEAN BURNING FUEL SOLD IN THIS STATE DURING THE PRECEDING MONTH AND CALCULATE THE LOSS OF REVENUES TO THE HIGHWAY USER REVENUE FUND BY MULTIPLYING THE NUMBER OF GALLONS SOLD FOR THAT MONTH BY THE DIFFERENCE IN THE CLEAN BURNING USE FUEL TAX THEN IN EFFECT BY THE USE FUEL TAX THEN IN EFFECT FOR USE FUEL OTHER THAN CLEAN BURNING USE FUEL. THE DIRECTOR SHALL NOTIFY THE STATE TREASURER OF THIS AMOUNT OF MONIES, AND THE STATE TREASURER SHALL REIMBURSE THIS AMOUNT TO THE HIGHWAY USER REVENUE FUND NOT TO EXCEED TWO HUNDRED FIFTY THOUSAND DOLLARS FROM THE AIR QUALITY FUND.

E. FOR THE PURPOSES OF THIS SECTION, "CLEAN BURNING FUEL" MEANS COMPRESSED NATURAL GAS.

Sec. 6. Title 28, Arizona Revised Statutes, is amended by adding chapter 22, to read:

CHAPTER 22

UNBLENDED GASOLINE SHORTAGES

ARTICLE 1. GENERAL PROVISIONS

28-2701. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "ASSIGNMENT" MEANS AN ACTION TAKEN BY THE DEPARTMENT DESIGNATING PRIME SUPPLIERS OF MOTOR GASOLINE TO SUPPLY UNBLENDED GASOLINE TO AN ELIGIBLE BLENDER TO ALLEVIATE A SHORTAGE.
2. "BLENDER" MEANS A PERSON WHO BLENDS GASOLINE WITH ALCOHOL FOR RESALE AND WHO IS REQUIRED TO FILE FUEL MANUFACTURERS' QUARTERLY REPORTS FOR MOTOR VEHICLE GASOLINE WITH THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY PURSUANT TO 42 UNITED STATES CODE SECTIONS 7545 AND 7601; 40 CODE OF FEDERAL REGULATIONS 79.
3. "NONATTAINMENT AREA" HAS THE SAME MEANING AS PRESCRIBED IN SECTION 49-541.
4. "OXYGENATE" MEANS ANY OXYGEN-CONTAINING ASHLESS, ORGANIC COMPOUND, INCLUDING ALIPHATIC ALCOHOLS AND ALIPHATIC ETHERS, WHICH MAY BE USED AS A FUEL OR AS A GASOLINE BLENDING COMPONENT.
5. "OXYGENATED FUEL" MEANS A MOTOR FUEL BLEND CONSISTING PRIMARILY OF GASOLINE AND A SUBSTANTIAL AMOUNT OF ONE OR MORE OXYGENATES.
6. "PRIME SUPPLIER" MEANS THAT SUPPLIER WHICH MAKES THE FIRST SALE OF MOTOR GASOLINE FOR ULTIMATE CONSUMPTION WITHIN A NONATTAINMENT AREA.
7. "STATE SET-ASIDE" OR "SET-ASIDE" MEANS, WITH RESPECT TO A GIVEN PRIME SUPPLIER, THE AMOUNT OF UNBLENDED GASOLINE WHICH IS MADE AVAILABLE FROM THE TOTAL SUPPLY OF THAT PRIME SUPPLIER FOR UTILIZATION BY THE DEPARTMENT TO RESOLVE UNBLENDED FUEL SHORTAGES.
8. "UNBLENDED GASOLINE" MEANS GASOLINE, WHETHER LEADED OR UNLEADED, WHICH IS OF SUCH COMPOSITION THAT IT IS LEGALLY AND CHEMICALLY SUITABLE FOR BLENDING WITH OXYGENATES SO AS TO PRODUCE OXYGENATED FUEL CONTAINING THE PER CENT WEIGHT OF OXYGEN PRESCRIBED BY LAW.

28-2702. Department survey of availability of unblended gasoline

BEGINNING FROM AND AFTER SEPTEMBER THROUGH MARCH 31 OF EACH YEAR, THE DEPARTMENT SHALL CONDUCT A MONTHLY SURVEY OF MOTOR VEHICLE FUEL REFINERS,

SUPPLIERS, TERMINAL OPERATORS AND WHOLESALERS TO DETERMINE THE AVAILABILITY AND SALES OF UNBLENDED GASOLINE WITHIN A CARBON MONOXIDE NONATTAINMENT AREA FOR WHICH THE SALE OF OXYGENATED FUEL IS REQUIRED TO BE SOLD. THE DEPARTMENT SHALL MAKE AVAILABLE A COPY OF THE REPORT OF SUCH SURVEY IN ORDER TO ASSIST BLENDERS.

28-2703. Determination of shortage; declaration

A. A BLENDER, WITHIN ONE MONTH BEFORE THE PERIOD OF TIME WHEN OXYGENATED FUEL IS REQUIRED TO BE SOLD IN A CARBON MONOXIDE NONATTAINMENT AREA OR AT ANY TIME DURING SUCH A PERIOD, MAY ALLEGE AND SHALL ESTABLISH THAT HE IS UNABLE TO PURCHASE FOR THE FOLLOWING MONTH UNBLENDED GASOLINE AND MAY REQUEST THAT THE DIRECTOR DETERMINE THAT A SHORTAGE OF UNBLENDED GASOLINE EXISTS IN THE CARBON MONOXIDE NONATTAINMENT AREA.

B. IF THE DIRECTOR DETERMINES THAT A SHORTAGE OF UNBLENDED GASOLINE EXISTS IN A CARBON MONOXIDE NONATTAINMENT AREA, THE DIRECTOR SHALL COMMUNICATE SUCH A DETERMINATION TO THE GOVERNOR. THE GOVERNOR, BY EXECUTIVE ORDER, MAY DECLARE THAT A SHORTAGE EXISTS AND NOTIFY THE DEPARTMENT TO IMPLEMENT THE STATE SET-ASIDE PROGRAM FOR UNBLENDED GASOLINE. THE DECLARATION OF A SHORTAGE IS EFFECTIVE FOR THE PERIOD OF TIME DURING WHICH OXYGENATED FUEL IS REQUIRED TO BE SOLD IN THIS STATE.

28-2704. State set-aside volume

A. ON DECLARATION OF A SHORTAGE, THE DEPARTMENT SHALL NOTIFY EACH PRIME SUPPLIER OF ITS MONTHLY SET-ASIDE PERCENTAGE, NOT TO EXCEED FIVE PER CENT. THE DEPARTMENT SHALL MAKE KNOWN THE SET-ASIDE PERCENTAGES TO A PRIME SUPPLIER NO LATER THAN FIFTEEN DAYS BEFORE THE BEGINNING OF EACH ALLOCATION MONTH.

B. THE TOTAL SET-ASIDE VOLUME AVAILABLE TO THE DEPARTMENT FOR ANY PARTICULAR MONTH IS THE AMOUNT CALCULATED BY MULTIPLYING THE STATE SET-ASIDE PERCENTAGE LEVEL BY EACH PRIME SUPPLIER'S SALES OF MOTOR VEHICLE FUEL FOR ULTIMATE CONSUMPTION IN EACH CARBON MONOXIDE NONATTAINMENT AREA FOR THE SAME MONTH OF THE PREVIOUS CALENDAR YEAR. THE SET-ASIDE FOR A PARTICULAR MONTH MAY NOT BE ACCUMULATED OR DEFERRED BY THIS STATE BUT SHALL BE MADE AVAILABLE FROM CURRENT MONTHLY STOCKS OF PRIME SUPPLIERS.

28-2705. Assignment of set-aside

A. IF A SHORTAGE HAS BEEN DECLARED, AT ANY TIME DURING THE MONTH THE DEPARTMENT MAY ORDER THE ASSIGNMENT OF ALL OR PART OF A PRIME SUPPLIER'S SET-ASIDE VOLUME THROUGH A TERMINAL FACILITY.

B. THE DEPARTMENT SHALL ASSIGN SET-ASIDE TO MEET SHORTAGES OF UNBLENDED GASOLINE AVAILABLE TO BLENDERS. AN ORDER ISSUED PURSUANT TO THIS SECTION SHALL BE IN WRITING AND IS EFFECTIVE FIFTEEN DAYS AFTER PRESENTATION TO THE PRIME SUPPLIER. THE ORDER REPRESENTS A CALL ON THE PRIME SUPPLIER'S SET-ASIDE VOLUME FOR THE MONTH OF ISSUANCE, EVEN IF FOR SOME REASON DELIVERY CANNOT BE MADE UNTIL THE FOLLOWING MONTH.

C. THE DEPARTMENT MAY ASSIGN SET-ASIDE FOR USE IN THE MONTH OF ISSUANCE IF AN APPLICANT CAN DEMONSTRATE THAT A SHORTAGE IS FACED WHICH REQUIRES IMMEDIATE ATTENTION AND IF THE DEPARTMENT GIVES FIFTEEN DAYS' NOTICE TO THE PRIME SUPPLIER. BY THE TWENTIETH DAY OF THE MONTH, THE DEPARTMENT SHALL MAKE AN INITIAL DETERMINATION AS TO HOW MUCH OF THE SET-ASIDE NOT ALLOCATED BY THE TWENTY-FIFTH DAY OF THE MONTH WILL REVERT TO THE PRIME SUPPLIER AND ON THE TWENTY-FIFTH DAY OF THE MONTH SHALL NOTIFY THE PRIME SUPPLIER OF THE AMOUNT OF SET-ASIDE WHICH REVERTS TO THE PRIME SUPPLIER.

D. ALL UNBLENDED GASOLINE MADE AVAILABLE TO AN APPLICANT SHALL BE ASSIGNED, IF POSSIBLE, TO THE APPLICANT'S NORMAL PRIME SUPPLIER.

E. EACH PRIME SUPPLIER SHALL DESIGNATE A LIAISON PERSON TO ACT FOR AND ON BEHALF OF THE PRIME SUPPLIER WITH RESPECT TO THE SET-ASIDE PROGRAM.

F. THIS ARTICLE DOES NOT REQUIRE A PRIME SUPPLIER TO SUPPLY UNBLENDED GASOLINE WITH VOLATILITY OR DISTILLATION CHARACTERISTICS WHICH ARE NOT REPRESENTATIVE OF NORMAL COMMERCIAL PRACTICES.

28-2706. Price

PRIME SUPPLIERS SHALL NOT CHARGE A PREMIUM ON SET-ASIDE VOLUMES EXCEPT TO RECOVER DOCUMENTED EXTRA COSTS TO DELIVER THE SET-ASIDE FUEL.

28-2707. Application

A. AN APPLICANT FOR A SET-ASIDE ASSIGNMENT SHALL BE A BLENDER SEEKING AN ASSIGNMENT FROM THE STATE SET-ASIDE PROGRAM TO MEET AN UNBLENDED GASOLINE SHORTAGE.

B. THE DEPARTMENT MAY INITIATE AN INVESTIGATION OF ANY STATEMENT IN AN APPLICATION, WHETHER WRITTEN OR ORAL, AND UTILIZE IN ITS EVALUATION ANY RELEVANT FACTS OBTAINED BY SUCH INVESTIGATION. THE DEPARTMENT MAY SOLICIT AND ACCEPT SUBMISSIONS RELEVANT TO ANY APPLICATION IF THE APPLICANT IS AFFORDED AN OPPORTUNITY TO RESPOND TO ALL SUCH SUBMISSIONS. IN EVALUATING AN APPLICATION, THE DEPARTMENT MAY CONSIDER ANY OTHER SOURCES OF INFORMATION.

C. IF THE DEPARTMENT DETERMINES THAT THERE IS INSUFFICIENT INFORMATION ON WHICH TO BASE A DECISION AND IF, ON REQUEST, THE NECESSARY ADDITIONAL INFORMATION IS NOT SUBMITTED, THE DEPARTMENT MAY DISMISS THE APPLICATION.

D. ON CONSIDERATION OF THE APPLICATION, AND OTHER RELEVANT INFORMATION RECEIVED OR OBTAINED DURING THE APPLICATION PROCESS, THE DEPARTMENT SHALL MAKE A DECISION DENYING OR GRANTING THE APPLICATION.

E. IF THE DEPARTMENT FAILS TO TAKE ACTION ON AN APPLICATION WITHIN FIFTEEN DAYS AFTER FILING, THE APPLICANT MAY TREAT THE APPLICATION AS HAVING BEEN DENIED AND MAY APPEAL.

28-2708. Appeals

IF AN APPLICATION FOR A SET-ASIDE ALLOCATION IS DENIED OR REDUCED, THE APPLICANT MAY REQUEST A REVIEW OF ITS APPLICATION BY THE DIRECTOR. THE APPLICANT SHALL HAVE AN OPPORTUNITY TO PRESENT ADDITIONAL INFORMATION TO SUPPORT THE REQUEST FOR SET-ASIDE. THE DECISION OF THE DIRECTOR CONSTITUTES THE FINAL ADMINISTRATIVE REMEDY AVAILABLE TO AN APPLICANT FOR STATE SET-ASIDE.

Sec. 7. Section 41-101.03, Arizona Revised Statutes, is amended to read:

41-101.03. State employee ride sharing program; designated state agency; fund

A. The governor shall designate an appropriate state agency to establish, administer and operate a ride sharing program for the transportation of state employees between their residences and their place of work. The designated agency shall establish the ride sharing program for the voluntary participation by state employees in any area of this state where a sufficiently large number of state employees reside and where the costs of administering a ride sharing program would not be excessive.

~~B. The agency designated by the governor may procure, service, maintain and repair the vehicles and maintain records and accounts for the purpose of obtaining full reimbursement of costs to this state from the users or ride share participants through payroll deductions or other lawful means. The agency shall adopt rules and regulations necessary for conducting the program.~~

~~C. The designated agency shall recover by reimbursement from ride sharing users or participants the costs to the state to purchase vehicles, fuels and other consumable materials used in the vehicles, the costs of repair and maintenance of the vehicles, the costs of insuring the vehicles and the costs of administering the ride sharing program.~~

~~D.~~ B. There is established the state employee ride share fund which consists of monies appropriated by the legislature, unrestricted private grants, gifts, contributions and bequests, federal funds, and fees. ~~and other monies paid as reimbursement of costs by ride share participants.~~ The state agency designated by the governor pursuant to this section shall administer the fund and may disburse monies from the fund only in direct support of the ride sharing program established by this section. Monies in the fund appropriated by the legislature are exempt

SESSION LAWS

STATE OF ARIZONA

Forty–second Legislature
FIRST REGULAR SESSION

Chapters 1 to 178

Convened—January 9, 1995
Sine Die—April 13, 1995

1995

commission to promote the adoption of former racing greyhounds as domestic pets pursuant to section 5–104, subsection G in a manner and in an amount established by rules of the commission.

Approved by the Governor April 17, 1995.

Filed in the Office of the Secretary of State April 18, 1995.

TRANSPORTATION CODE REVISION

CHAPTER 132

S.B. 1364

AN ACT REPEALING TITLES 2, 18 AND 28, ARIZONA REVISED STATUTES; AMENDING TITLE 20, CHAPTER 6, ARTICLE 8, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 20–1533 AND 20–1534; AMENDING ARIZONA REVISED STATUTES BY ADDING A NEW TITLE 28; AMENDING TITLE 38, CHAPTER 3, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 10; AMENDING TITLE 41, CHAPTER 12, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 41–1752 THROUGH 41–1755; AMENDING TITLE 41, CHAPTER 12, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 10; AMENDING TITLE 48, ARIZONA REVISED STATUTES, BY ADDING CHAPTERS 29 AND 30; RELATING TO TRANSPORTATION.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Repeal

Titles 2, 18 and 28, Arizona Revised Statutes, are repealed.

Sec. 2. Title 20, chapter 6, article 8, Arizona Revised Statutes, is amended by adding sections 20–1533 and 20–1534, to read:

§ 20–1533. Surety companies; arrest bond certificates

A. In any year, a domestic or foreign surety company that has qualified to transact surety business in this state may become surety in an amount of not more than three hundred dollars with respect to a guaranteed arrest bond certificate issued in that year by a motor club, by filing with the director an undertaking to become surety.

B. The undertaking shall both:

1. Be in a form prescribed by the director.

2. State the following:

(a) The name and address of the motor club with respect to the guaranteed arrest bond certificates of which the surety company undertakes to be surety.

(b) The unqualified obligation of the surety company to pay the forfeiture in an amount of not more than three hundred dollars of a person who, after posting a guaranteed arrest bond certificate with resect to which the surety company has undertaken to be surety, fails to make the appearance for which the guaranteed arrest bond certificate was posted.

§ 20–1534. Guaranteed arrest bond certificate; cash bail or other bond; forfeiture

A. A guaranteed arrest bond certificate that conforms to section 20–1533 shall:

1. Be accepted as a bail bond in lieu of cash bail or any other bond if posted by the person whose signature appears on the certificate.

2. Be accepted to guarantee the appearance of the person whose signature appears on the certificate in any court in this state, including all municipal courts, at the time the court requires if the person is arrested or required to post a bond for a violation of a motor vehicle law of this state or a motor vehicle ordinance of a city or town.

3. Not be accepted as bail bonds for:

(a) The offense of driving under the influence of intoxicating liquor or of drugs.

(b) Any felony.

B. A guaranteed arrest bond certificate posted as bail bond in any court in this state shall be treated like a bail bond in any criminal case and:

1. Is subject to the same forfeiture and enforcement provisions that govern bail bonds in criminal cases.

2. If in any municipal court of this state, is subject to the forfeiture and enforcement provisions of the charter or ordinance of the particular city or town pertaining to bail bonds posted.

Sec. 3. Arizona Revised Statutes is amended by adding a new title 28, to read:

TITLE 28

TRANSPORTATION

CHAPTER 1

DEFINITIONS AND PENALTIES

ARTICLE 1. DEFINITIONS

§ 28–101. Definitions

In this title, unless the context otherwise requires:

1. "Alcohol" means any substance containing any form of alcohol, including ethanol, methanol, propynol and isopropynol.

2. "Alcohol concentration" if expressed as a percentage means either:

(a) The number of grams of alcohol per one hundred milliliters of blood.

(b) The number of grams of alcohol per two hundred ten liters of breath.

3. "Authorized emergency vehicle" means any of the following:

(a) A fire department vehicle.

(b) A police vehicle.

(c) An ambulance or emergency vehicle of a municipal department or public service corporation that is designated or authorized by the department or a local authority.

(d) Any other ambulance, fire truck or rescue vehicle that is authorized by the department in its sole discretion and that meets liability insurance requirements prescribed by the department.

4. "Aviation fuel" means all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating an internal combustion engine for use in an aircraft but does not include fuel for jet or turbine powered aircraft.

5. "Bicycle" means a device that is propelled by human power and on which a person may ride and that has either:

(a) Two tandem wheels, either of which is more than sixteen inches in diameter.

(b) Three wheels in contact with the ground, any of which is more than sixteen inches in diameter.

6. "Board" means the transportation board.

7. "Bus" means a motor vehicle designed for carrying sixteen or more passengers, including the driver.

8. "Business district" means the territory contiguous to and including a highway if there are buildings in use for business or industrial purposes within any six hundred feet along the highway, including hotels, banks or office buildings, railroad stations and public buildings that occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway.

9. "Combination of vehicles" means a truck or truck tractor and semitrailer and any trailer that it tows but does not include a forklift designed for the purpose of loading or unloading the truck, trailer or semitrailer.

10. "Controlled substance" means a substance so classified under section 102(6) of the controlled substances act (21 United States Code section 802(6)) and includes all substances listed in schedules I through V of 21 Code of Federal Regulations part 1308.

11. "Conviction" means:

(a) An unvacated adjudication of guilt or a determination that a person violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal.

(b) An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court.

(c) A plea of guilty or no contest accepted by the court.

(d) The payment of a fine or court costs.

12. "County highway" means a public road constructed and maintained by a county.

13. "Dealer" means a person who is engaged in the business of buying, selling or exchanging motor vehicles, trailers or semitrailers and who has an established place of business.

14. "Department" means the department of transportation acting directly or through its duly authorized officers and agents.

15. "Director" means the director of the department of transportation.

16. "Drive" means to operate or be in actual physical control of a motor vehicle.

17. "Driver" means a person who drives or is in actual physical control of a vehicle.

18. "Driver license" means a license that is issued by a state to an individual and that authorizes the individual to drive a motor vehicle.

19. "Farm tractor" means a motor vehicle designed and used primarily as a farm implement for drawing implements of husbandry.

20. "Foreign vehicle" means a motor vehicle, trailer or semitrailer that is brought into this state other than in the ordinary course of business by or through a manufacturer or dealer and that has not been registered in this state.

21. "Golf cart" means a motor vehicle that has not less than three wheels in contact with the ground, that has an unladen weight of less than one thousand three hundred pounds, that is designed to be and is operated at not more than fifteen miles per hour and that is designed to carry golf equipment and not more than four persons including the driver.

22. "Hazardous material" means a material, and its mixtures or solutions, that the United States department of transportation determines under 49 Code of Federal Regulations is capable of posing an unreasonable risk to health, safety and property if transported in commerce and that is required to be placarded or marked as required by the department's safety rules prescribed pursuant to chapter 14 of this title.

23. "Implement of husbandry" means a vehicle designed primarily for agricultural purposes and used exclusively in the conduct of agricultural operations, including an implement or vehicle whether self-propelled or otherwise that meets all of the following conditions:

(a) Is used exclusively for carrying products of farming from one part of a farm to another part of the same farm or from one farm to another farm.

(b) Is used solely for agricultural purposes including the preparation or harvesting of cotton, alfalfa, grains and other farm crops.

(c) Is only incidentally operated or moved on a highway whether as a trailer or self-propelled unit.

24. "Local authority" means the county, municipal and other local board or body exercising jurisdiction over highways under the constitution and laws of this state.

25. "Manufacturer" means a person engaged in the business of manufacturing motor vehicles, trailers or semitrailers.

26. "Moped" means a bicycle that is equipped with a helper motor if the vehicle has a maximum piston displacement of fifty cubic centimeters or less, a brake horsepower of one and one-half or less and a maximum speed of twenty-five miles per hour or less on a flat surface with less than a one per cent grade.

27. "Motor-driven cycle" means a motorcycle, including every motor scooter, with a motor that produces not more than five horsepower.

28. "Motor vehicle":

(a) Means either:

(i) A self-propelled vehicle.

(ii) For the purposes of the laws relating to the imposition of a tax on motor vehicle fuel, a vehicle that is operated on the highways of this state and that is propelled by the use of motor vehicle fuel.

(b) Does not include a motorized wheelchair or a motorized skateboard. For the purposes of this subdivision:

(i) "Motorized wheelchair" means a self-propelled vehicle that is designed for and used by a physically disabled person.

(ii) "Motorized skateboard" means a self-propelled device that has a motor, a deck on which a person may ride and at least two tandem wheels in contact with the ground.

29. "Motor vehicle fuel" includes all products that are commonly or commercially known or sold as gasoline, including casinghead gasoline, natural gasoline and all flammable liquids, and that are composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines. Motor vehicle fuel does not include use fuel as defined in section 28–5701, aviation fuel or fuel for jet or turbine powered aircraft.

30. "Motorcycle" means a motor vehicle that has a seat or saddle for the use of the rider and that is designed to travel on not more than three wheels in contact with the ground but excluding a tractor and a moped.

31. "Nonresident" means a person who is not a resident of this state as defined in section 28–701.

32. "Off-road recreational motor vehicle" means a motor vehicle designed primarily for recreational nonhighway all-terrain travel. Off-road recreational motor vehicle does not mean a motor vehicle used for construction, building trade, mining or agricultural purposes.

33. "Operator" means a person who drives a motor vehicle on a highway, who is in actual physical control of a motor vehicle on a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.

34. "Owner" means:

(a) A person who holds the legal title of a vehicle.

(b) If a vehicle is the subject of an agreement for the conditional sale or lease with the right of purchase on performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, the conditional vendee or lessee.

(c) If a mortgagor of a vehicle is entitled to possession of the vehicle, the mortgagor.

35. "Pedestrian" means any person afoot. A person who is not ambulatory and who is in a wheelchair or motorized wheelchair is considered a pedestrian. For the purposes of this paragraph, "motorized wheelchair" means a self-propelled vehicle that is designed for and used by a physically disabled person.

36. "Power sweeper" means an implement, with or without motive power, that is only incidentally operated or moved on a street or highway and that is designed for the removal of debris, dirt, gravel, litter or sand whether by broom, vacuum or regenerative air system from asphaltic concrete or cement concrete surfaces, including parking lots, highways, streets and warehouses, and a vehicle on which the implement is permanently mounted.

37. "Public transit" means the transportation of passengers on scheduled routes by means of a conveyance on an individual passenger fare-paying basis excluding transportation by a sight-seeing bus, school bus or taxi or a vehicle not operated on a scheduled route basis.

38. "Reconstructed vehicle" means a vehicle that has been assembled or constructed largely by means of essential parts, new or used, derived from vehicles or makes of vehicles of various names, models and types or that, if originally otherwise constructed, has been materially altered by the removal of essential parts or by the addition or substitution of essential parts, new or used, derived from other vehicles or makes of vehicles. For the purposes of this paragraph, "essential parts" means integral and body parts, the removal, alteration or substitution of which will tend to conceal the identity or substantially alter the appearance of the vehicle.

39. "Residence district" means the territory contiguous to and including a highway not comprising a business district if the property on the highway for a distance of three hundred feet or more is in the main improved with residences or residences and buildings in use for business.

40. "Right-of-way" when used within the context of the regulation of the movement of traffic on a highway means the privilege of the immediate use of the highway. Right-of-way when used within the context of the real property on which transportation facilities and appurtenances to the facilities are constructed or maintained means the lands or interest in lands within the right-of-way boundaries.

41. "School bus" means a motor vehicle that is either:

(a) Designed for carrying more than ten passengers, that is owned by any public or governmental agency or other institution and that is operated for the transportation of children to or from home or school on a regularly scheduled basis.

(b) Privately owned and operated for compensation for the transportation of children to or from home or school on a regularly scheduled basis.

42. "Semitrailer" means a vehicle with or without motive power, other than a pole trailer, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that some part of its weight and that of its load rests on or is carried by another vehicle. For the purposes of this paragraph, "pole trailer" has the same meaning prescribed in section 28–3101.

43. "State" means a state of the United States and the District of Columbia.

44. "State highway" means a state route or portion of a state route that is accepted and designated by the board as a state highway and that is maintained by the state.

45. "State route" means a right-of-way whether actually used as a highway or not that is designated by the board as a location for the construction of a state highway.

46. "Street" or "highway" means the entire width between the boundary lines of every way if a part of the way is open to the use of the public for purposes of vehicular travel.

47. "Trailer" means a vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests on the towing vehicle. A semitrailer equipped with an auxiliary front axle commonly known as a dolly is deemed to be a trailer. For the purposes of this paragraph, "pole trailer" has the same meaning prescribed in section 28–3101.

48. "Truck" means a motor vehicle designed or used primarily for the carrying of property other than the effects of the driver or passengers and includes a motor vehicle to which has been added a box, a platform or other equipment for such carrying.

49. "Truck tractor" means a motor vehicle that is designed and used primarily for drawing other vehicles and that is not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

50. "Vehicle" means a device in, on or by which a person or property is or may be transported or drawn on a highway, excluding devices moved by human power or used exclusively on stationary rails or tracks.

51. "Vehicle transporter" means either:

(a) A truck tractor capable of carrying a load and drawing a semitrailer.

(b) A truck tractor with a stinger-steered fifth wheel capable of carrying a load and drawing a semitrailer or a truck tractor with a dolly mounted fifth wheel that is securely fastened to the truck tractor at two or more points and that is capable of carrying a load and drawing a semitrailer.

ARTICLE 2. GENERAL PENALTIES

§ 28–121. Violation; classification; exception; civil traffic violation; penalty assessment

A. A person who violates a provision of this title or who fails or refuses to do or perform an act or thing required by this title is guilty of a class 2 misdemeanor, unless the statute defining the offense provides for a different classification. This subsection does not apply to any provision or requirement of chapter 3, 4, 5, 6, 7 or 8 or chapter 9, article 4 or chapter 10, article 10 of this title.

B. A violation of or failure or refusal to do or perform an act or thing required by chapter 3, 4, 5, 6, 7 or 8 or chapter 9, article 4 or chapter 10, article 10 of this title is a civil traffic violation unless the statute defining the violation provides for a different classification. Civil traffic violations are subject to chapter 8, articles 3 and 4 of this title.

C. In addition to any other penalty assessment provided in this title, the court shall levy the penalty assessment as required by sections 12–116.01 and 12–116.02.

CHAPTER 2

ADMINISTRATION

ARTICLE 1. TRANSPORTATION BOARD

§ 28–301. Transportation districts

The state is divided into six transportation districts as follows:

1. First district, Maricopa county.
2. Second district, Pima county.
3. Third district, Cochise, Greenlee and Santa Cruz counties.
4. Fourth district, Gila, Graham and Pinal counties.
5. Fifth district, Apache, Coconino and Navajo counties.
6. Sixth district, La Paz, Mohave, Yavapai and Yuma counties.

§ 28–302. Transportation board; members; appointments; terms; compensation

A. A transportation board is established in the department of transportation.

B. The board consists of seven members, one from each of the six transportation districts and one from the state at large. At least two members of the board shall have experience in aviation.

C. The governor shall appoint members of the board for terms of six years pursuant to section 38–211 to expire on the third Monday in January of the appropriate year.

D. A person is not qualified to be a member of the board representing a transportation district if the person has not been a resident and taxpayer of this state and the county from which the person is chosen for at least five years immediately before the person's appointment.

E. The governor shall not appoint a member to serve two terms in succession. If a transportation district includes more than one county, the governor shall rotate the appointment of members for the district among the counties in the district.

F. If a member who represents a transportation district changes the member's residence to another county, the member's office becomes vacant.

G. Each member is eligible to receive compensation pursuant to section 38–611.

§ 28–303. Powers and duties of the board; meetings

A. The board may meet when necessary at any place in this state. The board shall hold other regular meetings as it determines necessary. The chairman may call special meetings with the concurrence of at least two members.

B. The board shall meet for the purpose of organizing on or before the third Monday in January of each year at which time the board shall designate the district member with the shortest period of time remaining to serve a complete term as chairman. The chairman shall preside at all sessions. The board shall designate the district member with the next shortest period of time remaining to serve a complete term as vice-chairman. The vice-chairman shall preside in the absence of the chairman. If the district member with the least time to serve does not choose to serve as chairman, the members shall select a chairman from the remaining board members.

C. If the chairman's membership on the board is terminated for any reason, the remaining members of the board shall select another member to serve as chairman until the regular organizational meeting on or before the third Monday in January of each year.

§ 28–304. Powers and duties of the board; transportation facilities

A. With respect to highways, the board shall:

1. Establish a complete system of state highway routes.

2. Determine which state highway routes or portions of the routes are accepted into the state highway system and which state highway routes to improve.

3. Establish, open, relocate or alter a portion of a state route or state highway.

4. Vacate or abandon a portion of a state route or state highway as prescribed in section 28–7209.

B. The board shall establish policies and the relative weights given to criteria to guide the development or modification of the five year transportation facilities construction program, award all construction contracts for transportation facilities and monitor the status of these construction projects.

C. The board shall determine priority program planning with respect to transportation facilities.

D. With respect to transportation facilities other than highways, the board shall establish, open, relocate, alter, vacate or abandon all or portions of the facilities.

E. With respect to aeronautics, the board shall perform the functions prescribed in chapter 25 of this title.

§ 28–305. Powers and duties of the board; rules

The board shall prescribe rules for the effective administration of its powers, duties and responsibilities, including rules relating to:

1. Priority programs.

2. Establishing, altering or vacating highways.

3. Construction contracts.

4. Revenue bonds.

5. Local government airport grants.

6. Designating or establishing scenic or historic highways.

7. Prohibiting bid rigging.

ARTICLE 2. DEPARTMENT OF TRANSPORTATION

§ 28–331. Department of transportation established

A. A department of transportation is established. The department shall provide for an integrated and balanced state transportation system.

B. The director is responsible for the administration of the department.

C. The transportation board has the policy powers and duties prescribed in sections 28–304, 28–305, 38–7209 and 28–8202 and shall advise the director on other matters as required.

§ 28–332. Department of transportation jurisdiction; duties; divisions

A. The exclusive control and jurisdiction over state highways, state routes, state owned airports and all state owned transportation systems or modes are vested in the department of transportation.

B. The department shall:

1. Register motor vehicles and aircraft, license drivers, collect revenues, enforce motor vehicle and aviation statutes and perform related functions.

2. Do multi-modal state transportation planning, cooperate and coordinate transportation planning with local governments and establish an annually updated priority program of capital improvements for all transportation modes.

3. Design and construct transportation facilities in accordance with a priority plan and maintain and operate state highways, state owned airports and state public transportation systems.

4. Investigate new transportation systems and cooperate with and advise local governments concerning the development and operation of public transit systems.

5. Have administrative jurisdiction of transportation safety programs and implement them in accordance with applicable law.

C. In order to carry out the responsibilities enumerated in subsection B, the department is organized into the following divisions:

1. Motor vehicle.

2. Transportation planning.

3. Highways.

4. Aeronautics.

5. Public transit.

6. Administrative services.

§ 28-333. Legal counsel

The attorney general is the legal adviser of the department and shall provide legal services as the department requires. Compensation for personnel assigned by the attorney general to perform the services is a charge against appropriations to the department. The attorney general shall prosecute and defend in the name of this state all actions necessary to carry out this title.

§ 28-334. Acceptance and expenditure of federal monies; limitations

A. The department may accept and expend grants, donations, aids or other monies received from the federal government or any agency of the federal government for any transportation purpose.

B. The department may contract and do all things necessary to secure the full benefits available to this state for transportation purposes under federal law and, in doing so, may cooperate with federal, state and local government agencies, private and public organizations and private individuals.

C. This chapter shall not be construed to affect the authority of other agencies or boards of this state or political subdivisions from accepting, receiving or expending grants or other monies from the federal government or any agency of the federal government for transportation purposes pursuant to other provisions of law or charter.

§ 28-335. Department of transportation venture team

A. The department of transportation shall establish one or more venture teams consisting of at least ten members, with at least five members who have private sector experience in executive positions and at least five members who serve as managers in the department. The governor shall appoint the private sector members. The director shall appoint the department managers. Private sector members shall serve for staggered terms of three years. The governor may remove

a private sector member for cause. Department managers serve at the pleasure of the director.

B. The venture team shall select work areas for review and consultation with senior management from the department. Department managers may suggest work areas for the venture team to review. The director shall dedicate at least four of the department's employees with appropriate experience and skills to provide staff support for the venture team. A report of the findings and recommendations regarding each study shall be submitted to the venture team.

C. The members shall elect a chairman from among the team's private sector members and a vice-chairman from among its manager members.

D. Notwithstanding section 38–101, the private sector members are not considered public officers and are not subject to financial disclosure under title 38, chapter 3.1. The private sector members are subject to title 38, chapter 3, article 8. Venture team meetings are exempt from title 38, chapter 3, article 3.1.

E. The members of the venture team are not eligible to receive compensation for their services, but the private sector members are eligible to receive reimbursement for expenses pursuant to title 38, chapter 4, article 2.

F. The venture team shall periodically submit reports of its findings and recommendations to the director. The venture team and director shall submit venture team annual reports to the governor, the president of the senate and the speaker of the house of representatives.

ARTICLE 3. DIRECTOR OF THE DEPARTMENT OF TRANSPORTATION

§ 28–361. Director; appointment; compensation

A. The governor shall appoint the director pursuant to section 38–211 from a list of qualified candidates submitted by the transportation board. The director serves at the pleasure of the governor.

B. The department of administration in consultation with the governor's office shall prepare a job description for the position of director and shall recruit candidates for the position. The board shall receive and review applications for the position of director and shall forward the names of all qualified applicants to the governor. The governor may ask for additional names and recommendations at any time.

C. The director is eligible to receive compensation pursuant to section 38–611.

§ 28–362. Deputy director of the department

The director may appoint a deputy director of the department with the approval of the governor. The deputy director serves at the pleasure of the director. The deputy director is directly responsible for the duties delegated to the deputy director by the director.

§ 28–363. Duties of the director; administration

A. The director shall:

1. Supervise and administer the overall activities of the department and its divisions and employees.

2. Appoint assistant directors for each of the divisions.

3. Provide for the assembly and distribution of information to the public concerning department activities.

4. Delegate functions, duties or powers as the director deems necessary to carry out the efficient operation of the department.

5. Exercise complete and exclusive operational control and jurisdiction over the use of state highways and routes.

6. Coordinate the design, right-of-way purchase and construction of controlled access highways that are either state routes or state highways and related grade separations of controlled access highways.

7. Coordinate the design, right-of-way purchase, construction, standard and reduced clearance grade separation, extension and widening of arterial streets and highways under chapters 17 and 18 of this title.

8. Assist counties, cities and towns in the development of their regional transportation plans under chapters 17 and 18 of this title to ensure that the streets and highways within each county form a regional system.

9. On or before December 1 present an annual report to the speaker of the house of representatives and the president of the senate documenting the expenditures of monies under chapters 17 and 18 of this title during the previous fiscal year relating to the design, right-of-way purchase or construction of controlled access highways that are accepted in the state highway system as state routes or state highways or related grade separations of controlled access highways that are included in the regional transportation plans of the counties.

10. Designate the necessary agencies for enforcing the provisions of the laws the director administers or enforces.

11. Exercise other duties or powers as the director deems necessary to carry out the efficient operation of the department.

B. The assistant directors appointed pursuant to subsection A are exempt from the state personnel system.

§ 28–364. Powers of the director

A. The director may provide technical transportation planning expertise to local governments when requested, coordinate local government transportation planning with regional and state transportation planning and guide local transportation planning to assure compliance with federal requirements. The planning authority granted by this subsection does not preempt planning responsibilities and decisions of local governments.

B. If the governor declares a state of emergency, the director may contract and do all things necessary to provide emergency transportation services for the residents in the affected areas whether the emergency transportation is by street, rail or air.

C. On a determination that it is in this state's best interest, the director may authorize payment for necessary relocation costs in advance of work being performed if an existing facility owned by the United States must be relocated or adjusted due to construction, modification or improvement of a state highway. The director shall base each advance payment on an estimate of cost of the proposed relocation or adjustment prepared by the federal government and acceptable to the director and shall base the final compensation on the actual agreed cost.

§ 28–365. Disposition of fees

Except as otherwise provided, the director shall transmit fees collected under this chapter to the state treasurer for deposit in the Arizona highway user revenue fund.

§ 28–366. Director; rules

The director shall adopt rules pursuant to title 41, chapter 6 for:

1. Collection of taxes and license fees.

2. Public safety and convenience as the director deems necessary.

3. Enforcement of the provisions of the laws the director administers or enforces.

§ 28–367. **Public transit**

The director shall:

1. Receive, allocate, control and disperse all monies designated for state public transit programs by federal or state law or rule.

2. Pass on projects for construction in cooperation with the United States.

3. Negotiate and enter into contracts on behalf of this state with the United States for the cooperative construction and maintenance of federal aid public transit systems in this state.

4. Enter into agreements on behalf of this state with counties, cities, towns, public transit districts or any other political subdivisions for the improvement or maintenance of public transit systems or for the joint improvement or maintenance of public transit systems.

5. Enter into contracts for the construction of state public transit systems.

6. Adopt rules for the application for and the expenditure of all public transit monies.

§ 28–368. **Property acquisition; definition**

A. The director may acquire in the name of this state by gift, grant, purchase, lease-purchase, condemnation or any other lawful manner real property or buildings that are necessary, useful or convenient for the use of the department. The director shall not acquire land or buildings by purchase or condemnation without prior approval of the joint committee on capital review established by section 41–1251 and without an appropriation of monies by the legislature for the acquisition.

B. The director may enter into certificate of participation financing arrangements to provide financing or refinancing for real property or buildings that are necessary, useful or convenient for the use of the department.

C. A lease-purchase agreement relating to land or buildings under this section shall provide that:

1. The obligation of this state to make a payment under the agreement is a current expense of the department, is payable exclusively from appropriated monies and is not a general obligation indebtedness of this state or the department.

2. If the legislature fails to appropriate monies or the department fails to allocate the monies for any periodic payment or renewal term of the agreement, the agreement terminates at the end of the current term and this state and the department are relieved of any subsequent obligation under the agreement.

3. The attorney general and the joint committee on capital review shall review and approve the agreement before the lease-purchase agreement takes effect.

D. The attorney general shall review the agreement for compliance with the constitution and laws of this state. If in the attorney general's opinion the agreement is in compliance, the attorney general shall append the attorney general's certification to the agreement and return it to the department. On request by the director, the attorney general may give other opinions relating to the agreement.

E. The joint committee on capital review shall review and approve a lease-purchase agreement under this section before the agreement takes effect.

F. The department may covenant to use its best efforts to budget, obtain, allocate and maintain sufficient appropriated monies to make payments under a lease-purchase agreement. The agreement shall acknowledge that appropriating

state monies is a legislative act and is beyond the control of the department or of any other party to the agreement.

G. For the purposes of this section, "certificate of participation financing" means an installment purchase or lease-purchase agreement that is subject to appropriations and that is structured to allow investors to receive a portion of the principal and interest payments made by the department as required by the agreement.

§ 28–369. Law enforcement powers; ports of entry; violation; classification

A. The director and officers, agents and employees of the department or local or state law enforcement agencies as the director designates are peace officers for the enforcement of all laws the director enforces. The powers of the director, officers, agents and employees as peace officers are strictly limited to the enforcement of motor vehicle laws and rules, and within these limits, the powers are coextensive with like authority of other peace officers of this state or cities and towns of this state. The director, officers, agents and employees may exercise the powers throughout this state.

B. A peace officer as defined in section 41–1701 or a peace officer designated in subsection A of this section may require a vehicle that is subject to the fee in section 28–5433 or the requirements of sections 28–1021 through 28–1024 to stop at a port of entry in this state for the purpose of enforcing a motor vehicle law prescribed in this title. A person who fails to stop as required by this subsection is guilty of a class 1 misdemeanor.

§ 28–370. Oaths and acknowledgments

The director, officers, agents and employees of the department the director designates may administer oaths and acknowledge signatures, without a fee, in any matter connected with the administration of a law the enforcement of which is vested in the director. The director shall issue to all persons the director designates a certificate of authority to administer oaths and acknowledge signatures. The director shall file the original certificate in the department and shall file a copy of the certificate in the office of the secretary of state.

§ 28–371. Surety bond

A. The director may authorize a person who is required to pay a fee to the department pursuant to this chapter to file with the director a bond on a form approved by the director with a surety company authorized by the corporation commission to transact business in this state as a surety. The person is the principal obligor, and this state is the obligee on the bond. The bond shall be conditioned on the payment by the person to the department of all fees together with any interest and penalties imposed by the department pursuant to this title. The director may accept cash deposits instead of a surety bond to guarantee fee payments.

B. The director shall determine the total amount of the bond required of a person, but the amount shall not exceed approximately three times the highest monthly fee estimated by the director to become due by the person. The director may increase or decrease the amount of the bond at any time.

§ 28–372. Returned checks; fee

A. The director may assess a fee for a check that has been returned for nonpayment because of insufficient monies, payments stopped or closed accounts. The director, by rule, shall adopt a fee of not more than ten dollars.

B. The director shall transmit fees for returned checks that were submitted for titling and registering vehicles to the state treasurer for deposit in the special

registration fund established by section 28–707 if the director is the registering officer or to the county treasurer for deposit in the county assessor's special registration fund established by section 28–705 if the county assessor is the registering officer. The director shall transmit all other fees collected under subsection A of this section to the state treasurer for deposit in the highway user revenue fund.

§ 28–373. Refunds; limitations

A. If the director determines that any tax, penalty, fee or interest has been overpaid or collected that was not lawfully due, the director shall state this fact in the director's records. The director shall either credit the overpayment on an amount due from the person or make a refund to the person or the person's successors, administrators, executors or assignees from receipts that are in the possession of the director and that are collected under the same statute.

B. Except as provided in this section and except as otherwise provided in this title, application fees, public record fees, permit fees, license fees and fees and taxes paid for vehicle registration are not refundable once paid.

C. Notwithstanding subsection B, the director may refund the fees prescribed in subsection B if both of the following conditions exist:

1. The service has not been rendered or the permit has not been used.

2. It has been determined that the director erred in accepting payment or that the director contributed to a misunderstanding on the part of the person making payment by providing inaccurate, misleading or incorrect information.

D. Except as otherwise provided by statute, a person shall make a request for a refund to the director within one year of the date of payment on which a claim for refund is made.

ARTICLE 4. AGREEMENTS

§ 28–401. Intergovernmental agreements

A. The department may contract under title 11, chapter 7, article 3 with a state public agency in this state or any other state if the general welfare of this state will be promoted and protected and if not in conflict with any other provision of law.

B. The director shall enter into agreements on behalf of this state with counties, cities, towns or rural districts for the improvement or maintenance of state routes or for the joint improvement or maintenance of state routes.

§ 28–402. Intergovernmental agreements; ports of entry

A. The department may enter into intergovernmental agreements with adjoining states pursuant to title 11, chapter 7, article 3 for the purpose of operating facilities at ports of entry into this state.

B. The director may negotiate and enter into bilateral agreements with designated representatives of contiguous states to provide for the staffing and operation of jointly occupied ports of entry located within the boundaries of this state or an adjoining state. The agreement may allow employees of either state to collect fees, taxes and penalties imposed by rules or laws of either state for the operation of vehicles on the highways of either state and for the issuance of required permits.

C. The director may appoint employees of the adjoining state as law enforcement agents of the department whose powers are strictly limited to the enforcement of tax, weight, size and load, equipment, safety and financial responsibility laws and rules of this state relating to vehicles entering or exiting this state. The director

may allow employees of the department to accept similar appointments with the adjoining states.

D. The agreement shall provide that this state shall not compensate an employee of the adjoining state appointed pursuant to this section and that the employee is not an employee of this state for purposes of employment rights or benefits. An employee of the adjoining state shall agree that this state shall not compensate the employee and that the employee is not an employee of this state for purposes of employment rights or benefits.

E. An employee of this state who accepts an appointment from an adjoining state is not an employee of that state by virtue of the appointment or for purposes of employment rights or benefits. The employee shall not receive compensation from an adjoining state.

§ 28–403. Interstate agreements; commercial vehicle registration

The director may enter into agreements with other states on behalf of this state relating to registration of commercial vehicles in the manner provided for in chapter 3, articles 7 and 8 of this title to facilitate the administration of the registration. The registration of fleet vehicles under these sections is subject to the rights, terms and conditions granted or contained in an agreement made pursuant to this section. The director may conclude arrangements or agreements with other states for the exchange of information for audit and enforcement activities in connection with the registration.

§ 28–404. Interstate agreements; fee and tax exemptions

The director may enter into agreements with other states on behalf of this state relating to the partial or total exemption from payment of lieu taxes, gross weight fees or use fees, and the partial or total exemption from payment of registration fees of vehicles registered and licensed in a state adjoining this state if the vehicles are used in this state within twenty-five miles of the border and if the owner and vehicles are domiciled in the adjoining state but within twenty-five miles of the border of this state.

§ 28–405. Contract; civil penalty collection

A court or political subdivision of this state may contract with the department to collect unpaid civil penalties under terms and conditions prescribed in the contract.

§ 28–406. Interstate agreements; dealer or manufacturer plates

The director may enter into agreements with other states on behalf of this state relating to reciprocity in the use of dealer or manufacturer plates on vehicles. The agreements shall permit motor vehicle dealers or manufacturers in another state to use dealer or manufacturer plates issued by that state in this state without registration of the vehicle or payment of taxes in this state. The use of these plates is subject to the same terms and conditions that the other state imposes on the use of the plates in the other state by a motor vehicle dealer or manufacturer doing business in this state without registration of the vehicle or payment of the taxes in the other state.

§ 28–407. Agreements with other jurisdictions; parking privileges

A. The director may enter into agreements with other jurisdictions, including foreign jurisdictions, on behalf of this state that extend parking privileges to residents of this state with a permanent disability and that recognize international symbol of access special plates issued by the other jurisdictions.

B. This state shall grant the same parking privileges as granted to a resident of this state to a nonresident for a motor vehicle that is licensed in another state or foreign country and that displays the international symbol of access special plates issued in accordance with the laws of the nonresident state or foreign country even if a written agreement to do so does not exist between this state and the nonresident's state or foreign county.

§ 28–408. Agreements with nonpublic entities

The director shall enter into agreements by direct contract with nonpublic entities for services or shall jointly exercise any powers common to the contracting parties that the director deems necessary and in the best interests of the department subject to the limitations of section 41–2544.

ARTICLE 5. RECORDS

§ 28–441. Reproduction of records; requirements

A. The director may cause any records kept by the department to be photographed, microphotographed, photostated or reproduced on film. The film or reproducing material shall be of durable material. The device used to reproduce the records on the film or material shall accurately reproduce and perpetuate the original records in all details.

B. When the photostatic copies, photographs, microphotographs or reproductions on films are placed in conveniently accessible files and provisions are made for preserving, examining and using them, the director of the department of transportation may certify the placement and provision to the director of the department of library, archives and public records. The director of the department of library, archives and public records shall direct the disposal, archival storage or destruction of the records or papers within ninety days after the certification.

§ 28–442. Records; evidence

The photostatic copy, photograph, microphotograph or photographic film of the original records is deemed an original record for all purposes and is admissible in evidence in all courts or administrative agencies. A facsimile, exemplification or certified copy of the photostatic copy, photograph, microphotograph or photographic film is deemed to be a transcript exemplification or certified copy of the original for all purposes provided in this section.

§ 28–443. Records; destruction

On certification by the director of the department of transportation of obsolete or nonessential records that the director of the department of transportation determines are not of sufficient value to be preserved by being photographed, microphotographed, photostated or reproduced on film, the director of the department of library, archives and public records shall order their destruction within ninety days from the certification. The director of the department of library, archives and public records may elect to have transferred to the department of library, archives and public records within the ninety day period any of the documents that are proposed to be destroyed.

§ 28–444. Computer storage; evidence

A. The director may cause the information contained on an original record or reproduction of an original record made pursuant to this article to be placed on computer storage devices, but the original records or the copies shall be maintained by the department for as long as required by law or the director deems necessary

after which time the records may be disposed of as provided in this article. Signatures on records need not be placed on the computer storage devices.

B. A reproduction of the information placed on computer storage devices is deemed an original of the record for all purposes and is admissible in evidence without further foundation in all courts or administrative agencies if the following certification by a custodian of the record appears on each page:

The below named individual, being a duly designated custodian of the department of transportation's motor vehicle division's public records, certifies this document as a true reproduction of the information contained in the computer storage devices of the department of transportation, motor vehicle division, in accordance with Arizona Revised Statutes section 28–444.

By: /s/ (Print full name)

§ 28–445. Seal; authentication of records

A. The director shall adopt a seal of office to use to authenticate records and copies of records that are required to be made and kept by the department.

B. Each assistant director shall use the director's seal to authenticate records required to be made and kept within the assistant director's division.

C. Authenticated records or authenticated copies of records shall be received in evidence without further proof of their authenticity.

§ 28–446. Fees for copies; sale of stamps or coupons; exemptions

A. The department may furnish information from the records that is required to be kept by this title or may furnish copies from the records. The department may charge a fee for providing the information or copies that does not exceed three dollars for each item.

B. The department may sell stamps or coupons in appropriate denominations for the convenient enforcement of this section. The stamps or coupons may be used to accompany requests for information in lieu of cash but are otherwise nonredeemable. The department shall cancel the stamps or coupons on furnishing the information.

C. The department shall not charge any of the following for copies of records, for certified copies of records or for information furnished from its records:

1. This state or its departments, agencies or political subdivisions.

2. A court.

3. The federal government or its agencies.

D. The department shall furnish certified copies of public records designated pursuant to section 28–447 to any person on payment of a fee of five dollars.

E. This section does not apply to information required by law to be kept confidential or to statistical information, the purpose of which relates to traffic accidents, traffic offenses or traffic enforcement.

F. The director shall transmit fees collected under this section to the state treasurer for deposit in the Arizona highway user revenue fund.

§ 28–447. Public records

A. An application for a license, permit, title or registration made to the department and a document required by law or by the department to accompany the application is a public record, except a medical report and a report voluntarily submitted by a physician as defined in section 28–1505, except as provided by section 28–452 and except as otherwise provided by law.

B. If the department is required or authorized to revoke, suspend or cancel a driver license or to suspend vehicle registrations pursuant to chapter 9 of this title, it shall notify the holder by a written notice that includes a citation to the statute or rule under which the action is authorized or required and a certification that the original notice was mailed and the date the notice was mailed. The department shall retain a copy of the notice. The copy of the notice is a public record. If the copy is addressed to a licensee at the address last shown on the department's records, as evidenced by the person's driver license application or subsequent notification pursuant to section 28–448 by the person of a different address, it is presumed, unless otherwise shown by clear and convincing evidence, that the person to whom the notice was addressed received the original notice.

C. The department may place notes, date stamps, identifying numbers or other information on an application, record of conviction or other record as is necessary to ensure the accuracy of the record and to expedite its handling. The information does not affect the validity of a record, except that the markings are not considered a part of the record for evidentiary purposes unless proven accurate by other records of the department or other competent evidence.

§ 28–448. Notice of address or name change; address update

A. If a person's name or address changes after the person applies for or receives a driver license or nonoperating identification license or if a person's address changes after the person applies for or receives a vehicle registration or vehicle title, the person shall notify the department within ten days after the change of the old and new address or the former and new name and the following:

1. If a registration or title is applied for or received, the number of vehicles registered to the person and the vehicle identification numbers of the vehicles.

2. If a driver license or nonoperating identification license is applied for or received, the person's date of birth and the number of each license held by the person or a statement that each license is suspended, revoked or canceled.

B. A person may notify the department of an address change by telephone, in writing or in person and of a name change in person or in writing.

C. The department may update an address in a vehicle registration record or driver license record if a traffic citation received by the department or records of another consenting government agency indicate an address change after the date the address was stated in department records.

§ 28–449. Information requests for public records

A. The director may designate as custodian of the department's public records as many employees of the department as the director deems necessary.

B. A person who requests a copy of or information from a public record designated pursuant to section 28–447 shall identify himself and state the reason for making the request. The department shall verify the name and address of the person making the request by requiring the person to produce information the department determines is necessary to ensure that the name and address of the person are the person's true name and address.

C. The department may supply the requested information by mail.

D. The department shall maintain a file of requests for information for six months. The department shall maintain the file by the name of the person whose record was requested.

§ 28–450. Release of information prohibited; classification; definition

A. Notwithstanding section 28–447, the department shall not:

1. Divulge information from a vehicle title or registration record unless the person who requests the information provides to the department all of the following:

(a) The name of the owner.

(b) The vehicle identification number of the vehicle.

(c) The vehicle license plate number assigned to the vehicle.

2. Release a copy of a record or divulge information concerning a person's driving record unless the person requesting the driving record provides to the department all of the following:

(a) The name of the licensee or the name of the person whose record is requested.

(b) The driver license number of the licensee, a statement that the person whose record is requested has not applied for a license or a statement that the license has been suspended or revoked.

(c) The date of birth of the licensee or the expiration date of the driver license of the licensee.

B. Subsection A of this section does not apply to:

1. A state or its departments, agencies or political subdivisions.

2. A court.

3. A law enforcement officer.

4. A licensed private investigator.

5. A financial institution and enterprise under the jurisdiction of the state banking department or a federal monetary authority.

6. The federal government or its agencies.

7. An attorney who is admitted to practice in this state and who alleges that the information is relevant to a pending or potential court proceeding.

8. A motor vehicle dealer who is licensed and bonded by the department or a state organization of licensed and bonded motor vehicle dealers.

9. The release of any of the following information to a person who is involved in an accident or to the owner of a vehicle involved in an accident if the person who requests the information submits proof to the department of involvement in the accident:

(a) The driving record of a person who operates a motor vehicle involved in the accident.

(b) The vehicle title or registration record of a vehicle involved in the accident.

10. The release of the driving record or title and registration record if that record is for the requester's vehicle or is the requester's own driving record, except that the director may require any information from the requester that is deemed necessary to ensure that the requester is entitled to receive the record.

11. An insurer that writes automobile liability or motor vehicle liability policies and that is under the jurisdiction of the department of insurance, except that an insurer or its authorized agent requesting information pursuant to subsection A of this section shall provide two of the three requirements under subsection A, paragraph 1 or 2 of this section before the department divulges or releases the information.

12. The release of a title and registration record if all of the following conditions exist:

(a) The requester verifies to the satisfaction of the director that the vehicle on which the requester is requesting the record is in the requester's possession.

(b) The record is requested in order for the requester to notify the registered owner of the requester's intent to apply to the department for a bonded title.

(c) The requester provides a verification of a vehicle inspection that was performed by an authorized department employee or agent.

C. An authorized agent shall promptly deliver information received from the department pursuant to subsection A of this section and subsection B, paragraph 11 of this section to the insurer that originally requested the information. An authorized agent shall not copy, retain or transfer by any means any of the information for the authorized agent's own use or for use by persons other than the insurer that originally requested the information.

D. The department shall not release to an insurer, broker, managing general agent, authorized agent or insurance agent any information in a person's driving record pertaining to a traffic violation that occurred forty months or more before the date of the request for the release of the information.

E. An authorized agent who commits any of the following acts with regard to information received pursuant to subsection A of this section and subsection B, paragraph 11 of this section is guilty of a class 1 misdemeanor:

1. Uses a false representation to obtain information from a department record.

2. Sells or otherwise distributes the information obtained from the department to a person or organization for purposes that are not disclosed in the request.

3. Violates subsection C of this section.

F. For the purposes of this section, "authorized agent" means a third party retained by an insurer for the purpose of requesting department information pursuant to subsection A of this section and subsection B, paragraph 11 of this section but does not include an agent as defined in section 20–282, a broker as defined in section 20–283 or a managing general agent as defined in section 20–284.

§ 28–451. Maintaining records

A. If pursuant to this title an application or record is required to be filed, an index is required to be maintained or a record is required to be compiled and if the director adopts rules to provide that the filing, indexing or compilation be accomplished by use of a computer so that on inquiry to the computer it is capable of disclosing and reproducing all information required by law, the director is not required to file, compile or index records other than by the use of a computer.

B. If a computer is used, the director shall preserve applications or records from which the information was obtained for as long as required by law or until a new application is filed by an applicant or a new record is received and the application or record is no longer needed to carry out the provisions of this title. The director is not required to store signatures on applications or on records.

§ 28–452. Information supplied for commercial purposes; charges; violation; classification; definition

A. Notwithstanding section 28–447, the department may supply information for commercial purposes if the information is transmitted in a machine readable form such as computer magnetic tape to the person making the request. The director may sell records information, except driver histories, for commercial purposes. A commercial records requester shall not sell or release a vehicle identification number, license plate number, driver license number or date of birth that is obtained from the records information purchased, except that the director may approve specific purposes for which a records information requester may release the vehicle identification number to a vehicle manufacturer.

B. The department or a commercial records requester shall not sell or release an individual record or any records information for any commercial purpose based on a request that provides one or more factors unique to a single record, except that the director may approve:

1. The sale or release by a records information requester of the information if the director determines the sale or release is necessary for the public health or safety.

2. The use of the information by a records information requester if the director determines that the use is for general research or general statistical purposes that do not provide specific factors from a record.

C. The director shall charge a minimum of six hundred dollars per million records searched and a minimum of thirty dollars per thousand records provided. The director may prorate the charge for fractional quantities that are searched or provided.

D. The director shall not provide records for a commercial purpose to any person convicted of a class 1 misdemeanor pursuant to subsection F of this section for a period of five years after conviction.

E. In providing a record for a commercial purpose, the department shall not disclose the street or residence address of a person who has provided the department with an alternate mailing address for the driver record, the title and registration record or the mobile home record. If no alternate mailing address has been provided to the department, the department shall provide the street or residence address of the person to the commercial requester.

F. A person who commits any of the following acts with regard to records requested for a commercial purpose is guilty of a class 1 misdemeanor:

1. Without authorization, knowingly discloses information from any department record.

2. Uses a false representation to obtain information from a department record.

3. Uses information obtained from a department record for a purpose other than the one stated in the request.

4. Sells or makes other distribution of the information obtained from the department to a person or organization for purposes that are not disclosed in the request.

5. Violates this section.

G. For the purposes of this section, "commercial purpose" means a purpose that is not illegal and for which the requester can reasonably expect a monetary gain through the contact of persons by mail, through the compiling of statistics or by providing research services. Commercial purpose does not mean the use of a public record as evidence or as a research for evidence in an action in a judicial or quasi-judicial body of this state or a political subdivision of this state.

§ 28-453. Electronic transfer of information

The department may accept electronic communication, transfer or receipt of any abstract, affidavit, application information, copy, form, order, report, record or other information prescribed in this title in accordance with rules adopted by the director.

ARTICLE 6. UNBLENDED GASOLINE SHORTAGES

§ 28-481. Definitions

In this article, unless the context otherwise requires:

1. "Assignment" means an action taken by the department designating prime suppliers of motor gasoline to supply unblended gasoline to an eligible blender to alleviate a shortage.

2. "Blender" means a person who blends gasoline with alcohol for resale and who is required to file fuel manufacturers' quarterly reports for motor vehicle gasoline

with the United States environmental protection agency pursuant to 42 United States Code sections 7545 and 7601 and 40 Code of Federal Regulations part 79.

3. "Oxygenate" means any oxygen-containing ashless, organic compound, including aliphatic alcohols and aliphatic ethers, that may be used as a fuel or as a gasoline blending component.

4. "Oxygenated fuel" means a motor fuel blend, whether leaded or unleaded, that consists primarily of gasoline and a substantial amount of one or more oxygenates and that has been blended consistent with the provisions of a waiver issued by the United States environmental protection agency pursuant to 42 United States Code section 7545(f).

5. "Prime supplier" means the distributor that makes the first sale of motor gasoline and that is responsible for reporting the distribution of motor vehicle fuel pursuant to section 28–5618 for ultimate consumption in a vehicle emissions control area.

6. "State set-aside" or "set-aside" means, with respect to a given prime supplier, the amount of unblended gasoline that is made available from the total supply of that prime supplier for utilization by the department to resolve unblended fuel shortages.

7. "Unblended gasoline" means gasoline, whether leaded or unleaded, that is of a composition that is legally and chemically suitable for blending with oxygenates in order to produce oxygenated fuel containing the per cent weight of oxygen prescribed by law.

8. "Vehicle emissions control area" has the same meaning prescribed in section 49–541, except that the area does not include a manufacturer's proving ground that is located in the area. For the purposes of this paragraph, "manufacturer's proving ground" means a facility whose sole purpose is to develop complete advanced vehicles for an automotive manufacturer.

§ 28–482. Department survey

From October through March 31 of each year, the department shall conduct a monthly survey of motor vehicle fuel refiners, suppliers, terminal operators and wholesalers to determine the availability and sales of unblended gasoline in a carbon monoxide vehicle emissions control area in which the sale of oxygenated fuel is required to be sold. The department shall make available a copy of the report of the survey to assist blenders.

§ 28–483. Determination of shortage; declaration

A. Within one month before the period of time when oxygenated fuel is required to be sold in a carbon monoxide vehicle emissions control area or at any time during the period, a blender may:

1. Allege and shall establish that the blender is unable to purchase unblended gasoline for the following month.

2. Request the director to determine that a shortage of unblended gasoline exists in the carbon monoxide vehicle emissions control area.

B. If the director determines that a shortage of unblended gasoline exists in a carbon monoxide vehicle emissions control area, the director shall inform the governor. By executive order, the governor may declare that a shortage exists and notify the department to implement the state set-aside program for unblended gasoline.

C. The declaration of a shortage is effective for the period of time that oxygenated fuel is required to be sold in this state.

§ 28–484. State set-aside volume

A. On declaration of a shortage, the department shall notify each prime supplier of its monthly set-aside percentage. The percentage shall not exceed five per cent. The department shall make known the set-aside percentages to a prime supplier no later than fifteen days before the beginning of each allocation month.

B. the total set-aside volume available to the department for any particular month is the amount calculated by multiplying the state set-aside percentage level by each prime supplier's sales of motor vehicle fuel for ultimate consumption in each carbon monoxide vehicle emissions control area for the same month of the previous calendar year. The set-aside for a particular month may not be accumulated or deferred by this state but shall be made available from current monthly stocks of prime suppliers.

§ 28–485. Assignment of set-aside

A. If a shortage has been declared the department may order, at any time during the month, the assignment of all or part of a prime supplier's set-aside volume through a terminal facility.

B. The department shall assign set-aside to meet shortages of unblended gasoline available to blenders. The department shall issue an order pursuant to this section in writing. The order is effective fifteen days after presentation to the prime supplier. The order represents a call on the prime supplier's set-aside volume for the month of issuance, even if delivery cannot be made until the following month.

C. The department may assign set-aside for use in the month of issuance if an applicant can demonstrate that a shortage is faced that requires immediate attention and if the department gives fifteen days' notice to the prime supplier. The department shall:

1. By the twentieth day of the month, make an initial determination as to how much of the set-aside not allocated by the twenty-fifth day of the month will revert to the prime supplier.

2. On the twenty-fifth day of the month, notify the prime supplier of the amount of set-aside that reverts to the prime supplier.

D. If possible, the department shall assign all unblended gasoline made available to an applicant to the applicant's normal prime supplier.

§ 28–486. Liaison designation

Each prime supplier shall designate a liaison to act for and on behalf of the prime supplier with respect to the set-aside program.

§ 28–487. Limitation of supply requirement

This article does not require a prime supplier to supply unblended gasoline with volatility or distillation characteristics that are not representative of normal commercial practices.

§ 28–488. Price

A prime supplier shall not charge a premium on set-aside volumes except to recover documented extra costs to deliver the set-aside fuel.

§ 28–489. Application

A. An applicant for a set-aside assignment shall be a blender seeking an assignment from the state set-aside program to meet an unblended gasoline shortage.

B. The department may:

1. Initiate an investigation of any statement in an application, whether written or oral.

2. Utilize in its evaluation any relevant facts obtained by the investigation.

3. Solicit and accept submissions relevant to an application if the applicant is afforded an opportunity to respond to all of the submissions.

4. In evaluating an application, consider any other sources of information.

C. The department may dismiss the application if both:

1. The department determines that there is insufficient information on which to base a decision.

2. On request, the necessary additional information is not submitted.

D. On consideration of the application and other relevant information received or obtained during the application process, the department shall either deny or grant the application.

E. If the department fails to take action on an application within fifteen days after filing, the applicant may treat the application as denied and may appeal.

§ 28-490. Appeal

A. If an application for a set-aside allocation is denied or reduced, the applicant may request a review of its application by the director.

B. The applicant may present additional information to support the request for set-aside.

C. The decision of the director is the final administrative remedy available to an applicant for state set-aside.

CHAPTER 3

CERTIFICATE OF TITLE AND REGISTRATION

ARTICLE 1. GENERAL PROVISIONS

§ 28-701. Definitions

A. "Resident", for the purpose of registration and operation of motor vehicles:

1. Except as provided by paragraph 2 of this subsection, means the following:

(a) A person who, regardless of domicile, remains in this state for an aggregate period of seven months or more during a calendar year.

(b) A person who engages in a trade, profession or occupation in this state or who accepts employment in other than either:

(i) Seasonal agricultural work.

(ii) Temporary seasonal work for a period of not more than three months if the state in which the temporary seasonal worker is permanently domiciled has a similar exception.

(c) A person who places children in a public school without payment of nonresident tuition.

(d) A person who declares that the person is a resident of this state for the purpose of obtaining at resident rates a state license or tuition fees at an educational institution maintained by public monies.

(e) An individual, partnership, company, firm, corporation or association that maintains a main office, a branch office or warehouse facilities in this state and that bases and operates motor vehicles in this state.

(f) An individual, partnership, company, firm, corporation or association that operates motor vehicles in intrastate transportation, for other than seasonal agricultural work.

2. Does not mean:

(a) A nonresident owner of a foreign vehicle that is registered and licensed in a state adjoining this state and that is used in this state for other than the transportation of passengers or property for compensation, if the nonresident owner and vehicle are domiciled in an adjoining state but within twenty-five miles of the border of this state and if the state in which the owner resides and in which the vehicle is registered exempts from payment of registration and weight fees like vehicles from this state, regardless of whether the nonresident owner engages in a trade, profession or occupation in this state or accepts employment.

(b) An out-of-state student enrolled with seven or more semester hours regardless of whether the student engages in a trade, profession or occupation in this state or accepts employment in this state. For the purposes of this paragraph, "out-of-state student" means either:

(i) A person who is enrolled at an educational institution maintained by public monies and who is not classified as an in-state student under section 15–1802.

(ii) A person who is a student at a private educational institution and who would not be classified as an in-state student under section 15–1802 if the student was attending a public educational institution.

(c) A nonresident daily commuter as defined by section 28–991.

B. For the purposes of this chapter, "serial number" means the number placed on the vehicle by its manufacturer or assigned pursuant to section 28–865.

§ 28–702. Assessor or director as county agent

A. Except in counties that have entered into an agreement authorized by section 28–706, the assessor of each county is an agent of the department for the performance of the acts and duties delegated to the assessor.

B. A county assessor or the director in those counties that have entered into an agreement authorized by section 28–706 may establish outlets for the issuance of licenses as are necessary. The outlets and offices are constituted county offices of the department.

§ 28–703. Fees; vehicle title and registration; identification plate

The following fees are required:

1. For each certificate of title or salvage certificate of title, four dollars.

2. For each certificate of title for a mobile home, as defined by section 42–641, seven dollars. The director shall deposit three dollars of each fee imposed by this paragraph in the state highway fund established in section 28–6991.

3. For the registration of a motor vehicle, eight dollars, except that the fee for motorcycles is nine dollars.

4. For a duplicate registration card or any duplicate permit, four dollars.

5. For each special thirty day nonresident registration issued under section 28–854, fifteen dollars.

6. For the registration of a trailer or semitrailer that is ten thousand pounds or less gross vehicle weight, eight dollars, and for the registration of a trailer or semitrailer that exceeds ten thousand pounds gross vehicle weight, forty-nine dollars.

7. For each special ninety day resident registration issued under section 28–854, fifteen dollars.

8. For each one trip registration permit issued under section 28–855, one dollar.

9. For each temporary general use registration issued under section 28–856, fifteen dollars.

10. For each identification plate bearing a serial or identification number to be affixed to any vehicle, five dollars.

§ 28–704. Disposition of fees; highway user revenue fund

Except as otherwise provided, the officer collecting the fees and taxes provided in this chapter shall immediately transfer them to the director. The director shall transfer the monies to the state treasurer. The state treasurer shall credit the monies immediately to the Arizona highway user revenue fund.

§ 28–705. Disposition of fees; county assessor's special registration fund

A. If the county assessor is acting as an agent of the department, the county assessor shall transmit the following monies to the county treasurer of the county in which the fee is collected:

1. One dollar of each registration fee.

2. One dollar of each title fee.

3. Two dollars of each late registration penalty collected by the assessor.

B. The county treasurer shall deposit the fees received pursuant to subsection A of this section in a special registration fund for the use of the assessor in carrying out the duties imposed by this article. The county treasurer shall allow and shall pay claims against the fund in the same manner as claims against the county are allowed and paid.

C. The board of supervisors may order the transfer of all or any unexpended part of the monies in the special registration fund received during the previous fiscal year to the fund for the maintenance and construction of county highways. The county treasurer may invest inactive monies in the special registration fund in United States government bonds or interest bearing notes and other interest bearing obligations of the United States for which the full faith and credit of the United States are pledged. The county treasurer shall credit all interest earned on the special registration fund monies to the special fund.

D. Except as otherwise provided by law, the collecting officer shall immediately transmit monies received from fees and taxes imposed by this chapter, except the portion retained for the assessor's special registration fund, to the director. The director shall transmit the monies to the state treasurer for deposit in the Arizona highway user revenue fund.

E. Each county assessor shall collect and transmit monies received as motor vehicle emissions inspection fees, exemption fees or certificate of waiver fees pursuant to section 49–543, the annual registration fee and the vehicle license tax to the state treasurer. The state treasurer shall deposit:

1. The emissions inspection fees, exemption fees and certificate of waiver fees in the emissions inspection fund established in section 49–544.

2. The annual registration fee and vehicle license tax as prescribed by law.

§ 28–706. Contract to transfer duties and responsibilities

A. The director and a county board of supervisors may contract to provide for the transfer of the duties and responsibilities of the county assessor pursuant to this title to the department.

B. The contract shall provide for the following:

1. The purchase and conveyance of real property presently used, subject to available monies.

2. The transfer and payment of personal property presently used.

3. The employment of persons presently employed by the county if the employees desire the transfer.

4. The effective date of the transfer.

5. The amount of monies in the county assessor's special registration fund established pursuant to section 28–705 that will be transferred, if any.

C. On the agreement's effective date, the department assumes all of the powers, duties and responsibilities of the county assessor pursuant to this title.

D. The department of administration shall transfer into the state service on a noncompetitive basis a permanent county employee who is affected by the agreement authorized by this section and who desires to be transferred to state employment. If the employee has not successfully completed six months' related experience, the employee shall serve a ninety day probationary period in the state service.

§ 28–707. Special registration fund; reversion

A. The department may establish a special registration fund composed of the following:

1. Monies retained pursuant to sections 28–906 and 28–5808 and chapter 8, article 5 of this title.

2. One dollar of each registration fee.

3. One dollar of each title fee.

4. Two dollars of each late registration penalty collected by the director as the registering officer.

5. The air quality compliance fee collected pursuant to section 49–542.

6. The eight dollar special plate administration fees collected pursuant to sections 28–1104, 28–1112, 28–1113 and 28–1114.

7. The windshield sticker fee collected pursuant to section 28–1055.

8. Monies collected pursuant to sections 28–372, 28–855 and 28–856 if the director is the registering officer.

9. Monies collected for envelope permits pursuant to section 28–3463.

B. The department may use the monies in the special registration fund to carry out the duties imposed by this title for registration or titling of vehicles, to operate joint title, registration and driver licensing offices, to cover the administrative costs of issuing the air quality compliance sticker, modifying the year validating tab and issuing the windshield sticker and to cover expenses and costs in issuing special plates pursuant to sections 28–1104, 28–1112, 28–1113 and 28–1114. The department shall use monies deposited in the fund pursuant to chapter 5, article 8 of this title only as prescribed by that article.

C. The special registration fund established in this section is exempt from the provisions of section 35–190 relating to lapsing of appropriations. The monies in the fund are not subject to legislative appropriation. For each county that enters into a contract pursuant to section 28–706 amounts of more than one hundred thousand dollars remaining in the fund at the close of each fiscal year revert to the state highway fund.

D. At the direction of the department, the state treasurer may invest inactive monies in the special registration fund. The state treasurer shall credit all interest earned on the special registration fund monies to the special registration fund.

§ 28–708. Duplicate certificate of title, permit, registration card or license plates

If a certificate of title, permit, registration card or license plate is lost or mutilated or becomes illegible, the person entitled to the certificate, permit, card or plate shall immediately apply for and obtain a duplicate or substitute certificate, permit, card or plate by furnishing information satisfactory to the department.

§ 28–709. Certificate of title; validity

The certificate of title is valid for the life of the vehicle as long as the vehicle is owned by the original holder of the title, unless it has been replaced by a duplicate certificate of title pursuant to section 28–708.

ARTICLE 2. CERTIFICATE OF TITLE AND REGISTRATION

§ 28–751. Application for certificate of title; vision screening test

A. A person shall apply for a certificate of title to a motor vehicle, trailer or semitrailer to the assessor of the county in which the transferee resides on a form furnished by the department. The person shall make the application within fifteen days of the purchase or transfer of the vehicle, trailer or semitrailer. The transferee shall sign the application.

B. The application shall contain:

1. The transferee's full name and either the driver license number of the transferee or a number assigned by the department.

2. The transferee's complete residence address.

3. A brief description of the vehicle to be titled.

4. The name of the manufacturer of the vehicle.

5. The serial number of the vehicle.

6. Whether the vehicle is new or used.

7. The last license plate number if applicable and if known and the state in which the license plate number was issued.

8. If the application is for a certificate of title to a new vehicle, the date of sale by the manufacturer or dealer to the person first operating the vehicle.

9. If the application is in the name of a lessor:

(a) A statement that the lessor is the owner or transferee.

(b) At the option of the lessor, a statement that the lessee is the registrant.

(c) The address of either the lessor or lessee.

(d) The signature of both the lessor and lessee.

10. If the application is for a certificate of title to a specially constructed, reconstructed or foreign vehicle, a statement of that fact. For the purposes of this paragraph, "Specially constructed vehicle" means a vehicle not originally constructed under a distinctive name, make, model or type by a generally recognized manufacturer of vehicles.

11. If an applicant rents or intends to rent the vehicle without a driver, a statement of that fact.

12. Other information required by the department.

C. Unless subsection B, paragraph 9 of this section applies, on request of an applicant, the department shall allow the applicant to provide on the title of a motor vehicle, trailer or semitrailer a post office box address that is regularly used by the applicant.

D. A person shall submit the following information with an application for a certificate of title:

1. To a vehicle previously registered:

(a) The odometer mileage disclosure statement prescribed by section 28–758.

(b) If the applicant is applying for title pursuant to section 28–760, the applicant's statement of the odometer reading as of the date of application.

2. To a new vehicle:

(a) The date of sale to the dealer or person first receiving it from the manufacturer.

(b) The name of the dealer or person.

(c) A description sufficient to identify the vehicle.

(d) A statement certifying that the vehicle was new when sold.

(e) If sold through a dealer, a statement by the dealer certifying that the vehicle was new when sold to the applicant.

E. The department may request an applicant who appears in person for a certificate of title of a motor vehicle, trailer or semitrailer to complete satisfactorily the vision screening test prescribed by the department.

§ 28–752. Title and registration of foreign vehicles

A. The owner of a foreign vehicle that has been registered in another state or country and for which an application for a certificate of title is made shall surrender to the department the license plates assigned to the vehicle, the registration card, the certificate of title, the certificate of ownership or other evidence of foreign registration and satisfactory evidence of ownership showing that the applicant is the lawful owner or possessor of the vehicle.

B. If in the course of interstate operation of a vehicle registered in another state or country it is desirable to retain registration of the vehicle in the other state or country, the applicant need not follow the requirements of subsection A of this section but shall submit evidence of the foreign registration and ownership for inspection. The department shall register the vehicle on a proper showing of evidence of registration but shall not issue a certificate of title for the vehicle.

C. The department shall inspect a foreign vehicle before titling or registration, including examination and inspection to establish compliance with section 28–3254, under conditions and standards as required by the director of environmental quality.

D. Before the department issues a certificate of title to a vehicle imported into this country, the owner shall obtain a certificate of compliance that states that the vehicle meets all federal vehicle equipment and emissions equipment requirements. This subsection does not apply to a golf cart.

§ 28–753. Certificate of title without registration

The department may issue a vehicle certificate of title without registration for any of the following reasons:

1. The applicant for a certificate of title is a nonresident whose vehicle is not subject to vehicle registration in this state.

2. The owner will register the vehicle under articles 7 and 8 of this chapter.

3. The applicant certifies that the vehicle was acquired for purposes other than highway use.

4. The vehicle was acquired by operation of law.

5. The vehicle is an off-road recreational motor vehicle required to be titled pursuant to section 28–761.

§ 28–754. Certificate of title; application processing; revocation; hearing

A. The department shall file each application for a certificate of title. When the department is satisfied that the application is genuine and regular and that the applicant is entitled to a certificate, it shall register the vehicle and the owner alphabetically under the name of the owner and numerically under the serial number and under a distinctive title number assigned to the vehicle and the owner.

B. In addition to all other requirements, if the application is for a certificate of title to a mobile home as defined in section 42–641 the department shall not issue or transfer a certificate of title on the mobile home if there are any delinquent unsecured personal property taxes on the mobile home.

C. Except as provided in article 8 of this chapter, a person who owns a motor vehicle, trailer or semitrailer, on furnishing satisfactory proof of ownership to the director, may procure a certificate of title to the vehicle, whether or not a certificate of title has been issued previously. If the director determines that an applicant for a certificate of title to a motor vehicle, trailer or semitrailer is not entitled to a certificate of title, the director may refuse to issue a certificate or to register the vehicle and, for like reason, after notice, may revoke a registration already issued or an outstanding certificate of title. Within fifteen days of the date the notice is mailed, the applicant may request a hearing.

§ 28–755. Certificate of title; content requirements

A. The certificate of title shall contain forms for assignment of title or interest and warranty by the owner, with space for notation of liens and encumbrances on the vehicle at the time of transfer. The certificate of title shall also contain the odometer mileage disclosure statement pursuant to section 28–758.

B. If a motor vehicle, trailer or semitrailer has been registered in any other state or country, the certificate of title shall indicate that fact by showing the name of the state or country in which the prior registration took place.

§ 28–756. Transfer or registration of vehicle; collection of use tax

A. The registering officer shall collect the use tax imposed under title 42, chapter 8, article 2 at the time of application for a transfer of title or registration of a vehicle. The registering officer shall issue a receipt, in a form prescribed by the department, for the amount of tax paid. The registering officer shall not process an application for transfer of title or registration of any vehicle on which the use tax is imposed under title 42, chapter 8, article 2 until the tax is paid.

B. The department of transportation shall notify the department of revenue of taxes collected pursuant to this section. At the end of each month the department of transportation shall transmit tax monies collected pursuant to this section to the state treasurer for deposit in the state general fund.

§ 28–757. Registration without certificate of title or bond; receipt; fee

A. Except as provided in subsection B of this section, the department shall not register a vehicle if the department is not satisfied as to the ownership of the vehicle or is not satisfied that there are no undisclosed security interests in the vehicle.

B. The department may register a vehicle if a condition prescribed in subsection A of this section exists and if the department takes one of the following actions:

1. Withholds issuance of a certificate of title until the applicant presents documents reasonably sufficient to satisfy the department as to the applicant's ownership of the vehicle and that there are no undisclosed security interests in the vehicle.

2. As a condition of issuing a certificate of title, requires the applicant to file a bond with the department as prescribed in subsection C of this section.

C. The department shall prescribe the form of the bond required by subsection B of this section. The applicant shall execute the bond and either accompany it with the deposit of cash or have a person authorized to conduct a surety business in this state also execute the bond. The bond shall be in an amount equal to one and one-half times the value of the vehicle as determined by the department and conditioned to indemnify any prior owner and lienholder and any subsequent purchaser of the vehicle or person acquiring any security interest in it and their respective successors in interest against any expense, loss or damage, including reasonable attorney fees, by reason of the issuance of the certificate of title of the vehicle or on account of any defect in or undisclosed security interest on the right, title and interest of the applicant in and to the vehicle.

D. An interested person has a right of action to recover on the bond for any breach of its condition. The aggregate liability of the surety to all persons shall not exceed the amount of the bond.

E. The bond and any deposit accompanying it shall be returned at the end of three years or prior to the end of three years if the vehicle is no longer registered in this state and the currently valid certificate of title is surrendered to the department, unless the department has been notified of the pendency of an action to recover on the bond.

F. If the applicant does not have the original certificate of title because the certificate of title is held by a lender located outside this state and if the applicant presents documents to the department sufficient in the judgment of the department to establish ownership of the vehicle, the department may register the vehicle and issue a receipt in lieu of the certificate of title provided by section 28–752. The fee for the receipt is equal to the fee prescribed for a certificate of title pursuant to section 28–703.

§ 28–758. **Transfer of title**

A. When the owner of a registered or unregistered vehicle transfers or assigns the owner's title or interest to the vehicle:

1. If the vehicle is registered:

(a) The owner shall endorse on the back of the certificate of title to the vehicle an assignment with the warranty of title in the form printed on the certificate.

(b) Except as provided in section 28–804, the owner shall deliver the certificate to the purchaser or transferee at the time of delivery of the vehicle to the purchaser or transferee.

(c) The registration of the vehicle expires.

(d) Except as otherwise provided by law, the license plates assigned to the vehicle shall remain on the vehicle.

(e) The owner shall remove the registration card issued for the vehicle, endorse on the reverse side of the card the name and address of the transferee and the date of transfer and immediately forward the card or other written notification to the department.

2. Regardless of whether or not the vehicle is registered:

(a) Except as provided in subsection B of this section, the owner shall deliver to the purchaser or transferee an odometer mileage disclosure statement in a form prescribed by the director.

(b) Except as provided in section 28–760, the purchaser or transferee shall present the certificate of title to the department with the required fee within thirty days after the transfer and:

(i) The department shall issue a new certificate of title to the purchaser or transferee.

(ii) If required, the purchaser or transferee shall apply for and obtain registration, and the department shall issue new license plates to the purchaser or transferee.

B. The odometer disclosure requirement of subsection A of this section does not apply to:

1. A motor vehicle that is ten model years of age or older.

2. A motor vehicle that has a gross vehicle weight rating of sixteen thousand pounds or more.

3. A vehicle that is not self-propelled.

4. A motor vehicle that is sold directly by the manufacturer to an agency of the United States in conformity with contractual specifications.

5. A new motor vehicle that is purchased for resale and not for use by the purchaser.

§ 28–759. Obtaining a certificate of title; revocation

A. Except as provided in article 4 of this chapter, a person who owns a motor vehicle, on furnishing satisfactory proof of ownership to the director, may obtain a certificate of title to the motor vehicle whether or not a certificate of title has ever been issued.

B. If the director determines that an applicant for a certificate of title to a motor vehicle, trailer or semitrailer is not entitled to a certificate of title, the director may refuse to issue a certificate or to register the vehicle and, after notice and a hearing, the director may revoke a registration already acquired or an outstanding certificate of title. The director shall serve the notice in person or by certified mail.

§ 28–760. Transfer of ownership by operation of law

A. Except as provided in subsection F of this section, when the title or interest of an owner of a registered vehicle passes to another other than by voluntary transfer, the transferee shall obtain a transfer of registration within fifteen days after the passing of the title or interest.

B. Within fifteen days after passing of the title or interest of an owner of a registered or unregistered vehicle, the transferee of the vehicle shall obtain a new certificate of title on proper application and presentation of the last certificate of title, if available, and such instruments or documents of authority or certified copies of the instruments or documents that are sufficient or required by law to evidence or effect a transfer of title or interest in or to chattels that pass to another other than by voluntary transfer.

C. If a motor vehicle has been forfeited to the federal government and is sold at public auction pursuant to federal law, the purchaser at the sale takes title free of any liens or encumbrances if federal law so provides. If a motor vehicle has been forfeited to any local or state government entity, agency or political subdivision or to any federal law enforcement agency after the disposition of all claims under the laws of this state, the order of the court forfeiting the vehicle shall transfer good and sufficient title to the transferee and to any subsequent purchaser or transferee. The purchaser or transferee shall register the motor vehicle within fifteen days after the sale or transfer, and the department shall issue a certificate of title to the purchaser or transferee on presentation of the evidence of title without any reference to liens or encumbrances.

D. The transferee of a vehicle required to be titled and registered under section 28–853 or a mobile home required to be titled under section 42–643 may obtain a transfer of registration to the transferee and a new certificate of title if both of the following occur:

1. The title or interest of the owner of the vehicle passes to another either:

(a) Through notice and sale under the conditions contained in any security agreement, chattel mortgage, conditional sale or other evidence of lien or under the authority given by statute in cases arising under sections 33-1021 and 33-1022.

(b) For a mobile home the lien on which is also a lien on real property, through a contract for conveyance of real property, deed of trust or mortgage.

2. Satisfactory evidence is presented to the director that the sale of the vehicle was fairly and lawfully conducted in conformity with all requirements of law after due notice to the former owner.

E. Any administrator, executor, trustee or other representative of the owner, a peace officer or a person repossessing a vehicle under the terms of any conditional sales contract, lease, chattel mortgage or other security agreement or a purchaser at a sale foreclosing a lien, or the assignee or legal representative of any such person, may operate a vehicle from the place of repossession or place where it was formerly kept to a garage or place of storage in the county or state where the contract was recorded or where the person repossessing the vehicle resides or to any other garage or place of storage that is not more than seventy-five miles from the place of repossession or place where the vehicle was formerly kept by the owner if either of the following conditions exists:

1. The license plates assigned to the vehicle are displayed on the vehicle, or if license plates are not displayed, a written permit has been obtained from the department or the local authorities having jurisdiction over the highways.

2. A placard that bears the name and address of the person authorizing the movement and that is legible from a distance of one hundred feet during daylight is displayed in plain sight on the vehicle.

F. If ownership of a motor vehicle titled in this state or another state reverts through operation of state law to a lienholder of record through repossession pursuant to the terms of a security agreement or through another similar instrument that is valid in this state, an affidavit by the lienholder of record stating that the vehicle was repossessed on default of the terms stated in the security agreement or similar instrument is proof of ownership, right of possession and right of transfer. The director shall prescribe the form and content of the affidavit. This state and its agencies, employees and agents are not liable for relying in good faith on the content of the affidavit.

§ 28-761. New off-road recreational motor vehicle; certificate of title

A. On the retail sale of a new off-road recreational motor vehicle, the dealer or person first receiving the motor vehicle from the manufacturer shall apply, on behalf of the purchaser, to the department for a certificate of title to the motor vehicle in the name of the purchaser. If satisfied that the application is genuine and regular and that the applicant is entitled to a certificate, the department shall issue a certificate of title to the motor vehicle without requiring registration for the motor vehicle.

B. A person shall apply for and obtain a certificate of title required by this section in the manner prescribed in this chapter. On the transfer of ownership of an off-road recreational motor vehicle for which a certificate of title is required by this section, a person shall apply for and obtain a new certificate in the manner prescribed in this chapter.

§ 28-762. Mobile home delinquent unsecured personal property tax list

A. The department shall prepare and maintain a list that identifies each prior year for which outstanding delinquent unsecured personal property taxes on mobile homes, as defined in section 42-641, remain unpaid. The list shall contain:

1. The complete manufacturer's serial number, the brand name or model and the name of the manufacturer of each mobile home.

2. The name and address of the current owners.

3. The year of levy, assessing county and tax roll identification number of the outstanding delinquent taxes for each mobile home.

4. Other information that the department may find necessary.

B. The department of revenue, each county assessor and each county treasurer shall provide such cooperation and information as the department requires in the preparation and maintenance of the listing required by subsection A of this section.

C. The department shall provide each county assessor who acts as a registering officer for the department with copies of or access to the listing prepared pursuant to subsection A of this section.

ARTICLE 3. SALVAGE, SEIZURE AND DISMANTLING OF VEHICLES

§ 28–801. Salvage certificate of title; violation; classification; definitions

A. If a motor vehicle subject to titling or registration pursuant to this chapter becomes a salvage vehicle and is acquired by an insurance company as a result of a total loss insurance settlement, the insurance company or its authorized agent shall submit an application to the department within fifteen days after the loss or settlement of the loss on a form prescribed by the department for a salvage title and accompanied by the following:

1. A properly endorsed certificate of title.

2. A lien satisfaction, if applicable.

3. The registration card.

4. The license plate, if any.

5. The appropriate fees.

B. If the registration card or license plate is lost or destroyed, the applicant shall state in a form prescribed by the department, under penalty of perjury, the circumstances of the loss or destruction.

C. If the owner retains possession of a salvage vehicle, the owner shall comply with this section before receiving a total loss settlement from the insurance company or otherwise disposing of the vehicle.

D. On receipt of a proper application, the department shall issue a salvage certificate of title for the vehicle.

E. An owner of a motor vehicle that is not a salvage vehicle who sells the vehicle as scrap or for purposes of dismantling or destroying shall assign the certificate of title to the purchaser, and the purchaser shall comply with section 28–804.

F. On sale of the vehicle, an owner of a salvage vehicle for which a salvage certificate of title has been obtained shall assign and deliver the salvage certificate of title to the purchaser and notify the department of the name and address of the purchaser. The department shall issue a certificate of title to a vehicle that has been issued a salvage certificate of title as a result of a total loss settlement by reason of theft if the vehicle is recovered and was not wrecked or stripped of essential parts.

G. If a vehicle that is titled as a salvage vehicle is to be scrapped, dismantled or destroyed, the owner or purchaser shall comply with section 28–804.

H. If a salvage vehicle is rebuilt and restored to operation, the department shall not register the motor vehicle or transfer the ownership of the vehicle until the following are submitted to the department together with the salvage certificate of title:

1. An appropriate application for a restored salvage certificate of title.

2. Proof that the vehicle has been inspected by an employee of the department who verifies that the vehicle is properly equipped for highway use and has a proper vehicle identification number on the vehicle or assigned to the vehicle pursuant to law.

3. Any other required documents and fees.

I. The provisions of this chapter that refer to titles apply to salvage certificates of title issued pursuant to this section unless they conflict with this section.

J. If a person has a currently registered vehicle that has subsequently become a total loss due to an accident or an unrecovered theft, the person may make a verified written application to the registering officer in the county in which the vehicle was last registered indicating the occurrence of the total loss. When the registering officer confirms that an application for a salvage certificate of title or dismantling permit has been made, the registering officer shall:

1. Determine the amount of the vehicle license tax as provided for in section 28–5801.

2. Reduce the amount of the registration fee required pursuant to section 28–703 and the vehicle license tax determined in paragraph 1 of this subsection by one-twelfth for each full month of the registration period not yet expired.

3. Credit the owner with the appropriate amount of the fee and tax previously paid, to be applied to the registration of another vehicle.

K. If a component part of a vehicle on which the vehicle identification number is affixed is to be replaced and if the vehicle is being repaired by a person other than its owner, the person shall notify the owner in writing and in the manner prescribed by the department that the part has been replaced, and the owner shall comply with section 28–865.

L. A person who violates this section is guilty of a class 2 misdemeanor.

M. For the purposes of this section:

1. "Restored salvage certificate of title" means a certificate of title issued to a vehicle that has been restored and for which a salvage certificate of title or a dismantling permit has been issued.

2. "Salvage vehicle" means a vehicle that either:

(a) Has been wrecked or damaged beyond repair.

(b) Has been declared a total loss vehicle by the insurer including total loss by reason of theft.

§ 28–802. Vehicle seizure

Employees of the department and peace officers, as defined by section 1–215, may seize a vehicle:

1. From which the serial or other identification number or mark is removed, defaced, obliterated or changed, if an application has not been made to the department as provided in this article.

2. For which the registration or license plates are fictitious.

3. That is being dismantled, scrapped or destroyed by a person who does not have a dismantling permit issued to the person or if an application for a permit has not been made.

4. If it is a salvage vehicle that is being reconstructed or repaired by a person who does not have in the person's possession a salvage certificate of title in the person's name or assigned to the person or a work or repair order signed by the owner or agent of the vehicle.

§ 28–803. **Sale of seized vehicles or motors; disposition of proceeds**

A. If a vehicle or motor has been seized under this chapter and held for six months and the owner has not complied with the provisions of law under which the vehicle or motor was seized, including payment of all fees, penalties, costs and expenses of seizure, the director shall sell the vehicle or motor.

B. The department may sell a motor vehicle, trailer or semitrailer seized and held for nonpayment of any fee, tax or other assessment or penalty on the vehicle that is due the department or for its account after thirty days.

C. The department shall sell a motor vehicle, motor, trailer or semitrailer under this section at public auction after notice of the sale by certified mail, return receipt requested, at least five but not more than twenty days before the sale, directed to the last known address of the owner of the vehicle or motor, if the owner is known. If the owner is unknown, the department shall give notice by publication in a newspaper of general circulation in the county in which the vehicle or motor was seized. If notice is published in a weekly newspaper, the department shall publish it once each week for two consecutive weeks, or if notice is published in a daily newspaper, six consecutive times, the last publication to be at least five but not more than ten days before the date of the sale.

D. The department shall pay the proceeds from the sale, after the fees, penalties, costs and expenses of seizure and sale are deducted, to the owner from whom the vehicle or motor was seized, if the owner is known. If the owner is unknown, the department shall transmit the proceeds to the state treasurer for deposit in the Arizona highway user revenue fund.

§ 28–804. **Dismantling motor vehicle; application fee; permit; exemption**

A. An owner who sells a motor vehicle, trailer or semitrailer as scrap or for dismantling or destroying shall assign the certificate of title of the vehicle to the purchaser. The purchaser shall deliver the following to the department:

1. An application for a permit to scrap, dismantle or destroy the vehicle.
2. The certificate of title to the vehicle purchased.
3. The registration card of the vehicle.
4. The license plate of the vehicle if any.
5. A fee of four dollars.

B. An owner who intends or desires to dismantle a vehicle shall first forward all of the following to the department:

1. An application for a permit to dismantle or wreck the vehicle.
2. The certificate of title to the vehicle.
3. The registration card of the vehicle.
4. The license plate of the vehicle, if any.
5. A fee of four dollars.

C. If the registration card or license plate is lost or destroyed, the applicant shall state in a form prescribed by the department under penalty of perjury the circumstances of the loss or destruction. On receipt of the documents and fee required by this section, the department shall issue a permit to the applicant to dismantle or destroy the vehicle. The permit authorizes the person to transport or possess the vehicle or to transfer ownership by endorsement on the permit. The department shall not issue a certificate of title for the vehicle if it is dismantled or destroyed.

D. A licensed automotive recycler who files with the application for a permit under this section an Arizona certificate of title indicating that the vehicle is free of all liens or a valid release of any liens shown on the title may begin dismantling the

vehicle five days after mailing or three days after delivery of the required documents and fee to the department unless notified by the department of the claim, or a lien or interest in the vehicle by some other person. If the department sends this notice, the licensed automotive recycler shall cease dismantling or sale of the vehicle and any of its parts until the rights of the other person are determined.

E. A licensed automotive recycler may dismantle a vehicle without obtaining a dismantling permit pursuant to this section if the vehicle has been issued a salvage certificate of title. The salvage certificate of title must be the current title of record. An automotive recycler shall file a written request to dismantle the vehicle on a form prescribed by the department. The automotive recycler may begin dismantling the vehicle five days after mailing the request or three days after delivering the request unless notified by the department of a claim, lien or interest in the vehicle by some other person. If the department sends this notice, the automotive recycler shall cease dismantling or sale of the vehicle and any of its parts until the rights of the other person are determined.

F. This section does not apply to the removal of a part for the purpose of replacement.

ARTICLE 4. VEHICLE LIENS AND ENCUMBRANCES

§ 28–831. Liens and encumbrances; validity

The following, other than a lien dependent on possession, are not valid as against the creditors of an owner acquiring a lien by levy or attachment or against subsequent purchasers or encumbrancers without notice until the requirements of this article are met:

1. Any security agreement, conditional sale contract, conditional lease, chattel mortgage or other lien or encumbrance.

2. A title retention instrument or other instrument affecting or evidencing title to, ownership of or reservation of title to a vehicle required to be titled and registered under section 28–853 or a mobile home required to be titled under section 42–643.

3. A contract for conveyance of real property, deed of trust or mortgage securing a lien on a mobile home and on real property.

§ 28–832. Indication of lien or encumbrance

A. The department shall provide on the application for title and the application for registration only a section that provides for the indication of a lien or encumbrance on the vehicle.

B. The applicant's signature on the application for title or the application for registration only is consent for the lien or encumbrance to be indicated by the department on its official title record for the vehicle.

C. Except as provided in subsection D and on receipt of the application as provided in this section, the department shall endorse on the application the date and hour it was received at the registering office of the department. When the department is satisfied that the application is genuine and regular, it shall issue a new certificate of title that gives all of the following:

1. The name of the owner.

2. A statement of all liens or encumbrances.

3. The amount of the liens or encumbrances certified to the department as existing against the vehicle.

D. The department shall not issue a new certificate of title to a purchaser or transferee if the outstanding certificate of title indicates an existing lien or encum-

brance unless the lien or encumbrance has been satisfied or the lienor or encumbrancer has consented in writing to the transfer of title.

§ 28–833. **Index and filing of liens, encumbrances or instruments; constructive notice**

A. The department shall maintain an appropriate index of all liens, encumbrances or title retention instruments filed as provided by this article.

B. The filing and issuance of a new certificate of title as provided in this article is constructive notice to creditors of the owner or to subsequent purchasers of all liens and encumbrances against the vehicle described in the certificate of title, except those that are authorized by law and that are dependent on possession. If the documents referred to in this article are received and filed in a registering office of the department within ten days after the date of their execution, the constructive notice dates from the time of execution. Otherwise, the notice dates from the time of receipt and filing of the documents by the department as shown by its endorsement.

C. The method provided in subsection B of this section for giving constructive notice of a lien or encumbrance on a vehicle required to be titled and registered under section 28–853 or a mobile home required to be titled under section 42–643 is exclusive, except for liens dependent on possession. A lien, encumbrance or title retention instrument or document that evidences any of them and that is filed as provided by this article is exempt from the provisions of law that otherwise require or relate to the recording or filing of instruments creating or evidencing title retention or other liens or encumbrances on vehicles of a type subject to registration under this chapter.

§ 28–834. **Satisfaction of lien or encumbrance**

A. When final payment is made on a lien or encumbrance recorded under this article, the holder of the lien or encumbrance shall make and deliver to the lienor or encumbrancer a satisfaction of the lien or encumbrance. On delivery to the department by the lienor or encumbrancer of the certificate of title to the vehicle on which the lien or encumbrance was given, together with the satisfaction of the lien or encumbrance, the department shall satisfy the lien or encumbrance on its records and on the certificate of title to the vehicle.

B. The department may satisfy a lien or encumbrance on its records and on a certificate of title to a vehicle if the owner of the vehicle furnishes satisfactory proof of the payment in full of the underlying debt and an affidavit stating the following:

1. That the owner has made a diligent search to locate the holder of the lien or encumbrance.

2. With particularity the steps taken in the search.

3. That after the search the holder of the lien or encumbrance could not be found.

C. The department may satisfy a lien or encumbrance against a vehicle on its records by accepting a certificate of title to the vehicle issued by another jurisdiction if all of the following conditions exist:

1. The lien previously recorded in this state does not appear on the title presented from another jurisdiction.

2. The title was issued by the other jurisdiction at least one year before the time it was presented to this state.

3. The law of the other jurisdiction requires a lien or encumbrance to be recorded on that state's certificate of title.

§ 28-835. Perfection of security interest in inventory

Notwithstanding any other provision in this article:

1. A security interest in inventory, as defined in section 47-9109, consisting in whole or in part of vehicles required to be titled and registered under section 28-853 or of mobile homes shall be perfected in accordance with the filing provisions of sections 47-9401 through 47-9409 to the extent that those provisions are applicable by virtue of section 47-9302.

2. A lien on a mobile home, as defined in section 42-641, for which an affidavit of affixture has been recorded pursuant to section 42-641.01 shall be perfected either according to the laws governing perfection of liens on real property or according to the laws governing perfection of security interests in fixtures.

§ 28-836. Unsatisfied liens

A. Except as provided in subsection B of this section, the department may remove from its records a lien on a vehicle required to be titled and registered under section 28-853 if the lien remains on the records of the department as unsatisfied twelve years after filing with the department.

B. This section applies only to noncommercial vehicles other than travel trailers, motor homes or mobile homes.

ARTICLE 5. REGISTRATION REQUIREMENTS GENERALLY

§ 28-851. Registration by mail; postage fund

A. The assessor of any county or the director acting as the registering agent may establish a procedure for mailing registration applications and license plates or year validating tabs to applicants.

B. For purposes of paying postage incurred under this section, the assessor or director may establish a postage fund and charge the estimated postage incurred under this section to an applicant who registers by mail. The assessor or director shall not charge postage to an applicant who does not register by mail. The assessor shall transfer monies in the assessor's postage fund annually and shall use the monies as provided in section 28-705. The director may transfer monies in the director's postage fund annually and use the monies as provided in section 28-707.

§ 28-852. Registration in county of residence; violation; classification; civil penalty; fee transfer

A. A person who registers a motor vehicle belonging to the person in a county other than the county where the person maintains the person's permanent and actual residence or at a place within the county that is outside the vehicle emissions control area with intent to evade title 49, chapter 3, article 5 is guilty of a class 2 misdemeanor and is subject to a fine of no more than one hundred dollars.

B. A lessee of a vehicle titled in the name of a lessor shall register the vehicle in the county where the lessee resides. The lessee shall provide documentation satisfactory to the director that the person is the lessee of the vehicle and resides in the county in which the person applies for registration of the vehicle.

C. A person who registers a motor vehicle belonging to the person or leased to the person in a county other than the county where the person maintains the person's permanent and actual residence or at a place within the county that is outside the vehicle emissions control area is responsible for a civil violation and is subject to a civil penalty of no more than one hundred dollars.

D. A county assessor who registers a motor vehicle illegally for a person not residing in the county shall transfer monies collected and retained by the county in

connection with the registration to the county assessor of the county of the person's permanent and actual residence.

§ 28–853. Registration requirement exceptions; assessment; violation; classification

A. A person shall not operate, move or leave standing on a highway a motor vehicle, trailer or semitrailer unless the motor vehicle, trailer or semitrailer has been registered with the department for the current registration year or is properly registered for the current registration year by the state or country of which the owner or lessee is a resident.

B. A resident shall not operate, move or leave standing on a highway a motor vehicle, trailer or semitrailer that is:

1. Owned by a nonresident and that is primarily under the control of a resident of this state for more than seven months unless the motor vehicle, trailer or semitrailer has been registered with the department for the current registration year.

2. Leased by the resident for more than twenty-nine days unless the motor vehicle, trailer or semitrailer has been registered with the department for the current registration year.

C. This section applies to a trailer or semitrailer without motive power unless the vehicle is disabled or is being towed as an abandoned vehicle at the direction of a law enforcement agency.

D. This section does not apply to:

1. A farm tractor.

2. A trailer used solely in the operation of a farm for transporting the unprocessed fiber or forage products of a farm or any implement of husbandry designed primarily for or used in agricultural operations and only incidentally operated or moved on a highway.

3. A road roller or road machinery, including a power sweeper, that is temporarily operating or moved on the highway.

4. An owner permitted to operate a vehicle under special provisions relating to lienholders, manufacturers, dealers and nonresidents.

5. Motorized or nonmotorized equipment designed primarily for and used in mining operations and only incidentally operated or moved on a highway.

6. A motor vehicle that is being towed by a tow truck that has been registered and for which a permit has been obtained pursuant to section 28–3417.

7. A golf cart or any other motor vehicle used in the operation of a golf course and only incidentally operated or moved on a highway.

8. Wheeled equipment. For the purposes of this paragraph, "wheeled equipment" means:

(a) A compressor.

(b) A forklift.

(c) A portable cement mixer.

(d) A single axle tow dolly as defined by section 28–3405.

(e) A tar pot.

(f) A water trailer used for watering livestock or for agricultural or domestic purposes.

(g) A welder.

(h) Any other similar item designed and used primarily for construction or building trade purposes.

E. A person who owns or operates a trailer that is exempt from registration pursuant to this section shall notify the county assessor of the exemption, and the assessor shall assess the trailer.

F. A person who violates subsection E of this section is guilty of a class 2 misdemeanor.

§ 28–854. **Special registrations**

A. A nonresident who purchases an unregistered vehicle in this state for removal to the state of residence of the purchaser may obtain a special thirty day nonresident registration of the vehicle. The nonresident may obtain this special registration by applying to the department or to a motor vehicle dealer as defined in section 28–4301 and by paying the fees prescribed by section 28–703. The application shall include an affidavit of the purchaser containing the following statements:

1. The purchaser is not a resident of this state as defined in section 28–701.

2. The vehicle is purchased to be registered out of state.

3. The vehicle is not purchased for transfer to a resident of this state.

4. Other information that the director deems necessary.

B. At the time of application for a special thirty day nonresident registration, the purchaser shall submit for inspection proper evidence of ownership of the vehicle to be registered. The special registration is valid for not more than thirty days from the date of issuance and may be evidenced in the form the director deems necessary or advisable. A person who obtains a nonresident registration on a semitrailer that has been manufactured in this state may use the semitrailer for commercial purposes if the semitrailer is being used to transport goods from this state, subject to the payment of any taxes prescribed by this title.

C. An enrolled member of an Indian tribe who resides on the Indian reservation established for that tribe and who purchases an unregistered vehicle in this state for removal to the Indian reservation may obtain a special thirty day registration permit for the vehicle. The member may obtain this special registration by applying to the department or to any motor vehicle dealer as defined by section 28–4301 and by payment by the motor vehicle dealer of the fees prescribed by section 28–703.

D. A resident who does not have complete documentation for issuance of an Arizona title and registration on a noncommercial vehicle but who has established ownership of the vehicle to the satisfaction of the department may receive a special ninety day resident registration by applying and paying the fee prescribed by section 28–703 to the department. The basis of assessment for the full annual registration fee and vehicle license tax relates back to the date of issuance of the first special ninety day resident registration.

E. A resident may receive a second consecutive special ninety day resident registration on application and payment of the fee prescribed by section 28–703 if:

1. The person has applied for a bonded title and the title has not been issued during the first ninety day registration.

2. The person is awaiting settlement of an estate.

3. The person is awaiting lien clearance.

4. The person is awaiting a hearing decision as a result of a title complaint.

5. The person is awaiting the issuance of honorary consular official special license plates.

6. The director determines other circumstances justify the issuance.

F. A resident may not receive more than two consecutive special ninety day resident registrations for a vehicle in a twelve month period.

§ 28–855. One trip registration permit

A. The department may issue a one trip registration permit that allows a person to operate an unregistered vehicle from a specified origin to a specified destination.

B. The one trip registration permit is valid only for the following purposes:

1. Vehicle emissions inspection.

2. Registration or titling.

3. Vehicle inspection by the registering officer.

4. Vehicle repair to comply with an emissions inspection or inspection by the registering officer.

C. A person operating a vehicle with a one trip registration permit shall comply with the mandatory motor vehicle insurance requirements of this state prescribed in chapter 9 of this title.

D. Issuance of a one trip registration permit is prima facie evidence that the vehicle will be used on the highway and that the waiver of the penalty provided by section 28–862 is not applicable.

E. The department shall prescribe the content and form of the one trip registration permit. The owner or operator of the vehicle shall display the one trip registration permit so that it is clearly visible from outside the vehicle.

F. The registering officer shall not issue more than three one trip registration permits for a vehicle in a twelve month period. The registering officer shall issue a one trip registration permit for not more than three days, excluding weekends and holidays.

G. The fee for the one trip registration permit is prescribed in section 28–703. The department shall deposit the fee in the county assessor's special registration fund established by section 28–705 if the assessor is the registering officer or in the special registration fund established under section 28–707 if the director is the registering officer.

§ 28–856. Temporary general use registration

A. In lieu of permanent registration, the department may issue a temporary general use registration that allows a person to operate a vehicle for no more than thirty days.

B. The director may authorize issuance of this temporary registration if the person does not qualify for registration under section 28–854 or 28–992 or article 10 of this chapter.

C. A person operating a vehicle with a temporary general use registration shall comply with the mandatory motor vehicle insurance requirements of this state prescribed in chapter 9, article 4 of this title.

D. The department shall prescribe the content and form of the temporary general use registration application. The owner or operator of the vehicle shall display the temporary general use registration so that it is clearly visible from outside the vehicle.

E. The registering officer shall not issue more than one temporary general use registration for a vehicle in a twelve month period.

F. At the time of application for a temporary general use registration, the applicant shall submit for inspection proper evidence of ownership or authorized possession of the vehicle.

G. The fee for the temporary general use registration is as prescribed in section 28–703. The registering officer shall deposit one dollar of the fee in the county assessor's special registration fund established by section 28–705 if the assessor is

the registering officer or in the special registration fund established by section 28–707 if the director is the registering officer.

§ 28–857. **Application for registration**

A. A person shall apply to the department for registration of a motor vehicle, trailer or semitrailer on forms prescribed and furnished by the department.

B. The application shall contain:

1. The name and complete residence address of the owner.

2. A description of the vehicle, including the serial number.

3. If it is a new vehicle, the date of sale by the manufacturer or dealer to the person first operating the vehicle.

4. If the owner of the vehicle rents or intends to rent the vehicle without a driver, a statement of that fact.

5. Other facts required by the department.

C. On request of an applicant, the department shall allow the applicant to provide on the registration of a motor vehicle, trailer or semitrailer a post office box address that is regularly used by the applicant and that is located in the county in which the applicant resides.

D. The person shall accompany the application with the required fees and the certificate of title to the vehicle for which registration is sought. The registering officer may waive the requirement that the applicant present a certificate of title at the time of making an application for renewal if the registering officer has available complete and sufficient records to accurately compute the vehicle license tax.

E. The department may request an applicant who appears in person to register a motor vehicle, trailer or semitrailer to complete satisfactorily the vision screening test prescribed by the department.

§ 28–858. **Registration card**

A. The department shall file each application for registration. If satisfied that the application is genuine and regular, the department shall issue a registration card to the owner of the vehicle and shall assign license plates to the vehicle.

B. The registration card shall contain on the face of the card all of the following:

1. The date it is issued.

2. The registration number assigned to the owner and the vehicle.

3. The name and address of the owner.

4. A description of the registered vehicle, including the serial number.

5. The amount of fees paid for registration of the vehicle.

C. The registration card shall be carried at all times in the driver's compartment of the vehicle for which it is issued. The registration card is subject to inspection by the director, members of the highway patrol or any peace officer.

§ 28–859. **Staggered registration**

A. The director shall establish a system of staggered registration on a monthly basis to distribute the work of registering motor vehicles as uniformly as practicable throughout the twelve months of the calendar year.

B. All vehicle registrations provided in this chapter expire pursuant to schedules established by the director. The director may set the number of renewal periods within the month from one each month to one each day depending on which system is most economical and best accommodates the public.

C. If adoption of the staggered system results in the expiration of any registration more than a year from its issuance, the department shall charge a prorated registration fee in addition to the annual fee.

D. In order to initiate a system of registering or reregistering vehicles during any month of the calendar year, the director may register or reregister a vehicle for more or less than a twelve month period, but not more than eighteen months, and may prorate the annual registration fee if in the director's opinion proration tends to fulfill the purpose of the monthly registration system.

E. The director or a registering officer may allow a person who owns three or more vehicles to register or reregister the vehicles for less than one year so that the vehicles' registrations expire on the same date. The director may not delay the registration date for a vehicle if it causes a decrease in the vehicle license tax. The director or the registering officer shall prorate the registration fee of these vehicles. This subsection does not apply to a commercial vehicle with a gross weight of more than ten thousand pounds or to a motor vehicle rental or leasing agency.

F. The director shall adopt rules necessary to accomplish the purposes of this section.

§ 28–860. Denial of registration

The director shall deny registration of a motor vehicle, trailer or semitrailer owned by or under the control of a person who has failed, refused or neglected to pay any motor vehicle fee, tax or other assessment or penalty due to the department or for its account. The department shall not renew a registration that is denied until the fees provided for registration and the full amount of the delinquent fees, taxes or other assessments and penalties are paid.

§ 28–861. Nonpayment of fees, taxes and assessments; consequences

A. Subject to section 28–5807, the director shall:

1. Refuse to register a motor vehicle, trailer or semitrailer owned by or under the control of a person who has failed, refused or neglected to pay any motor vehicle fee, tax or other assessment, or a penalty on the fee, tax or assessment, that is due the department or for its account.

2. Revoke the registration of a motor vehicle, trailer or semitrailer owned by or under the control of a person who has been delinquent for at least forty-five days in the payment of any motor vehicle fee, tax or other assessment due the department or for its account.

B. The department shall renew the registration of a motor vehicle, trailer or semitrailer revoked pursuant to subsection A for the owner who failed, refused or neglected to pay any motor vehicle fee, tax or other assessment, or a penalty on the fee, tax or assessment, only on payment of the fees prescribed for registration and the full amount of the delinquent fees, taxes or other assessments and penalties.

§ 28–862. Delinquent registration; penalty; lien; failure to apply for title

A. If a vehicle is operated on a highway without payment of the registration or transfer fee, the fee is delinquent. If the fee is not paid before the date on which the vehicle is required to be registered for the current registration year, the department shall collect a penalty. The penalty is eight dollars for the first month of delinquency and four dollars for each additional month, not to exceed a total penalty of one hundred dollars. Registration of a vehicle in the name of the applicant for the year immediately preceding the year for which the application for registration is made is prima facie evidence that the vehicle has been operated on the highways during the year for which the application for registration is made.

B. Except as provided in section 28-5807, an applicant shall submit the total annual registration fee, the weight fee, any other required fee and the penalty prescribed in subsection A of this section with an application for registration of a vehicle that is submitted after the date the vehicle was required to be registered for the registration year in which registration of the vehicle for the next preceding year expired. If it is determined at the time of renewal, on proof satisfactory to the director, that the vehicle was not operated on the highways of this state before the filing of the application and the registration of the vehicle, the department shall refund or waive the penalty prescribed in subsection A of this section.

C. A registration or transfer fee and any penalty added to the fee are a lien on the vehicle on which they are due from the due date. The department shall collect the fee and penalty by seizure of the vehicle from the person in possession of the vehicle, if any, and by sale as provided by law.

D. The director shall prescribe the method of readily identifying on the license plate the current registration date of the license plate.

E. A person who fails to apply for a certificate of title for any mobile home or other vehicle that is not registered under this title within fifteen days after acquiring the mobile home or vehicle shall pay an additional fee equal to the penalty prescribed in subsection A of this section.

§ 28-863. Cancellation of registration

A. The department shall cancel the registration of a vehicle that it determines is unsafe or unfit to be operated or that is not equipped as required by law.

B. The department shall cancel the registration of a vehicle if the person to whom the registration card or license plates have been issued makes or permits to be made an unlawful use of the vehicle or permits the use of the vehicle by a person not entitled to the use.

§ 28-864. Reregistration on becoming liable for weight fee

On using or offering to use a registered vehicle for transportation of passengers for compensation or on altering or reconstructing it for the transportation of property, whether or not the weight fee has been paid, the owner shall:

1. Surrender to the department the certificate of title and registration card to and the license plate assigned to the vehicle.

2. Apply for a corrected certificate of title.

3. Obtain a new registration, and an additional fee, other than the weight fee, is not required.

§ 28-865. Special serial or identification number

A. If the manufacturer's serial or other identifying number of a motor vehicle, trailer or semitrailer is altered, removed, obliterated, defaced, omitted or otherwise missing or if the original manufacturer's serial or identification number on a major component part of a motor vehicle can be permanently restored after having been removed, defaced, altered or destroyed, the owner at the time of application for registration or titling of the vehicle shall file an application with the department, on a form the department provides, that contains facts and information required by the director for the assignment of a special serial or identifying number.

B. The form prescribed by subsection A shall require, at a minimum, all of the following:

1. A sworn statement by the owner that the owner is the lawful owner of the vehicle and that sets forth the basis for the claim of ownership, including documentation such as purchase contracts, bills of sale, invoices and receipts for the original

vehicle and any replacement parts that replaced damaged portions of the original vehicle that bore original manufacturer's serial or identification numbers.

2. A copy of police or law enforcement agency reports documenting the theft and recovery of the vehicle.

3. A copy of a police or law enforcement agency accident report documenting the extent of damage to the vehicle.

4. A certified copy of documents from an insurance company documenting the precise nature, extent and dollar amount of damage to the vehicle or a sworn statement by the owner, including full and complete supporting documentation, establishing the origin of the vehicle and each major component part of the vehicle.

C. If the director is satisfied that the applicant has provided the documentation required by this section and that the applicant is entitled to assignment of a special serial or identification number, the director shall designate the serial number and note it on the application, on a suitable record of the department and on the authorization of use of the number.

D. The director shall furnish to the applicant a serial plate together with the authorization of use that shall be immediately delivered to a department inspector or agent who shall permanently attach the serial plate to the item in a conspicuous position and certify the attachment on the authorization of use. After attachment and certification, the plate is the lawful serial or identification number and shall remain on the item during its existence.

§ 28-866. Registration of vehicle rented without a driver; liability insurance; joint liability; violation; classification; definition

A. The department of transportation shall not allow an owner who is engaged in the business of renting or who intends to rent a motor vehicle without a driver to register the motor vehicle until either:

1. The owner has procured public liability insurance with an insurance company approved by the department of insurance.

2. The owner has furnished to the department of transportation satisfactory proof of the owner's ability to respond in damages in the amount of fifteen thousand dollars if one motor vehicle is registered and ten thousand dollars for each additional motor vehicle. Proof of the ability to respond in damages in the amount of one hundred thousand dollars is sufficient for any number of motor vehicles.

B. The policy of insurance required by subsection A shall:

1. Insure the renter against:

(a) Liability arising from the renter's negligence in the operation of the rented vehicle in an amount of at least fifteen thousand dollars for any one person injured or killed and thirty thousand dollars for any number more than one injured or killed in any one accident.

(b) Liability of the renter for property damage in the amount of at least ten thousand dollars for any one accident.

2. Cover the liability of the renter to a passenger in the rented motor vehicle unless the owner gives the renter a written notice that the policy does not cover the liability.

C. The public liability insurance or the obligation of a self-insured owner pursuant to this section is primary coverage to any other available insurance coverage for any damages and injury caused by a renter.

D. The owner regulated by this section:

1. Is not an insurer and has no obligation to provide a defense after the owner has tendered its limits to either the insured party or the next available coverage for

a renter in a situation if a renter has caused property damage or personal injuries. The obligation of any other insurance company to provide a defense if a renter is alleged to have caused property damages or personal injuries shall be determined in accordance with the specific provisions of the applicable policy.

2. In any situation in which damages or injuries are caused by a person who is operating a motor vehicle and who is not authorized by the written rental agreement to do so, has a right of subrogation against the person who rented the automobile for damages that are caused to the owner and that arose out of the unauthorized operation of the owner's vehicle.

3. Except as provided in paragraph 2 of this subsection, has no other right of subrogation against the person who rented the automobile.

E. The department of transportation shall cancel the registration of a motor vehicle rented without a driver if the owner has failed to comply with this section.

F. The owner of a motor vehicle who rents it to another without a driver, other than as a bona fide transaction involving the sale of the vehicle, without having procured the required public liability insurance or without qualifying as a self-insurer pursuant to section 28–4007 with at least the minimum limits prescribed in subsection A of this section is jointly and severally liable with the renter for damage caused by the negligence of the renter operating the motor vehicle.

G. The owner of a motor vehicle who rents a motor vehicle without a driver, other than as a bona fide transaction involving the sale of the motor vehicle, without first complying with this section is guilty of a class 2 misdemeanor.

H. As used in this section, owner engaged in the business of renting or who intends to rent a motor vehicle without a driver does not include a person who operates a golf course that rents golf carts that are intended to be used primarily for playing a round of golf and that are only incidently operated or moved on a highway.

I. As used in this section, "renter" includes any person operating a motor vehicle with permission of the person who has rented it.

§ 28–867. Commercial vehicle registration; financial responsibility

On notice from the department that the department deems it necessary, the registering officer shall not complete the registration of an applicant subject to the motor carrier financial responsibility requirements of chapter 9, article 2 of this title until the applicant has met the financial responsibility requirements of section 28–4033.

§ 28–868. Federal heavy vehicle use tax; enforcement assistance

The department may assist the United States department of treasury in enforcing the federal heavy vehicle use tax (26 United States Code section 4481). The director may determine persons who have paid or who are subject to or exempt from payment of the federal heavy vehicle use tax and may cancel the registration or refuse to register a vehicle that is owned or operated by a person and that is not in compliance with the federal heavy vehicle use tax.

ARTICLE 6. FLEET REGISTRATION

§ 28–901. Definition of fleet

In this article, unless the context otherwise requires, "fleet" means twenty-five or more vehicles owned by a person and registered in this state.

§ 28–902. Fleet registration; requirements; fees

A. In lieu of the staggered vehicle registration requirements of section 28–859, a person may register a fleet on an annual basis so that the registration for all vehicles in the fleet expires in the same month.

B. The director shall approve the request for fleet registration if the applicant, at least thirty days before the registration date:

1. Provides an application containing information necessary for qualification as a fleet registrant.

2. Provides a list of all vehicles to be included in the fleet.

3. Pays a one time filing fee of one hundred dollars that the director shall transmit to the state treasurer for deposit in the special registration fund established by section 28–707.

§ 28–903. **Registration card; sticker**

On approval of the application for fleet registration, the director shall issue a permanent registration card and a permanent validating sticker for each qualified vehicle in the fleet. The permanent registration card shall be carried in the vehicle at all times and shall be made available to any law enforcement officer on demand. The department shall determine the manner in which the permanent validating sticker is displayed.

§ 28–904. **Department as registering officer; vehicle license tax distribution; definition**

A. Except as provided in section 28–5101, the department is the registering officer for the initial application for registration and subsequent renewal application of fleet registrants. In the application for registration the applicant shall group vehicles by county of domicile.

B. The director shall distribute the vehicle license tax based on the county of domicile using the distribution formula prescribed in section 28–5808.

C. For the purposes of this section, "domicile" means the place from which a vehicle is most commonly dispatched or controlled.

§ 28–905. **New fleet registrant; fees; taxes**

For purposes of establishing a new fleet registrant and in order to establish a uniform month of expiration:

1. The department shall maintain the valuation for the vehicle license tax determined pursuant to section 28–5801 at the current valuation if it is necessary to calculate a partial year vehicle license tax.

2. The gross weight fee prescribed in section 28–5433 and the motor carrier tax prescribed in section 28–5855 may be discounted on a monthly basis for purposes of calculating a partial registration year.

§ 28–906. **Additions to fleet; fee**

A. If a vehicle is added to the fleet during the registration year, the director shall discount all fees required for registration as prescribed by law.

B. In addition to all registration fees, the registrant shall pay a two dollar identification fee for each vehicle added to the fleet. The director shall transmit the identification fee to the state treasurer for deposit in the special registration fund established by section 28–707.

§ 28–907. **Renewal of fleet registration; deletion of vehicle**

A. On the renewal of a fleet registration, the department shall require payment of full registration fees for each vehicle registered in the preceding year unless the vehicle has been deleted from the fleet as required by this section.

B. To delete a vehicle from a fleet, the fleet registrant shall surrender to the department the permanent registration card, the permanent validating sticker and the license plate. If the card, sticker or license plate is lost or stolen, the fleet registrant shall submit a sworn statement detailing the circumstances for the inability to surrender the card, sticker or license plate.

§ 28-908. Fleet utility trailers; five year registration; definition

A. In lieu of annual registration, the director shall provide for the registration of fleet utility trailers for five year periods on proper application by the owner of the trailers. The owner is subject to all fees and license taxes imposed by this title and shall pay the fees and taxes as if the trailers were registered annually.

B. An application for registration of fleet utility trailers for a five year period shall contain a proportional number of the trailers equal to the average number and the assessed value of the trailers operated in or through this state during the preceding calendar year.

C. The director shall require the owner of fleet utility trailers registered pursuant to this section to annually file on a form to be supplied by the department for each of the ensuing four years information the director deems necessary for the computation of the average number and assessed value of the trailers operated in and through this state during the preceding calendar year. If in any year subsequent to the first year of registration the average number or assessed value of the trailers increases, the director may require the owner to register additional trailers for the remainder of the five year period.

D. The director may cancel at any time any or all of the license plates and registration cards issued to the owner of fleet utility trailers registered pursuant to this section for nonpayment of registration fees or license taxes or for noncompliance with subsection C.

E. For the purposes of this section, "fleet utility trailer" means a trailer of a utility trailer fleet consisting of two hundred fifty or more trailers with a gross weight of less than six thousand pounds.

ARTICLE 7. INTERNATIONAL PROPORTIONAL REGISTRATION

§ 28-931. Definitions

In this article, unless the context otherwise requires:

1. "Commercial vehicle" means:

(a) For vehicles base licensed in this state, a bus, truck or truck tractor, trailer or semitrailer.

(b) For vehicles based in another state, a bus, truck or truck tractor that has a gross weight of six thousand pounds or more and that is operated in more than one jurisdiction.

2. "Fleet" means one or more commercial vehicles.

3. "Jurisdiction" means a state, district, province, political subdivision, territory or possession of the United States or a foreign country.

4. "Preceding year" means a period of twelve consecutive months fixed by the director. The director shall fix the period within the eighteen months immediately preceding the beginning of the registration or license year for which proportional registration is sought. In fixing the period, the director shall make it conform to the terms, conditions and requirements of an applicable agreement or arrangement for the proportional registration of vehicles.

§ 28–932. International proportional registration authority; rules

A. Except as otherwise provided in this article, the registration of fleet vehicles on a proportional basis without reference to or application of section 28–751, 28–752, 28–1021, 28–1022, 28–1023 or 28–1024 or other statutes of this state relating to vehicle registration is authorized.

B. Sections 28–861, 28–862 and 28–5724 and article 16 of this chapter apply to vehicles proportionally registered pursuant to this article.

C. This article does not require a vehicle to be proportionally registered if the vehicle is otherwise registered in this state for the operation in which the vehicle is engaged under section 28–703, 28–1024, 28–1025 or 28–5433 or any other law prescribing vehicle registration fees.

D. The director shall adopt rules necessary to administer and enforce this article.

§ 28–933. Interstate commercial fleet registration; application; restrictions

A. In lieu of the registration required by section 28–853, in lieu of the full payment of fees prescribed by sections 28–703 and 28–5433 and notwithstanding section 28–1021, a resident or nonresident engaged in operating one or more fleets of commercial vehicles in this state and another jurisdiction may register and license each fleet for operation in this state.

B. The director may refuse to permit proportional registration of vehicles based in a jurisdiction that does not grant proportional registration privileges to fleet vehicles based in this state.

C. A person may proportionally register and license a vehicle pursuant to this article by filing an application with the director. The execution of the application is subject to penalties of perjury for false statements. The application shall contain the following information and other information pertinent to vehicle registration as the director requires:

1. Total fleet miles determined as follows:

(a) The total number of miles operated in all jurisdictions during the preceding year by the power units in the fleet.

(b) If a fleet is composed entirely of trailers or semitrailers, the total number of miles that the vehicles were towed on the highways of all jurisdictions during the preceding year.

2. In-state miles determined as follows:

(a) The total number of miles operated in this state during the preceding year by the power units in the fleet.

(b) If a fleet is composed entirely of trailers or semitrailers, the total number of miles that the vehicles were towed on the highways of this state during the preceding year.

3. A description and identification of each vehicle of the fleet that is to be proportionally registered in this state during the registration year for which proportional fleet registration is requested.

4. For proportional registration of an interstate fleet to be operated in this state for the first time:

(a) The mileage data with respect to the fleet for the preceding year in other jurisdictions and the estimated annual mileage for the fleet in this state.

(b) If no operations were conducted with the fleet during the preceding year, a full statement of the proposed method of operation and estimates of annual mileage in this state and other jurisdictions.

D. The application shall not include as a proportionally registered fleet vehicle a vehicle that is operated exclusively in this state or a vehicle if the sole purpose of its operation in this state is for use in the conduct of intrastate business.

E. The department shall not register a vehicle under this article unless it has been or will be proportionally or otherwise properly registered in at least one other jurisdiction during the period for which proportional registration is sought in this state.

F. From the applications submitted for proportional registration of an interstate fleet to be operated in this state for the first time, the director shall fix the in-state and total fleet miles to be used in determining the mileage proportion for the fleet and may evaluate and adjust the estimate in the application if the director is not satisfied the estimate is correct.

§ 28–934. Owner-operators

An owner-operator who leases a vehicle to a motor carrier may proportionally register the vehicle by one of the following procedures:

1. The owner-operator may be the registrant, and the vehicle may be registered in the name of the owner-operator. The department shall allocate the fees according to the operational records of the owner-operator. The identification plate and cab card are the property of the lessor.

2. The lessee may be the registrant at the option of the lessor and the vehicle may be registered by the motor carrier. The registration shall be in both the owner-operator's name and that of the motor carrier as lessee. The department shall allocate the fees according to the records of the motor carrier. The identification plate and cab card are the property of the lessee.

§ 28–935. Interstate commercial fleet registration; trailers; fees

A. The application of each fleet registered pursuant to this article shall include a total fee payment of at least four dollars fifty cents for each vehicle in the fleet that is submitted at the time and in the manner directed by the director and that is computed as follows:

1. Divide in-state miles by total fleet miles.

2. Determine the total amount necessary to register each vehicle in the fleet for which registration is requested based on the applicable fees and taxes prescribed by sections 28–703, 28–5433, 28–5471 and 28–5801.

3. Multiply the sum obtained in paragraph 2 by the fraction obtained in paragraph 1.

B. In addition to all other fees, the applicant shall include a filing fee of seven dollars fifty cents with each application or supplemental application for nine or fewer vehicles, fifteen dollars for ten through twenty-four vehicles and twenty-two dollars fifty cents for twenty-five or more vehicles.

C. The applicant for proportional registration of a fleet, the nonmotor vehicles of which are operated in jurisdictions in addition to those in which the applicant's proportionally registered motor vehicles are operated, may state the nonmotor vehicles separately in the application and compute and pay the fees in accordance with the separate statement. In this application the total miles are the total miles that the nonmotor vehicles were towed by any of the applicant's motor vehicles on highways in all jurisdictions during the preceding year.

§ 28–936. **Interstate commercial fleet registration; identification; fee; registration card**

A. On payment of the appropriate fees for a proportional registration application submitted pursuant to this article, the director shall register the vehicles described and identified in the application and may issue a distinctive sticker for each motor vehicle described in the application. In addition, the director shall charge a fee of three dollars for each additional proportionally registered vehicle and shall determine whether to issue a sticker.

B. The department shall issue a registration card for each proportionally registered vehicle that bears on its face the number of the license or distinctive sticker issued for the proportionally registered vehicle and other information from the application for proportional registration as the director determines is appropriate for identifying the vehicle. The registration card shall be carried in the vehicle at all times. If it is a combination of vehicles, the registration card shall be carried in the vehicle supplying the motive power.

C. Proportionally registered interstate fleet vehicles that are registered and identified pursuant to this article are fully licensed and registered in this state for any type of movement or operation.

§ 28–937. **Additional vehicles**

A. A vehicle that is acquired by the owner after the beginning of the registration year and subsequently added to a proportionally registered fleet shall be proportionally registered by applying the mileage percentage used in the original application for the fleet for the registration period to the fees otherwise due for the vehicle pursuant to section 28–935 for the remainder of the registration year.

B. A vehicle that is operated by the owner as a lessee of another owner who, in the license year, has proportionally registered the vehicle in this state is not considered an addition to the lessee's fleet if the lessor establishes to the satisfaction of the director both of the following:

1. That the owner maintains and will submit complete annual mileage data for each vehicle for all states, including, by individual states, all miles operated in service by the lessor and the lessee of the lessor.

2. That the vehicle or its replacement will be included in the lessor's proportional registration application in this state in the normal course of operations for the succeeding license year.

§ 28–938. **Records; audits; interest; penalty**

A. An owner whose application for proportional registration is accepted shall preserve the records on which the application is based for four years following the year or period on which the application is based. On request of the director, the owner shall either:

1. Make records available to the director at the director's office for audit as to the accuracy of computations and payments and the assessment of deficiencies or allowances for credit.

2. Pay the costs of an audit by the department at the applicant's home office.

B. The director may enter into agreements with agencies of other jurisdictions administering motor vehicle registration laws for joint audits of an owner whose application for proportional registration has been accepted.

C. The department shall not make an assessment for deficiency or a claim for credit for a period for which records are not required. Amounts that are found to be due and owing on audit bear interest of twelve per cent from the date they should have been paid until the date of actual payment. If the audit discloses a deliberate

and wilful intent to evade the requirements of payment under section 28–933, the department shall also assess an additional penalty of ten per cent of the amounts found to be due and owing on audit.

§ 28–939. Temporary proportional registrations; fee

A. The department may sell temporary proportional registrations to motor carriers with existing fleets that are registered under this article. Motor carriers may use temporary proportional registrations for vehicles that are added to an existing fleet or in lieu of lost registrations pending receipt of permanent or replacement registrations.

B. The cost of a temporary proportional registration is one dollar, and the registration is valid for thirty days.

ARTICLE 8. ALTERNATIVE PROPORTIONAL REGISTRATION

§ 28–961. Alternative proportional registration agreements; authority; rules

A. In lieu of the registration required by section 28–853, in lieu of international proportional registration pursuant to article 7 of this chapter and notwithstanding section 28–1021, the director may provide for the apportionment of registration and other fees for nonresident fleets of apportionable commercial vehicles that are engaged in interstate and intrastate commerce between this state and another state or states in which fleets operate in accordance with a proportional registration agreement pursuant to this article.

B. The director may enter into proportional registration agreements with another state or states providing that residents of the other state or states who operate a commercial vehicle may allocate and apportion the registration and other fees and taxes for the commercial vehicle prescribed in sections 28–703, 28–5433, 28–5471 and 28–5801 pursuant to a formula agreed on by the director and the other state or states.

C. The director may enter into an agreement pursuant to this article if residents of this state are granted the same allocation and apportionment privileges for commercial motor vehicles registered in the other state or states. An agreement, arrangement, declaration or amendment entered into pursuant to this article shall be in writing and is not effective until filed with the department.

D. The director shall adopt rules necessary to administer and enforce this article.

§ 28–962. Alternative proportional registration agreements; restriction; contents

A. A proportional registration agreement authorized by this article does not exempt a motor vehicle, owner or operator from complying with all laws and rules pertaining to the operation of motor vehicles and pertaining to highway maximum length, width, height and weight.

B. A proportional registration agreement authorized by this article may:

1. Provide for collecting and forwarding the applicable registration and other fees and applications to another state or states.

2. Define the size of a fleet that may consist of one or more vehicles.

3. Provide a method to determine the state in which a fleet is based.

4. Establish a minimum fee or a flat fee if a fleet operator adds jurisdictions to the fleet operator's area of operation.

5. Include other provisions to facilitate the administration of the agreement.

§ 28–963. **Withdrawal of vehicle**

If a vehicle that is subject to an agreement authorized by this article is permanently withdrawn from a proportionally registered fleet because the vehicle has been destroyed, sold or otherwise completely removed from the registrant's service, the director shall refund the unused portion of the fees paid with respect to the vehicle or apply the fees against the registrant's liability for subsequent additions to the fleet during the registration year or for additional fees on audit.

§ 28–964. **Trailers**

The registration fees prescribed in sections 28–703 and 28–5801 for trailers and semitrailers base licensed in this state under an agreement authorized by this article may be allocated or apportioned.

§ 28–965. **Owner-operators; permit**

If an owner-operator is not operating as a lessor, the owner-operator may apply for a fifteen day permit for a fee of twenty dollars for each motor vehicle or vehicle combination using a registered gross weight that does not exceed the empty weight of the vehicle. The director may extend registration reciprocity to similar registrations issued by other jurisdictions.

§ 28–966. **Fees; vehicle identification; registration card**

A. In addition to all other fees, a person applying or making a supplemental application for registration under this article shall pay a filing fee of seven dollars fifty cents for nine or fewer vehicles, fifteen dollars for ten through twenty-four vehicles or twenty-two dollars fifty cents for twenty-five or more vehicles.

B. On payment of the appropriate fees for the registration, the director shall register the vehicles described and identified in the application and may issue a distinctive sticker for each motor vehicle described in the application. The director shall charge a fee of three dollars for each registered vehicle and shall determine whether to issue a sticker.

C. For each registered vehicle the director shall issue a registration card that bears on its face the number of the license or distinctive sticker issued for the registered vehicle and the other information extracted from the application for registration as the director determines appropriate for identifying the vehicle. The card shall be carried in the vehicle at all times. If it is a combination of vehicles, the card shall be carried in the vehicle supplying the motive power.

§ 28–967. **Temporary registrations; fee**

A. The department may sell temporary registrations to motor carriers with existing fleets that are registered under this article. Temporary registrations may be used for vehicles that are added to an existing fleet or in lieu of lost registrations pending the receipt of permanent or replacement registrations.

B. The temporary registration fee is one dollar. The temporary registration is valid for thirty days.

§ 28–968. **Audit costs**

If the place of business where records are audited is located outside of this state, the director may require the licensee to pay the department in advance for the cost of reimbursing employee subsistence and travel expenses.

ARTICLE 9. NONRESIDENT DAILY COMMUTER

§ 28-991. Definition of nonresident daily commuter

In this article, unless the context otherwise requires, "nonresident daily commuter" means a person who is a resident of a contiguous state, who enters and leaves this state on a daily basis for the purpose of employment and whose motor vehicle is principally garaged in the contiguous state.

§ 28-992. Nonresident daily commuter vehicle operation

Notwithstanding this chapter, a nonresident daily commuter may operate a motor vehicle on the highways of this state if all of the following conditions are met:

1. The motor vehicle is either:

(a) A passenger vehicle.

(b) A commercial vehicle of a type commonly referred to as a pickup truck of less than six thousand pounds unladen weight with not more than two axles.

2. The motor vehicle is used regularly to transport passengers on the highways of this state principally between and to and from the place of residence in a contiguous state and the place of employment in this state by the owner of the motor vehicle and is not used for any other business purpose.

3. The motor vehicle is not used in the course of a business within this state, including the transportation of property other than incidental personal property between and to or from the place of residence in a contiguous state and the place of employment of the motor vehicle owner in this state.

§ 28-993. Application

A. A nonresident daily commuter may apply for external vehicle identification indicia and an identification card by filing an application with the department.

B. The department shall prescribe a form to be completed by the applicant that includes all of the following information:

1. The vehicle license plate number and the vehicle identification number of the motor vehicle that will display the nonresident daily commuter indicia.

2. The name of the registered owner of the motor vehicle that will display the indicia.

3. A statement that the applicant is a nonresident daily commuter.

4. A statement that the indicia will be displayed on a qualified motor vehicle as prescribed by section 28-995.

5. A statement that the place of employment of the nonresident daily commuter is within the corridor prescribed by section 28-994.

§ 28-994. Nonresident daily commuter; identification card; fee

A. On application and completion of the form prescribed by section 28-993, the department shall provide a nonresident daily commuter with external vehicle identification indicia and a corresponding identification card that are valid for two years.

B. A motor vehicle is exempt from registration by this state if the following conditions are met:

1. The motor vehicle is operated with the indicia provided pursuant to subsection A of this section and otherwise in accordance with this article.

2. The motor vehicle is a passenger vehicle or an unladen truck.

3. The motor vehicle is licensed in a contiguous state and is used to commute into this state to a destination within a corridor in this state that parallels the border

between this state and the contiguous state and that extends not more than seventy air miles into this state from the border at any point.

C. The privilege accorded by subsection A of this section is revoked if the motor vehicle is operated for commuter purposes beyond the air mileage limitation provided in subsection B of this section.

D. The department may charge a fee of not more than eight dollars for each motor vehicle exempt from registration pursuant to this section, as necessary, to recover the costs of administering this article.

§ 28–995. Display of indicia

A. A nonresident daily commuter shall display nonresident daily commuter indicia in a location on the motor vehicle that is clearly visible and adjacent to the rear license plate.

B. A nonresident daily commuter shall carry the corresponding nonresident daily commuter identification card at all times in the motor vehicle for which the card is assigned and shall present the card to any peace officer of this state on demand.

ARTICLE 10. NONRESIDENT RESPONSIBILITY

§ 28–1021. Registration requirement for nonresident's vehicle

A. Except as otherwise provided in this article, a nonresident owner of a foreign motor vehicle shall register and license the motor vehicle in this state in the same manner as a motor vehicle that has not been registered or licensed if the motor vehicle is operated in this state either:

1. For the transportation of passengers or property for compensation.

2. In the business of a nonresident carried on in this state.

3. For the transportation of property.

4. In the furtherance of a commercial enterprise and is a passenger carrying motor vehicle designed to seat twelve or more persons.

B. Sections 28–1022, 28–1023, 28–1024 and this section do not apply to:

1. A foreign motor vehicle that is owned by a nonresident and that would be exempt from payment of gross weight fees under section 28–5432 if the motor vehicle was owned by a resident of this state.

2. A foreign motor vehicle that is owned by a nonresident and operated in this state for the transportation of property in the furtherance of a commercial enterprise and that is either:

(a) Commonly referred to as a passenger car or station wagon.

(b) Commonly known and referred to by manufacturer's rating as a three-quarter ton or less pickup truck or three-quarter ton or less van.

§ 28–1022. License plate requirement for nonresident's foreign vehicle

A person shall not operate a foreign vehicle owned by a nonresident on a highway and a nonresident owner shall not knowingly permit the foreign vehicle to be operated on a highway unless there is displayed on the vehicle the license plates assigned to the vehicle for the current registration year by the state or country of which the owner is a resident.

§ 28–1023. **Exemptions from fees; special registration permit**

A. An owner of a foreign motor vehicle that is registered and licensed in a state adjoining this state is not required to pay the gross weight fees prescribed in section 28–5433 if all of the following conditions exist:

1. The owner and motor vehicle are domiciled within twenty-five miles of the border of this state.

2. The motor vehicle is used in this state within twenty-five miles of the border.

3. The state in which the owner resides and in which the motor vehicle is registered exempts from payment of weight fees like motor vehicles from this state.

B. An owner who seeks partial or total exemption as provided in subsection A of this section shall apply to the department for a special registration permit. The department shall issue the permit to the vehicle owner if:

1. The department is satisfied that the owner is entitled to an exemption from gross weight fees.

2. The owner pays the portion of fees that are not exempt.

3. The owner signs an affidavit stating that when operated in this state the motor vehicle will be operated within the prescribed border zone and other information related to the permit as prescribed by the department.

C. The permit issued under this section shall be distinctive in form and shall include all of the following:

1. A statement that when the motor vehicle is operated in this state it will be operated only within the prescribed border zone.

2. The date the permit is issued.

3. A brief description of the motor vehicle.

4. A statement that the owner has registered the motor vehicle.

5. Other information that the director requires.

§ 28–1024. **Limited registration; fees; violation**

A. If a person desires to operate a motor vehicle that is required to be registered by section 28–1021 for a period of less than the full registration year and the motor vehicle is registered under the laws of another state or country, the owner may apply to the department in the manner and form prescribed for the registration of the motor vehicle for either thirty, sixty or ninety day periods. The person shall pay the following percentages of the full annual registration, use and gross weight fees that are applicable to the applicant's motor vehicle as prescribed by sections 28–703, 28–5433 and 28–5471, or twelve dollars, whichever is more:

1. For thirty days, twenty per cent.

2. For sixty days, thirty-five per cent.

3. For ninety days, fifty per cent.

B. The department shall not accept an application for a fraction of any of the periods prescribed in subsection A of this section. The department may issue registrations without restriction as to number or sequence.

C. If satisfied as to the facts stated in the application, the department shall register the motor vehicle for the period prescribed in subsection A of this section and shall assign an appropriate certificate or license. The operator shall display the certificate or license on the motor vehicle in the manner prescribed by the department when the motor vehicle is operated or driven on a highway of this state.

D. If a nonresident owner of a foreign motor vehicle is apprehended while operating the vehicle beyond the period specified in the owner's certificate or license and the owner has not applied for renewal of the certificate or license:

1. The department shall not issue another thirty, sixty or ninety day certificate or license to the owner during the registration year in which the violation occurred.

2. The nonresident owner shall register the motor vehicle and pay the fees for the registration year.

§ 28–1025. Single trip permit; fees

A. An owner of a vehicle that is required to be registered pursuant to section 28–1021 may apply to the department for a single trip permit. The single trip permit authorizes the interstate operation of the vehicle:

1. For a single trip through this state.

2. From any point on the Arizona border to a point within this state and back to the border.

3. From a railhead within this state and return to a railhead.

4. From a point within this state to the border of this state.

B. If satisfied as to the facts stated in the application, the department shall register the vehicle by issuing a single trip permit on payment by the owner of the following fees:

1. For a one or two axle vehicle, one dollar fifty cents for each fifty miles or fraction of fifty miles to be traveled on the highways in any one trip.

2. For a three axle vehicle or combination of vehicles with not more than three axles, two dollars twenty-five cents for each fifty miles or fraction of fifty miles to be traveled on the highways in any one trip.

3. For a vehicle or combination of vehicles with four axles, three dollars for each fifty miles or fraction of fifty miles to be traveled on the highways in any one trip.

4. For a vehicle or combination of vehicles with five axles, three dollars seventy-five cents for each fifty miles or fraction of fifty miles to be traveled on the highways in any one trip.

5. For a vehicle or combination of vehicles with six axles, four dollars fifty cents for each fifty miles or fraction of fifty miles to be traveled on the highways in any one trip.

6. For a vehicle or combination of vehicles with more than six axles, five dollars twenty-five cents for each fifty miles or fraction of fifty miles to be traveled on the highways in any one trip.

7. For a vehicle commonly known as and referred to by manufacturer's rating as a three-quarter ton or less pickup truck a maximum of seven dollars fifty cents in any one trip.

C. The single trip permit shall contain information, be in the form and be issued and displayed in or on the vehicle as prescribed by department rules.

D. A single trip permit expires on completion of the earlier of the following:

1. The specific trip for which the permit is issued.

2. Ninety-six hours from the time of issuance.

3. A period of time that is authorized in writing by the department.

E. If a person violates the terms of a single trip permit, the owner shall apply for and obtain annual registration of the vehicle and pay the fees applicable at the time the terms of the permit are violated.

§ 28–1026. Acceptance of rights and privileges; appointment for service of process

A. The rights and privileges conferred by sections 28–1021, 28–1022, 28–1023 and 28–1024 and section 28–1592, subsection A, paragraphs 4 and 5 are deemed accepted, and the acceptance is evidenced, by a nonresident:

1. If the nonresident or the nonresident's agent operates a motor vehicle on a highway under the provisions of and the conditions imposed by sections 28–1021, 28–1022, 28–1023 and 28–1024 and section 28–1592, subsection A, paragraphs 4 and 5.

2. If the nonresident or the nonresident's agent operates a motor vehicle on a highway other than under the provisions of sections 28–1021, 28–1022, 28–1023 and 28–1024 and section 28–1592, subsection A, paragraphs 4 and 5.

3. If a motor vehicle that is owned by a nonresident is operated on a highway with the owner's express or implied permission under circumstances that render a resident motor vehicle owner liable for damages to person or property caused by the operation.

B. Acceptance of the rights and privileges stated in subsection A of this section constitutes the appointment of the director by the nonresident as the nonresident's true and lawful attorney on whom process may be served in an action against the nonresident that arises from an accident or collision involving the nonresident, the nonresident's agent or any other person operating a motor vehicle owned by the nonresident with the nonresident's express or implied permission on a highway.

C. This section also applies to a nonresident defendant who was a resident of this state at the time of the accident or collision that gave rise to the action.

§ 28–1027. Service on director; notice to nonresident; fee; proof of service

A. Service of process under section 28–1026 is made by leaving a copy of the summons and complaint and a fee of four dollars with the director or in the director's office during office hours. The service of process is deemed sufficient service on the nonresident if either:

1. The plaintiff immediately does all of the following:

(a) Sends notice of the service and a copy of the summons and complaint by certified mail to the nonresident defendant.

(b) Appends the defendant's return receipt and the plaintiff's affidavit of compliance with this section and section 28–1026 to the original summons.

(c) Files them with the court within the time the court allows.

2. The plaintiff both:

(a) Serves notice of the service and a copy of the summons and complaint on the defendant, if found outside this state, by a duly constituted officer qualified to serve like process in the state or the jurisdiction where the defendant is found.

(b) Files with the court, within the time the court allows, the officer's return showing that the notice, copy of the summons and complaint were served as provided by this section on the defendant.

B. The court in which the action is pending may order postponements necessary to give the defendant a reasonable opportunity to defend the action.

C. The director shall keep a record, including the day and hour of service, of all process served on the director under this section.

D. The fee paid to the director at the time of service shall be taxed as costs in the suit if the plaintiff recovers.

ARTICLE 11. LICENSE PLATES GENERALLY

§ 28–1051. License plate provided; design

A. The department shall provide to every owner one license plate for each motor vehicle, motorcycle, trailer or semitrailer registered. At the request of the owner and on payment of any required fee, the department shall provide either one or two license plates for a motor vehicle for which a license plate is requested pursuant to this chapter.

B. The license plate shall display the number assigned to the vehicle and to the owner of the vehicle and the name of this state, which may be abbreviated. The director shall coat the license plate with a reflective material that is consistent with the determination of the license plate commission established by section 28–1105 regarding the color and design of license plates and special plates as prescribed by section 28–1105. The director shall design the license plate and the letters and numerals on the license plate to be of sufficient size to be plainly readable during daylight from a distance of one hundred feet.

C. Notwithstanding any other law, the department shall not contract with a nongovernmental entity to purchase or secure reflective material for the plates issued by the department unless the department has made a reasonable effort to secure qualified bids or proposals from as many individual responsible respondents as possible.

D. The license plate commission established pursuant to section 28–1105 shall determine the color and design of the license plate. All other plates issued by the department, except the plates issued pursuant to sections 28–1112, 28–1113, 28–1152, 28–1153, 28–1154 and 28–1155 and article 14 of this chapter, shall be the same color as and similar in design to the license plate as determined by the commission.

E. A passenger motor vehicle rented without a driver shall receive the same type of license plate as issued for a private passenger motor vehicle.

§ 28–1052. License plate; return; replacement; fee

A. On termination of the lawful use of the license plate the director may require return to the department of the plate issued by the department.

B. If the license plate of a motor vehicle is mutilated or illegible, the owner shall return the plate to the department, and the department shall issue a new plate on payment of the fee provided in this section.

C. The fee for replacement of each lost, destroyed or mutilated license plate, pair of license plates or year validating tab is five dollars.

§ 28–1053. Special license plate replacement fund

A. The department may establish a special license plate replacement fund composed of twenty-five cents of each registration fee collected or received by the department. These fees are in addition to fees authorized to be kept pursuant to sections 28–705 and 28–707.

B. The department shall use the monies in the fund to systematically replace license plates that are no longer plainly readable or to offset the cost of the issuance of a newly designed license plate. The department shall transmit fund monies that exceed one hundred ten thousand dollars as of June 30 of each year to the state treasurer for deposit in the highway user revenue fund.

§ 28–1054. License plates; attachment

A. A person shall display the license plate or plates as follows:

1. For a motor vehicle, motorcycle, trailer or semitrailer, on the rear.

2. For a vehicle for which two license plates are issued, the vehicle owner shall display either of the following:

(a) One plate on the rear.

(b) One plate on the front and one plate on the rear.

B. A person shall display all license plates as required by subsection A until their lawful use expires or is canceled or revoked. A person shall maintain each license plate so it is clearly legible. A person shall securely fasten each license plate to the vehicle as follows:

1. To prevent the plate from swinging.

2. At a height of at least twelve inches from the ground to the bottom of the plate.

3. In a position to be clearly visible.

§ 28–1055. License plates; tabs; stickers; fee

A. The department may issue one or more tabs or windshield stickers to indicate the year for which a license plate is issued.

B. The department shall develop a windshield sticker and issue it, on application, to a person whose motor vehicle is a farm vehicle as defined in section 28–1562. The department shall design the windshield sticker to provide that the words "farm vehicle" appear on the sticker.

C. For each farm windshield sticker issued under this section, the department shall charge a one time fee of eight dollars. A person shall not transfer the sticker to any other person or vehicle.

ARTICLE 12. SPECIAL PLATES

§ 28–1101. Definition of special plates

In this article, unless the context otherwise requires, "special plates" means plates issued pursuant to this article.

§ 28–1102. Special plate fees

The following fees are required:

1. Twenty-five dollars for each pair of original and for each annual renewal of special plates issued under this article, except special plates for deaf persons issued under section 28–1108, international symbol of access special plates issued under section 28–1109 and, if the department receives approval from the federal government allowing the use of high occupancy vehicle lanes by alternative fuel vehicles, special plates for alterative fuel vehicles issued under section 28–1116.

2. Twelve dollars for a transfer of special plates, unless exempt.

§ 28–1103. Special plates; violation; classification

A. Except as otherwise provided in this article, the department shall issue or renew special plates in lieu of the regular license plates pursuant to the following conditions and procedures and only if the requirements prescribed by this article for the requested special plates are met:

1. A person who is the registered owner of a vehicle registered with the department or who applies for an original or renewal registration of a vehicle may submit to the department a completed application form as prescribed by the department with the fee prescribed by section 28–1102 for special plates in addition to the registration fee prescribed by section 28–703.

2. Except for plates issued pursuant to sections 28–1112, 28–1113, 28–1152, 28–1153, 28–1154 and 28–1155 and article 14 of this chapter, the special plates shall be the same color as and similar to the design of the regular license plates that is determined by the license plate commission pursuant to section 28–1051.

3. Except as provided in section 28–1106, the department shall issue special plates only to the registered owner or lessee of a vehicle that is a passenger vehicle or a light commercial vehicle that has a manufacturer's rated carrying capacity of one ton or less. The special plates shall be used on a vehicle currently registered in the applicant's name or in the name of the applicant and another person or on a vehicle leased by the applicant.

4. The department shall charge the fee prescribed by section 28–1102 for each annual renewal of special plates in addition to the registration fee prescribed by section 28–703.

B. On notification to the department and on payment of the transfer fee prescribed by section 28–1102, a person who is issued special plates may transfer the special plates to another vehicle the person owns or leases. Persons who are issued special plates for deaf persons pursuant to section 28–1108 and international symbol of access special plates pursuant to section 28–1109 are exempt from the transfer fee. If a person who is issued special plates sells, trades or otherwise releases ownership of the vehicle on which the plates have been displayed, the person shall immediately report the transfer of the plates to the department or the person shall surrender the plates to the department as prescribed by the director. It is unlawful for a person to whom the plates have been issued to knowingly permit them to be displayed on a vehicle except the vehicle authorized by the department.

C. The special plates shall be affixed to the vehicle for which registration is sought in lieu of the regular license plates.

D. A person is guilty of a class 3 misdemeanor who:

1. Violates subsection B of this section.

2. Fraudulently gives false or fictitious information in the application for or renewal of special plates or placards issued pursuant to this article.

3. Conceals a material fact or otherwise commits fraud in the application for or renewal of special plates or placards issued pursuant to this article.

§ 28–1104. Special organization plates; special plate fund; definitions

A. An organization may submit a request to the department on a form prescribed by the department for a special organization plate. In the request the organization may propose suggested indicia for the special organization plate that are indicative of the organization. If the department determines the organization meets the requirements of an organization as defined in this section, the department shall submit the request for a special organization plate to the license plate commission established pursuant to section 28–1105.

B. The commission shall determine and inform the department whether the requested special organization plate is authorized. The commission shall authorize a special organization plate if the organization meets the following requirements:

1. The primary activity or interest of the organization serves the community, contributes to the welfare of others and is not offensive or discriminatory in its purpose, nature, activity or name.

2. The name of the organization or any part of the organization's purpose does not promote any specific product or brand name that is provided for sale.

3. The purpose of the organization does not promote a specific religion, faith or antireligious belief.

C. If the commission authorizes the special organization plate pursuant to subsection B of this section, section 28-1103 and the following requirements and procedures apply:

1. The department shall not issue the special organization plate unless it receives a sufficient number of applications from qualified applicants to pay for the production and program costs of the plates.

2. The department shall inform the organization of the authorization by the commission of the requested special organization plate, the requirements of this subsection and the number of applications required pursuant to paragraph 1 of this subsection.

3. The organization shall collect and hold applications from its members and the required fees for the special organization plates until the required number of applications, as determined by the department, is received.

4. The organization shall refund all fees to applicants if the required number of applications is not received in the calendar year in which the first application was received or if the department refunds the fees to the organization.

5. The organization shall submit the required number of applications and fees to the department by January 1 of any calendar year.

6. If the department determines that the required number of applications is received, that the applicants are qualified for the requested special plate and that the monies paid for the plates are available to the state, the department shall design and issue the requested special plate within one year after receiving the applications and fees.

D. The determination of the commission of whether to authorize a special organization plate and of the department of whether to issue a special organization plate as required by this section is not subject to the rule making provisions of title 41, chapter 6. The department shall file with the secretary of state a document for publication in the administrative code with the department's rules that names each special organization plate that is authorized and issued pursuant to this section.

E. A special plate fund is established in the state treasury in which monies shall be deposited pending the determination required by subsection C, paragraph 6 of this section. The department shall transmit the fees received with applications for each special organization plate to the state treasurer for deposit in the fund. The department shall administer the fund and shall use the monies in the fund to provide refunds to an organization if special organization plates are not issued. Monies in the fund that are not refunded shall be deposited as required by law. The fund is exempt from the provisions of section 35-190 relating to lapsing of appropriations. On notice from the department, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

F. Eight dollars of the fees prescribed in section 28-1102 for original special plates and the renewal of special plates issued under this section are special plate administration fees. If the fees are not refunded and the special plates are issued pursuant to this section, the department shall transmit the special plate administration fees to the state treasurer for deposit in the special registration fund established by section 28-707 to cover administration costs.

G. For the purposes of this section:

1. "Commission" means the license plate commission established by section 28-1105.

2. "Organization" means an entity that is organized as a nonprofit corporation pursuant to title 10, chapter 22 and that either certifies to the department that the organization has at least five hundred members or certifies to the department that the organization has fewer than five hundred members if, based on data requested

by the department and provided by the organization, the department determines that the requirements of subsection C, paragraph 1 of this section can be satisfied.

§ 28–1105. License plate commission

A. A license plate commission is established. The commission is composed of the following members:

1. A person who is appointed by the speaker of the house of representatives and who serves at the pleasure of the speaker of the house of representatives.

2. A person who is appointed by the president of the senate and who serves at the pleasure of the president of the senate.

3. A person who is appointed by the governor from the governor's office of highway safety and who serves at the pleasure of the governor.

4. The superintendent of the highway patrol division or the superintendent's designee.

5. The director of the department of transportation or the director's designee.

6. The director of the office of tourism or the director's designee.

7. The director of the state department of corrections or the director's designee.

B. The director of the department of transportation or the director's designee shall serve as chairman of the commission. The chairman shall preside at commission meetings and coordinate the activities of the commission and staff implementation of commission actions.

C. All official actions of the commission shall be decided by a majority vote of commission members.

D. The commission shall determine the following:

1. The color and design of license plates.

2. The color of special plates to be the same as and the design of special plates to be similar to the license plates, except for special plates issued pursuant to sections 28–1112, 28–1113, 28–1152, 28–1153, 28–1154 and 28–1155 and article 14 of this chapter.

3. Whether to authorize special organization plates pursuant to section 28–1104.

4. The indicia for special organization plates issued pursuant to section 28–1104.

E. The department shall provide the commission with staff and technical assistance as necessary to perform its functions.

F. Commission members are not eligible to receive compensation, but the members who are appointed pursuant to subsection A, paragraphs 1 and 2 of this section are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.

§ 28–1106. Personalized special plates

A. Notwithstanding section 28–1103, subsection A, paragraph 3, a person may apply for personalized special plates for any vehicle the person owns or leases or as a gift for the owner or lessee of a vehicle by indicating on the application the letters, numbers or combination of letters and numbers requested as a registration number. The department shall determine the number of positions allowed on the personalized special plates. The personalized special plates shall not conflict with existing plates and shall not duplicate registration numbers. The department may refuse to issue or may suspend, cancel or revoke any combination of letters or numbers or any combination of letters and numbers that carries connotations that are offensive to good taste and decency, any combination that is misleading or any combination that duplicates other plates.

B. If a person who has been issued personalized special plates sells, trades or otherwise releases ownership of the vehicle on which the plates have been displayed and relinquishes the plates to the new owner of the vehicle, the person shall release the person's priority to the letters, numbers or combination of letters and numbers that is displayed on the personalized special plates in the manner prescribed by the director. The person to whom the plates are relinquished shall apply to the department for issuance of the plates to the new applicant.

§ 28–1107. **Amateur radio operator special plates**

A. The department shall issue amateur radio operator special plates to a person who provides satisfactory proof that the person owns and holds an unrevoked and unexpired amateur radio station license issued by the federal communications commission.

B. The amateur radio operator special plates shall be inscribed with the official identifying amateur radio call letters of the applicant as assigned by the federal communications commission.

§ 28–1108. **Special plates for deaf persons; placard; definition**

A. The department shall issue to a deaf person special plates that display a distinctive number assigned to the motor vehicle and to the motor vehicle owner or lessee and that indicate the owner or lessee of the motor vehicle is deaf.

B. On application, the department shall issue a removable placard to a deaf person at no additional charge for display in a motor vehicle operated by the deaf person. The department shall design the placard and determine the required display of the placard.

C. For the purposes of this section, "deaf person" means a person who cannot, with or without a hearing aid, hear and understand normal speech in optimal listening conditions and who submits to the department a certificate issued by a person licensed to practice medicine in this state or by an audiologist certified by the American speech, language and hearing association that states the applicant is deaf.

§ 28–1109. **International symbol of access special plates; placard; definitions**

A. The department shall issue special plates bearing the international symbol of access to either:

1. A person who is permanently physically disabled and who is an owner or lessee of a motor vehicle.

2. An organization that owns or leases a motor vehicle that primarily transports physically disabled persons.

B. A person who is permanently physically disabled may obtain, if qualified, a "permanently disabled" removable windshield placard. A person who is temporarily physically disabled may obtain, if qualified, a "temporarily disabled" removable windshield placard. An organization that primarily transports physically disabled persons may obtain, if qualified, a placard for each of the qualified vehicles. The department shall issue only one valid placard to a temporarily or permanently physically disabled applicant, except to replace a lost, stolen or mutilated placard or if the department determines, on receiving the applicant's written request, that the needs of the applicant are such that two valid placards are required. The department shall issue a placard pursuant to this section at no additional charge.

C. A "permanently disabled" removable windshield placard or special plate issued or renewed under this section is valid for one year. A "temporarily disabled" removable windshield placard issued or renewed under this section is valid for a period of time as determined by the department. A person who desires to obtain a

"temporarily disabled" removable windshield placard for an additional period of time shall submit a new application.

D. A person or organization that desires to obtain a "permanently disabled" or "temporarily disabled" removable windshield placard or international symbol of access special plates shall submit an application to the department on a form furnished by the department that contains one of the following:

1. If a permanently or temporarily disabled person, a certificate completed by a hospital administrator or by an authorized physician that certifies that the applicant is physically disabled.

2. If an organization, a signed statement by an authorized officer of the organization affirming that the registered vehicle that is owned or leased by the organization and that will display the placard or the international symbol of access special plates primarily transports physically disabled persons.

E. On receipt of the application containing the medical certificate or signed statement, if the department finds that the applicant qualifies for the parking privileges pursuant to chapter 5, article 15 of this title, the department shall issue the placard or international symbol of access special plates.

F. A person or organization that desires to renew a "permanently disabled" removable windshield placard shall submit to the department an application that contains the following:

1. If a permanently disabled person, a signed statement by the person requesting renewal of the placard and affirming that the person is physically disabled. Every three years after issuance of the placard a department agent or notary public must witness the signed statement submitted to the director requesting renewal.

2. If an organization, a signed statement by an authorized officer of the organization affirming that the registered vehicle that is owned or leased by the organization and that will display the placard primarily transports physically disabled persons.

G. A person or organization that desires to renew the international symbol of access special plates shall comply with the annual vehicle registration requirements and every three years after issuance of the special plates shall submit an application to the department containing one of the following:

1. If a permanently disabled person, a signed statement by the person witnessed by a department agent or notary public requesting renewal of the special plates and affirming that the person is physically disabled.

2. If an organization, a signed statement by an authorized officer of the organization affirming that the registered vehicle that is owned or leased by the organization and that will display the special plates primarily transports physically disabled persons.

H. The placard or international symbol of access special plates shall be displayed on or in the motor vehicle in the manner prescribed by the department.

I. A request for special plates issued under this section may be combined with a request for any other special plate. The department shall prescribe the form for the request. The request is subject to payment of the fee required for the other special plate.

J. In this section:

1. "Authorized physician" means a doctor of medicine, osteopathy or chiropractic licensed to practice medicine in this state or any contiguous state or authorized by the United States government to practice medicine.

2. "Permanently disabled removable windshield placard" means a two-sided, hooked placard that includes on each side all of the following:

(a) The international symbol of access that is at least three inches in height, that is centered on the placard and that is white on a blue shield.

(b) An identification number.

(c) An expiration date.

(d) The seal or other identification of the issuing authority.

3. "Physically disabled person" means a person who, as determined by a hospital administrator or authorized physician, meets any of the following conditions:

(a) Cannot walk two hundred feet without stopping to rest.

(b) Cannot walk without the use of or assistance from any brace, cane, crutch, other person, prosthetic device, wheelchair or other assistive device.

(c) Is restricted by lung disease to such an extent that the person's forced respiratory, expiratory volume for one second, if measured by spirometry, is less than one liter, or the arterial oxygen tension is less than sixty mm/Hg on room air at rest.

(d) Uses portable oxygen.

(e) Has a cardiac condition to the extent that the person's functional limitations are classified in severity as class III or class IV according to standards set by the American heart association.

(f) Is severely limited in the person's ability to walk due to an arthritic, neurological or orthopedic condition.

4. "Temporarily disabled removable windshield placard" means a two-sided, hooked placard that includes on each side all of the following:

(a) The international symbol of access that is at least three inches in height, that is centered on the placard and that is white on a red shield.

(b) An identification number.

(c) A date of expiration.

(d) The seal or other identification of the issuing authority.

§ 28–1110. Honorary consular official special plates

The department shall issue honorary consular official special plates to a citizen of the United States or a permanent resident of this country who submits satisfactory proof to the department that the citizen or permanent resident is appointed by a foreign country to facilitate and promote the interest of the foreign country with this state.

§ 28–1111. Personalized street rod vehicle special plates

A. The department shall issue personalized street rod vehicle special plates to a person who owns a vehicle with a body design that retains at least the basic original style as manufactured in 1948 or earlier and that has been modified for safe road use. This modification may include:

1. Modification of the drive train and suspension and brake systems.

2. Modifications to the body through the use of materials such as steel or fiberglass.

3. Any other safety or comfort features.

B. A person who complies with subsection A may apply for personalized street rod vehicle special plates by indicating on the application the letters, numbers or combination of letters and numbers requested as a registration number. The department shall determine the number of positions allowed on the personalized street rod vehicle special plates. The personalized street rod vehicle special plates shall not conflict with existing plates and shall not duplicate registration numbers. The department may refuse to issue or may suspend, cancel or revoke any combination of letters or numbers or any combination of letters and numbers that

carries connotations that are offensive to good taste and decency, any combination that is misleading or any combination that duplicates other plates.

C. If a person who has been issued personalized street rod vehicle special plates sells, trades or otherwise releases ownership of the vehicle on which the plates have been displayed and relinquishes the plates to the new owner of the vehicle, the person shall release the person's priority to the letters, numbers or combination of letters and numbers that is displayed on the personalized street rod vehicle special plates in the manner prescribed by the director. The person to whom the plates are relinquished shall apply to the department for issuance of the plates to the new applicant.

§ 28–1112. Collegiate special plates

A. The department shall issue collegiate special plates that identify each university that is described in section 15–1601. The collegiate special plates shall have the same color and design as the collegiate license plates issued on or before December 31, 1992, except that on the request of a university as described in section 15–1601, the department may revise the color and design of the plates as appropriate for the university.

B. Of the twenty-five dollar fee required by section 28–1102 for original special plates and for renewal of special plates, eight dollars is a special plate administration fee and seventeen dollars is a collegiate plate annual donation.

C. The department shall transmit all special plate administration fees and all collegiate plate annual donations collected pursuant to this section to the state treasurer. The state treasurer shall deposit the special plate administration fees in the special registration fund established by section 28–707 and shall transmit the collegiate plate annual donations to the board of regents for placement in the appropriate university collegiate special plate fund.

D. The request for collegiate special plates may be combined with a request for personalized special plates. This request shall be on a form prescribed by the director and is subject to the fees required for the personalized special plates in addition to the fees required for collegiate special plates.

§ 28–1113. Environmental special plates

A. The department shall issue environmental special plates. The environmental special plates shall have the same basic color and design as the environmental license plates issued on or before December 31, 1992, except that the department may make minor alterations of environmental special plates to make the plates more reflective and readable during the daylight and nighttime hours.

B. Of the twenty-five dollar fee required by section 28–1102 for original environmental special plates and for renewal of environmental special plates, eight dollars is a special plate administration fee and seventeen dollars is an environmental plate annual donation.

C. The department shall transmit all special plate administration fees and all environmental plate annual donations collected pursuant to this section to the state treasurer. The state treasurer shall deposit the special plate administration fees in the special registration fund established by section 28–707 and shall deposit the environmental plate annual donations in the environmental special plate fund established by section 15–214 for disbursement by the department of education to environmental education programs.

§ 28–1114. Veteran special plates

A. The department shall issue veteran special plates.

B. Of the twenty-five dollar fee required by section 28–1102 for original veteran special plates and for renewal of veteran special plates, eight dollars is a special plate administration fee and seventeen dollars is a veteran plate annual donation.

C. The department shall transmit all special plate administration fees and all veteran plate annual donations collected pursuant to this section to the state treasurer. The state treasurer shall deposit the special plate administration fees in the special registration fund established by section 28–707 and shall deposit the veteran plate annual donations in the state home for veterans trust fund established by section 41–608.01.

§ 28–1115. National guard member special plates

A. The department shall issue national guard member special plates to a person who submits satisfactory proof to the department that the person is or has been a member of the Arizona national guard or the spouse of a person who is or has been a member of the Arizona national guard.

B. The department shall not issue special plates pursuant to this section to a person or to the spouse of a person who was discharged from the armed forces under conditions less than honorable.

§ 28–1116. Alternative fuel vehicle special plates; use of high occupancy vehicle lanes

A. If the department receives approval from the federal government allowing the use of high occupancy vehicle lanes by alternative fuel vehicles, the department shall issue alternative fuel vehicle special plates to a person who owns a motor vehicle that is powered by an alternative fuel and that is registered pursuant to section 28–5805.

B. If the department receives approval from the federal government allowing the use of high occupancy vehicle lanes by alternative fuel vehicles, a motor vehicle with alternative fuel special plates may drive in high occupancy vehicle lanes at any time, regardless of occupancy level, without penalty.

ARTICLE 13. HONORED MILITARY LICENSE PLATES

§ 28–1151. Honored military license plates; procedures; transfers; violation; classification

A. The department shall issue or renew military license plates issued pursuant to this article in lieu of the regular license plates pursuant to the following conditions and procedures and only if the requirements prescribed by this article for the requested license plates are met:

1. A person who is the registered owner of a vehicle registered with the department or who applies for an original or renewal registration of a vehicle may submit to the department a completed application form as prescribed by the department.

2. The department shall issue license plates only to the registered owner or lessee of a vehicle that is a passenger vehicle or a light commercial vehicle having a manufacturer's rated carrying capacity of one ton or less. The license plates shall be used on a motor vehicle currently registered in the applicant's name or in the name of the applicant and another person or on a motor vehicle leased by the applicant.

B. On notification to the department, a person who is issued license plates pursuant to this article may transfer the license plates to another vehicle for which he is the registered owner or lessee. If a person who is issued license plates sells, trades or otherwise releases ownership of the vehicle on which the plates have been displayed, the person shall immediately report the transfer of the plates to the

department or the person shall surrender the plates to the department as prescribed by the director. It is unlawful for a person to whom the plates have been issued to knowingly permit them to be displayed on a motor vehicle except the motor vehicle authorized by the department.

C. The owner shall affix the license plates to the vehicle for which registration is sought in lieu of the regular license plates.

D. A person is guilty of a class 3 misdemeanor who:

1. Violates subsection B.

2. Fraudulently gives false or fictitious information in the application for or renewal of license plates issued pursuant to this article.

3. Conceals a material fact or otherwise commits fraud in the application for or renewal of license plates issued pursuant to this article.

§ 28–1152. Congressional medal of honor license plates

The department shall issue at no additional cost distinctive license plates to a person who submits proof to the department that the person is a recipient of the congressional medal of honor.

§ 28–1153. Former prisoner of war license plates; fees

A. The department shall issue distinctive license plates to:

1. A person, other than a person who was discharged from the armed forces under conditions less than honorable, who submits satisfactory proof to the department that the person was captured and incarcerated by an enemy of the United States during a period of conflict with the United States.

2. The spouse of a person who has been issued a license plate pursuant to this section.

B. For each pair of original license plates issued pursuant to this section, the department shall charge a fee of fifteen dollars in addition to the registration fee required by section 28–703. For each annual renewal of license plates issued pursuant to this section, the department shall charge a fee of five dollars in addition to the registration fee required by section 28–703.

§ 28–1154. Purple heart medal recipient license plates; fees

A. The department shall issue distinctive license plates to:

1. A person who submits satisfactory proof to the department that the person is a veteran and a bona fide purple heart medal recipient.

2. The spouse of a person who has been issued a license plate pursuant to this section.

B. For each pair of original license plates issued pursuant to this section, the department shall charge a fee of twenty-five dollars in addition to the registration fee required by section 28–703. For each annual renewal of license plates issued pursuant to this section, the department shall charge a fee of five dollars in addition to the registration fee required by section 28–703.

§ 28–1155. Pearl Harbor survivor license plates; fees

A. The department shall issue distinctive license plates to:

1. A person who submits satisfactory proof from the veterans' service commission to the department that all of the following are true:

(a) The person was a member of the United States armed forces on December 7, 1941.

(b) The person received an honorable discharge from the United States armed forces.

(c) The person was on station on December 7, 1941 during the hours of 7:55 a.m. to 9:45 a.m. Hawaii time at Pearl Harbor, the island of Oahu or offshore at a distance of not exceeding three miles.

2. The spouse of a person who has been issued a license plate pursuant to this section.

B. For each pair of original license plates issued pursuant to this section, the department shall charge a fee of twenty-five dollars in addition to the registration fee required by section 28–703. For each annual renewal of license plates issued pursuant to this section, the department shall charge a fee of five dollars in addition to the registration fee required by section 28–703.

ARTICLE 14. LICENSE PLATES FOR VEHICLES OF HISTORIC VALUE

§ 28–1181. Historic value license plate fees

In addition to the payment of all other fees required by law, the following fees are required for license plates issued pursuant to this article:

1. For each pair of original license plates, twenty-five dollars.

2. For each annual renewal of the license plates, ten dollars.

§ 28–1182. License plates for horseless carriages; definition

A. The department shall issue license plates for a horseless carriage on application and in the manner and at the time prescribed by the department. The license plates are in lieu of the regular license plates issued by the department.

B. The registration numbers and license plates assigned to horseless carriages shall be manufactured from Arizona copper and shall run in separate numerical series beginning with "horseless carriage no. 1". The license plates shall be of a distinguishing color.

C. On renewal of the registration of a horseless carriage, the department shall annually issue symbols or devices as provided in section 28–1055.

D. For the purposes of this section, "horseless carriage" means a motor vehicle manufactured in 1915 or before.

§ 28–1183. License plates for classic cars; definition

A. The department shall issue special license plates for a classic car on application and in the manner and at the time prescribed by the department. The license plates are in lieu of the regular license plates issued by the department.

B. The registration numbers and license plates assigned to classic cars shall be manufactured from Arizona copper and shall run in separate numerical series commencing with "classic car no. 1". The license plates shall be of a distinguishing color but different from the color selected for license plates issued under section 28–1182 or 28–1184.

C. On renewal of registration of a classic car, the department shall annually issue symbols or devices as provided in section 28–1055.

D. For the purposes of this section, "classic car" means a car included in the 1963 list of classic cars filed with the director by the classic car club of America. The director shall revise the list every five years.

§ 28–1184. **License plates for historic vehicles; definition**

A. The department shall issue special license plates for a historic vehicle on application and in the manner and at the time prescribed by the department. The license plates are in lieu of the regular license plates issued by the department.

B. The registration numbers and special license plates assigned to the historic vehicles shall be manufactured from Arizona copper and shall run in separate unique numerical series. The license plates shall be of a distinguishing color but different from the color selected for license plates issued under section 28–1182 or 28–1183.

C. On renewal of registration of a historic vehicle, the department shall annually issue symbols or devices as provided in section 28–1055.

D. For the purposes of this section, "historic vehicle" means any of the following:

1. A motor vehicle bearing a model year date of original manufacture that is twenty-five years old or older.

2. A motor vehicle included in a list of historic cars filed with the director by a recognized historic or classic car organization during the month of December of each year.

3. A reconstructed vehicle that the director determines, on application by the owner, retains at least the basic original body style as manufactured twenty-five years or more before the date of the application.

E. The director shall grant the final approval of a vehicle to be licensed under this section.

§ 28–1185. **Safety requirements; compliance**

Notwithstanding any other law, a motor vehicle that is eligible to be licensed under this article is in compliance with the safety requirements of the laws of this state relating to motor vehicles if the original safety equipment placed on the motor vehicle by the manufacturer of the motor vehicle is in good operating condition or if the original equipment has been replaced by equipment equal to or more efficient than the original equipment.

§ 28–1186. **Retention of old certificate of title**

A. The owner of a motor vehicle that is licensed under this article may retain the old canceled certificate of title if:

1. The application for a new title is granted.

2. The old title is marked "canceled" on its face.

3. A photostatic copy paid for by the applicant is made of the canceled certificate of title.

B. The photostatic copy is deemed to be the original for purposes of canceled title records of the department.

§ 28–1187. **Model year date license plates**

An owner of a vehicle that is eligible for registration pursuant to section 28–1183 or 28–1184 may use a license plate previously issued by this state with the date of the year corresponding to the model year date when the vehicle was manufactured in lieu of the license plates issued pursuant to section 28–1183 or 28–1184. To qualify for the license plate authorized by this section:

1. The department shall approve the license plate and determine that the model year date license plate is legible and serviceable and that the license plate numbers do not conflict with other numbers currently assigned to license plates issued by the department. The department may consult with an organization of old car hobbyists

in determining whether the date of the year of the license plate to be used corresponds to the model year date when the vehicle was manufactured.

2. The owner of the vehicle shall comply with the requirements for the registration of the vehicle.

ARTICLE 15. DISTINCTIVE VEHICLES

§ 28–1211. Official vehicles; registration exemption; definition

A. A registration fee is not required for a vehicle owned by a foreign government, by a consul or any other official representative of a foreign government, by the United States, by a state or political subdivision of a state, by an Indian tribal government, by a provider of ambulance, fire fighting or rescue services that is used solely for the purpose of providing emergency services or by a nonprofit organization that presents to the department a form approved by the director of the division of emergency management pursuant to section 26–318. The person who has custody of these vehicles shall register them as required by this chapter and shall display official license plates that bear distinguishing marks. The department shall furnish the license plates free of charge. The department may issue regular license plates without any distinguishing marks for vehicles that are exempt from title 38, chapter 3, article 10 pursuant to section 38–538.03, subsection B.

B. The director may issue license plates for motor vehicles owned by and used in the line of duty by law enforcement agencies in other states and the federal government without being registered as required by this chapter.

C. The director may enter into agreements or arrangements subject to the approval of the attorney general of this state with the federal government and with motor vehicle departments in other states to provide for a reciprocal exchange of license plates for use on motor vehicles owned or operated by law enforcement agencies for investigating actual or suspected violations of law. License plates of other states obtained pursuant to this subsection may be used on exempt motor vehicles of law enforcement agencies of this state or a political subdivision of this state.

D. The director shall maintain a record of the license plates issued pursuant to subsections B and C of this section. The director shall also keep a record of the license plates received pursuant to subsection C of this section, the regular license plates issued pursuant to subsection A of this section and the vehicles to which the plates are attached. These records are not open to public inspection except on demand of the attorney general.

E. For the purposes of this section, "ambulance" means a vehicle for which a certificate of registration has been issued pursuant to title 36, chapter 21.1.

§ 28–1212. Off-road recreational motor vehicle license plate; fee

A. The department shall furnish to an owner of an off-road recreational motor vehicle one license plate for each titled off-road recreational motor vehicle.

B. The license plate is valid for the life of the vehicle.

C. The fee for a plate issued pursuant to this section is eight dollars.

§ 28–1213. Mopeds

Notwithstanding any other provision of this title:

1. A certificate of title is not required for a moped that is registered pursuant to this chapter.

2. A number permanently affixed to the frame of the moped identifies the moped for registration purposes.

3. The director shall adopt necessary rules to provide for any tag, decal, plate or other device in lieu of a license plate otherwise required pursuant to this chapter to be attached to a moped to indicate that the moped is properly registered.

4. The license tax imposed by article IX, section 11, Constitution of Arizona, is four dollars fifty cents for each moped registered each year.

5. A moped is exempt from the provisions of section 28–3361 relating to required equipment on motorcycles and motor-driven cycles and from the provisions of title 49, chapter 3, article 5 relating to vehicle emissions inspections.

6. The motor vehicle fee for registration or reregistration of a moped is five dollars. All other fees applicable to motor vehicles also apply to a moped.

7. Any class of driver license is valid for operating a moped.

8. A moped is restricted from rights-of-way designated for exclusive use by bicycles.

ARTICLE 16. VIOLATIONS

§ 28–1231. Registration; violation; classification

A. A person is guilty of a class 5 felony who:

1. Intentionally removes a manufacturer's serial or identification number from or defaces, alters or destroys a manufacturer's serial or identification number on a motor vehicle.

2. Knowingly issues a license plate without payment of the full amount of the registration and weight fee payable on the date of issuance of the license plate.

B. A person is guilty of a class 2 misdemeanor who:

1. Displays or possesses a registration card or license plate knowing it to be fictitious or to have been stolen, canceled, revoked, suspended or altered.

2. Lends to a person or knowingly permits the use of the person's registration card or license plate by a person not entitled to the card or plate.

3. Knowingly fails or refuses to surrender to the department on demand a license plate that has been suspended, canceled or revoked.

4. Uses a false or fictitious name or address in an application for registration of a vehicle or for a renewal or duplicate of a registration.

5. Knowingly makes a false statement or conceals a material fact or otherwise commits fraud in an application for registration of a vehicle or for a renewal or duplicate of a registration.

6. Knowingly issues a registration card that does not contain all information required to be shown on the card.

7. Knowingly places information on a registration card that does not appear on the certificate of title of the vehicle.

8. Operates on a street or highway a motor vehicle without an emissions control device as required by section 28–3254 or with a device that has been dismantled or disconnected or is otherwise inoperative.

9. Displays or possesses a registration card or license plate while operating a vehicle on a highway after the person certifies to the department pursuant to section 28–4135 that the vehicle is nonoperational, is in storage or will not be operated on a highway of this state and does not have evidence of current financial responsibility applicable to the motor vehicle.

§ 28–1232. Registration; violation; civil penalties

A. Except as provided in subsection B of this section, a person who is the resident or nonresident owner or operator of a motor vehicle, trailer or semitrailer that is required by law to be registered in this state and that is not registered or does not display license plates assigned by the department for the current registration year and who operates or knowingly permits the vehicle to be operated on a highway is subject to a civil penalty of three hundred dollars.

B. On proper presentation of evidence of current registration, a person who is charged with a violation of subsection A of this section is subject to a civil penalty of fifty dollars.

C. A court shall not dismiss an action brought under this section merely because the defendant has obtained the appropriate license plates or registration after violating this section. A court shall not impose a civil penalty against a defendant for a violation of this section if the defendant was an operator but was not the owner of the motor vehicle, trailer or semitrailer.

§ 28–1233. Registration; violation; additional civil penalty; disposition of civil penalty

A. In addition to all other penalties prescribed by law, an owner of a motor vehicle that is or was registered in another state, territory or foreign country who knowingly fails to register the vehicle for the first time in this state as required by law is, notwithstanding any other law, subject to a civil penalty of three hundred dollars.

B. A court shall not dismiss an action brought under this section merely because the defendant has obtained the appropriate registration after violating this section.

C. The law enforcement agency that cites the owner for a violation of this section shall retain twenty per cent of the civil penalty provided by this section. The court shall transmit any remaining monies collected under this section to the state treasurer for deposit in the Arizona highway user revenue fund.

CHAPTER 4

MOTOR VEHICLE DRIVER LICENSES

ARTICLE 1. GENERAL PROVISIONS

§ 28–1501. Definitions

In this chapter, unless the context otherwise requires:

1. "Cancellation" means the annullment or termination of a driver license because of an error or defect or because the licensee is no longer entitled to the license.

2. "Commercial driver license" means a license that is issued to an individual and that authorizes the individual to operate a class of commercial motor vehicles.

3. "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used to transport passengers or property if the motor vehicle either:

(a) Has a gross combined weight rating of twenty-six thousand one or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten thousand pounds.

(b) Has a gross vehicle weight rating of twenty-six thousand one or more pounds.

(c) Is a school bus.

(d) Is a bus.

(e) Is used in the transportation of materials found to be hazardous for the purposes of the hazardous materials transportation act (49 United States code appendix section 1801 et seq.) and is required to be placarded under 49 Code of Federal Regulations section 172.504, as adopted by the department pursuant to chapter 14 of this title.

4. "Conviction" means a final conviction or judgment, including an order of a juvenile court finding that a juvenile has violated a provision of this title or has committed a delinquent act that if committed by an adult constitutes any of the following:

(a) A homicide resulting from the operation of a motor vehicle.

(b) A felony in the commission of which a motor vehicle was used.

(c) A forfeiture of bail or collateral deposited to secure a defendant's appearance in court that has not been vacated.

5. "Disqualification" means a prohibition from obtaining a commercial driver license or driving a commercial motor vehicle.

6. "Domicile" means the person's principal establishment to which the person intends to return when the person is absent.

7. "Employer" means a person, including the United States, a state or a political subdivision of a state, that owns or leases a commercial motor vehicle or that assigns a person to operate a commercial motor vehicle.

8. "Endorsement" means an authorization that is added to an individual's driver license and that is required to permit the individual to operate certain types of vehicles.

9. "Foreign" means outside the United States.

10. "Gross vehicle weight rating" means the weight that is assigned by the vehicle manufacturer to a vehicle and that represents the maximum recommended total weight including the vehicle and the load for the vehicle.

11. "Judgment" means a final judgment and any of the following:

(a) The finding by a court that an individual is responsible for a civil traffic violation.

(b) An individual's admission of responsibility for a civil traffic violation.

(c) The voluntary or involuntary forfeiture of deposit in connection with a civil traffic violation.

(d) A default judgment entered by a court pursuant to section 28–3796.

12. "License class" means, for the purpose of determining the appropriate class of driver license required for the type of motor vehicle or vehicle combination a driver intends to operate or is operating, the class of driver license prescribed in section 28–1561.

13. "Nonresident commercial driver license" means a commercial driver license issued to an individual domiciled in a foreign country.

14. "Original applicant" means any of the following:

(a) An applicant who has never been licensed or cannot provide evidence of licensing or an applicant whose previous license has expired for more than one year.

(b) An applicant who is applying for a higher class of driver license than the license currently held by the applicant.

(c) An applicant who has a license from a foreign country.

15. "Revocation" means that the driver license and privilege to drive a motor vehicle on the highways of this state are terminated and shall not be renewed or restored, except that an application for a new license may be presented and acted on by the department after one year from the date of revocation.

16. "Suspension" means that the driver license and privilege to drive a motor vehicle on the highways of this state are temporarily withdrawn during the period of the suspension and until application for reinstatement is made.

17. "Vehicle combination" means a motor vehicle and a vehicle in excess of ten thousand pounds gross vehicle weight that it tows, if the combined gross vehicle weight rating is more than twenty-six thousand pounds.

§ 28–1502. Fees; driver licenses; disposition

A. The following fees are required:

1. For each original or initial application or renewal application, if a written examination is required, for the following:

(a) Class A driver license, twenty-five dollars.

(b) Class B driver license, twenty-five dollars.

(c) Class C driver license, twelve dollars fifty cents.

(d) Class D driver license issued pursuant to section 28–1612, ten dollars.

(e) Class M driver license issued pursuant to section 28–1612, ten dollars.

2. Except as provided in paragraph 1, for each original, renewal or reinstatement application for a class D or M license:

Age	Fee
50 or older	$10.00
45–49	$15.00
40–44	$20.00
39 or younger	$25.00

3. For each original or initial application or renewal examination, if a written application is required, for the following endorsements to a driver license:

(a) Bus endorsement, ten dollars.

(b) Hazardous materials endorsement, ten dollars.

(c) Tank vehicle endorsement, ten dollars.

(d) Double-triple trailer endorsement, ten dollars.

(e) Motorcycle endorsement, seven dollars.

4. For taking each driving test for a:

(a) Class A driver license, twenty-five dollars.

(b) Class B driver license, twenty-five dollars.

(c) Class C driver license, twelve dollars fifty cents.

(d) Bus endorsement, five dollars.

5. For each application for an instruction permit under:

(a) Section 28–1594 or 28–1596, seven dollars.

(b) Section 28–1595, three dollars.

(c) Section 28–1665, class A, twenty-five dollars.

(d) Section 28–1665, class B, twenty-five dollars.

(e) Section 28–1665, class C, twelve dollars fifty cents.

6. For each renewal application, if a written examination is not required, for a:

(a) Class A driver license and any endorsement, other than a hazardous materials endorsement, to the license, fifteen dollars.

(b) Class B driver license and any endorsement, other than a hazardous materials endorsement, to the license, fifteen dollars.

(c) Class C driver license and any endorsement, other than a hazardous materials endorsement, to the license, ten dollars.

7. For each application for a duplicate of a driver license, four dollars.

8. For each application for a duplicate of an instruction permit, two dollars.

9. In addition to the fees prescribed in paragraph 2, for reinstatement of driving privileges after suspension or disqualification, ten dollars, except as provided in paragraph 11.

10. For each application for an extension by mail of a driver license, five dollars.

11. In addition to the fees prescribed in paragraph 2, for reinstatement of driving privileges that were suspended or denied pursuant to section 28–2885 after completion of the suspension or revocation, fifty dollars.

B. Except as otherwise provided by law, the director shall transmit fees collected under this section to the state treasurer for deposit in the Arizona highway user revenue fund.

§ 28–1503. Driver license fund

A. The department may establish a driver license fund as a special fund in the state treasury consisting of the monies collected by the director pursuant to section 28–1502, paragraph 1, subdivisions (a), (b) and (c), paragraph 3, subdivisions (a), (b), (c) and (d), paragraph 4, subdivisions (a), (b) and (c), paragraph 5, subdivisions (c), (d) and (e) and paragraph 6.

B. The department shall administer the fund. The department may use the monies in the fund to carry out the duties imposed by this title for the licensing of drivers and to cover the administrative costs of driving tests for commercial motor vehicle operators.

C. The fund established in this section is exempt from the provisions of section 35–190 relating to lapsing of appropriations. Monies in excess of two hundred thousand dollars remaining in the fund at the close of each fiscal year revert to the state highway fund.

D. The state treasurer may invest inactive monies in the fund. The state treasurer shall credit all interest earned on the fund monies to the fund.

§ 28–1504. License records

A. The department shall file an application for a license and shall maintain suitable indexes containing, in alphabetical order:

1. Each application denied, with a note on each application of the reason for the denial.

2. Each application granted.

3. Except as provided in subsection B of this section, the name of each licensee whose license is suspended or revoked by the department, with a note after each name of the reason for the action.

B. The director shall expunge from the public records maintained by the department a note of a suspension or revocation made pursuant to section 28–2885 if, after the suspension or revocation period, the licensee submits a certified copy of the court record indicating a dismissal or finding of not guilty of the violation on which the suspension or revocation is based. The director shall not expunge the record or shall rescind the expungement of the record if the licensee is convicted of or found responsible for a violation of chapters 5, 6, 7 or 8 of this title that occurred during the suspension or revocation period.

C. The department shall file all abstracts of court records of convictions it receives under the laws of this state and shall maintain convenient records of the abstracts or make suitable notations on the abstracts in order that an individual record of each licensee showing the convictions of the licensee and the traffic accidents in which the licensee has been involved is readily ascertainable and available for the consideration of the department on an application for renewal of a license and at other suitable times.

D. The department shall maintain the records pursuant to this section for five years after the application, suspension, revocation or abstract of a court record of conviction has become inactive.

§ 28–1505. Medical or psychological reports; immunity; definitions

A. A physician, psychologist or certified substance abuse counselor who provides information to the director in good faith and at the written request of a driver license applicant or licensee concerning a person's medical or psychological condition with respect to operation of a motor vehicle is immune from personal liability for providing the information.

B. Notwithstanding the physician-patient or psychologist-client confidentiality relationship, a physician or psychologist may voluntarily report a patient to the department who has a medical or psychological condition that in the opinion of the physician or psychologist could significantly impair the person's ability to safely operate a motor vehicle. If a report is made, the physician or psychologist shall make the report in writing, including the name, address and date of birth of the patient. On receipt of the report, the department may require an examination of the person reported in the manner provided by section 28–1714. A person shall not bring an action against a physician or psychologist for not making a report pursuant to this subsection. The physician or psychologist submitting the report in good faith is immune from civil or criminal liability for making the report pursuant to this subsection. The physician's or psychologist's report is subject to subpoena or order to produce in an action except an action against the physician or psychologist submitting the report.

C. In this section:

1. "Certified substance abuse counselor" means a person who is certified by the board of behavioral health examiners in this state, who is certified in a contiguous state, who is certified by a board for certification of addiction counselors, who is a nationally certified addiction counselor or who is employed by the federal government and practicing in this state.

2. "Medical or psychological condition" means a condition that could affect a person's functional ability to safely operate a motor vehicle.

3. "Physician" means a medical doctor, optometrist, chiropractor, naturopath, doctor of osteopathy or doctor of homeopathy who is licensed to practice in this state or a state contiguous to this state or who is employed by the federal government and practicing in this state or their agents.

4. "Psychologist" means a person who is licensed pursuant to title 32, chapter 19.1, who is licensed to practice psychology in a state contiguous to this state or who is employed by the federal government and practicing in this state.

ARTICLE 2. ADVISORY ENTITIES

§ 28–1531. Medical advisory board

A. A medical advisory board is established as a professional unit composed of qualified personnel to advise the department on medical criteria and vision standards for licensing drivers.

B. The medical advisory board consists of at least seven members who are appointed by the director. The director shall appoint board members who have expertise in matters concerning health or medicine. The director shall appoint at least one representative of the department of health services to the board.

C. The director shall act as chairman of the medical advisory board. In the absence of the director, an official from the department designated by the director may act as chairman.

D. Members of the medical advisory board shall serve three year terms unless a member vacates the office. Appointment to fill a vacancy resulting other than from expiration of a term is for the unexpired portion of the term only.

E. By written request the chairman or a majority of the appointed members may call meetings. A majority of the board is a quorum.

F. A member is eligible to receive reimbursement for mileage and subsistence expenses from the state highway fund as allowed by law in traveling from the member's regular place of residence to and from meetings of the medical advisory board or to and from the place where the member discharges the member's duties. Nongovernmental members of the board are eligible to receive compensation pursuant to section 38–611 that is payable from the state highway fund.

§ 28–1532. **Medical advisory board; powers and duties**

A. The medical advisory board established by section 28–1531 may:

1. Make recommendations to the director consistent with this article.

2. Make studies, including recommendations, for the purpose of suggesting:

(a) Medical and vision standards for driver license applicants.

(b) Medical and vision standards for driver license examinations.

(c) Courses of training, training facilities and qualifications and methods of training for driver license examining personnel.

(d) Procedures for the certification of driver license personnel and the certification of driver license personnel instructors.

3. Direct research in the field of licensing drivers and may accept public or private grants for the research.

4. Conduct research in the field of examination or reexamination of licensing individual drivers with medical or vision problems.

B. The medical advisory board shall set minimum vision standards for the operation of a motor vehicle in this state.

§ 28–1533. **School bus advisory council**

A. The school bus advisory council is established consisting of nine members appointed by the governor. The governor shall appoint the members as follows:

1. One member representing the department of public safety.

2. One member representing the state board of education.

3. One member from a school district with a student count of less than six hundred.

4. One member from a school district with a student count of six hundred or more but less than three thousand.

5. One member from a school district with a student count of three thousand or more but less than ten thousand.

6. One member from a school district with a student count of ten thousand or more.

7. One member representing transportation administrators.

8. One member who is a certified school bus driver or school bus driver instructor.

9. One member representing a private sector school bus service provider.

B. The members shall serve staggered three year terms unless a member vacates the position. Appointment to fill a vacancy resulting other than from expiration of a term is for the unexpired portion of the term only.

C. The school bus advisory council shall:

1. Meet at least annually.

2. Select a chairman from its members.

3. Advise and assist the department of administration in developing the rules required by sections 28–1668 and 28–3322.

4. Recommend curricula for school bus driver safety and training courses required by section 28–1668.

5. Advise and consult with the department of public safety concerning matters related to the certification of school bus drivers and the safety of school buses.

6. Establish a mailing list that includes any party expressing an interest in the council's activities. The council shall provide the list to the department of administration, and the department of administration shall send notice by regular mail to each person on the list at least fifteen days before the date on which the meeting is to be held.

D. Members of the school bus advisory council are not eligible to receive compensation or reimbursement for expenses.

ARTICLE 3. DRIVER LICENSE CLASSES AND ENDORSEMENTS

§ 28–1561. Driver license classes

A. Except as provided in subsection B of this section and section 28–1562, the following driver license classes are valid:

1. Class A. A class A license is valid for operating either of the following:

(a) A motor vehicle that tows a vehicle with a gross vehicle weight rating of more than ten thousand pounds if the combined gross vehicle weight rating is twenty-six thousand one or more pounds.

(b) A vehicle that requires a class B, C or D license.

2. Class B. A class B license is valid for operating any of the following:

(a) A single motor vehicle with a gross vehicle weight rating of twenty-six thousand one or more pounds.

(b) A motor vehicle with a gross vehicle weight rating of twenty-six thousand one or more pounds that tows a vehicle with a gross vehicle weight rating of ten thousand pounds or less.

(c) A vehicle that requires a class C or D license for operation.

3. Class C. A class C license is valid for operating any of the following:

(a) A single motor vehicle with a gross vehicle weight rating of twenty-six thousand pounds or less.

(b) A motor vehicle with a gross vehicle weight rating of twenty-six thousand pounds or less that tows a vehicle with a gross vehicle weight rating of ten thousand pounds or less.

(c) A motor vehicle with a gross vehicle weight rating of twenty-six thousand pounds or less that tows a vehicle with a gross vehicle weight rating of more than

ten thousand pounds, if the combined gross vehicle weight rating is less than twenty-six thousand one pounds and the vehicle is required to be placarded for hazardous materials.

(d) A bus or school bus.

(e) A vehicle that requires a class D license for operation.

4. Class D. A class D license is valid for operating any of the following:

(a) A single motor vehicle with a gross vehicle weight rating of twenty-six thousand pounds or less.

(b) A motor vehicle with a gross vehicle weight rating of twenty-six thousand pounds or less that tows a vehicle with a gross vehicle weight rating of ten thousand pounds or less.

(c) A motor vehicle with a gross vehicle weight rating of twenty-six thousand pounds or less that tows a vehicle with a gross vehicle weight rating of more than ten thousand pounds if the combined gross vehicle weight rating is less than twenty-six thousand one pounds.

5. Class M. A class M license is valid for operating a motorcycle, motor-driven cycle or moped. For the purpose of licensing a driver, the department may endorse a class M license classification on a valid class A, B, C or D license.

B. A class A, B, C or D license is not valid for operating a vehicle that requires a class M license or a vehicle that requires a special endorsement unless the proper endorsement appears on the license.

§ 28–1562. Exceptions to driver license classes; definitions

A. Notwithstanding section 28–1561, a person who operates an authorized emergency vehicle, a farm vehicle or a recreational vehicle may operate the vehicle with a class A, B, C or D license.

B. For the purposes of this section:

1. "Commercial farming" means the intensive cultivation of arable land by raising agricultural or horticultural products as a principal source of the owner's livelihood.

2. "Commercial stock raising" means breeding, raising and caring for domestic animals as a principal source of the owner's livelihood.

3. "Farm vehicle" means a vehicle or combination of vehicles that is used for commercial farming or commercial stock raising and that meets all of the following requirements:

(a) Is controlled and operated by the farm vehicle owner or the owner's family member or employee.

(b) Is used to transport agricultural products, machinery or supplies to or from a commercial farming or a commercial stock raising operation.

(c) Is not used in the operations of a common or contract motor carrier.

(d) Is used within one hundred fifty miles of the farm vehicle owner's commercial farming or commercial stock raising operation.

4. "Recreational vehicle" means a motor vehicle or vehicle combination that is more than twenty-six thousand pounds gross vehicle weight rating and that is designed and exclusively used for private pleasure, including vehicles commonly called motor homes, pickup trucks with campers, travel trailers, boat trailers and horse trailers used exclusively to transport personal possessions or persons for noncommercial purposes.

§ 28–1563. Driver license endorsements

A driver license applicant shall obtain the following endorsements to the applicant's driver license and shall submit to an examination appropriate to the type of endorsement if the applicant operates one or more of the following vehicles:

1. A motorcycle endorsement for operation of a motorcycle if the applicant qualifies for a class M license and if the applicant qualifies for or has a class A, B, C or D license.

2. A hazardous materials endorsement on a class A, B or C license for operation of a vehicle that transports hazardous materials, wastes or substances in a quantity and under circumstances that require the placarding or marking of the transport vehicle as required by the department's safety rules prescribed pursuant to chapter 14 of this title.

3. A double-triple trailer endorsement on a class A license for operation of a vehicle towing double or triple trailers.

4. A passenger vehicle endorsement on a class A, B or C license for operation of a bus designed to transport sixteen or more passengers, including the driver, or a school bus.

5. A tank vehicle endorsement on a class A, B or C license for operation of a tank vehicle. For the purposes of this paragraph, "tank vehicle" means a commercial motor vehicle that is designed to transport a liquid or gaseous material within a tank that is either permanently or temporarily attached to the vehicle or chassis, including a cargo tank and a portable tank and excluding a portable tank having a rated capacity under one thousand gallons.

ARTICLE 4. GENERAL LICENSING PROVISIONS

§ 28–1591. Driver license requirement

A. Unless exempt pursuant to this chapter, a person shall not drive a motor vehicle or vehicle combination on a highway without a valid driver license and proper endorsement as prescribed by this chapter.

B. A person who is licensed under this chapter is entitled to exercise the privilege granted by this chapter on highways and is not required to obtain another license to exercise the privilege by a county, municipal or local board or a body with authority to adopt local police regulations.

§ 28–1592. Driver license; exemptions; limitation

A. Except as provided in subsection B, the following persons are exempt from licensing under this chapter:

1. Active duty military personnel while operating a military vehicle in the service of the armed forces of the United States.

2. A person while driving or operating a farm tractor or implement of husbandry that is temporarily operated or moved on a highway.

3. A person who is a nonresident, who is at least sixteen years of age and who has in the person's immediate possession a valid driver license issued to the person in the person's home state or country while the person is operating a motor vehicle requiring a class D license.

4. A person who is a nonresident, who is at least eighteen years of age and who has in the person's immediate possession a valid commercial driver license or classified license that is issued to the person in the person's home state or country and that authorizes operation of a commercial motor vehicle while the person is operating a motor vehicle requiring a class A, B or C license in this state, except that the person must be licensed under this chapter before accepting employment

from a resident of this state involving the operation of a motor vehicle requiring a class A, B or C license.

5. A person who is a nonresident, who is at least eighteen years of age and whose home state or country does not require the licensing of operators while the person operates a motor vehicle requiring a class D license for a period of not more than ninety days in a calendar year, if the motor vehicle that the person is operating is duly registered in the home state or country of the nonresident.

B. A person who is a resident of a foreign country and who operates a commercial vehicle in this state shall obtain a commercial driver license of the proper class that is issued by this state or another state, if the foreign country does not grant reciprocal driver license privileges to operators of commercial vehicles who are residents of this state.

§ 28–1593. Driver license issuance; prohibitions

A. The department shall not issue the following:

1. A class D or M license to a person who is under sixteen years of age, except that the department may issue a restricted class D license to a person who is at least fifteen years of age.

2. A class A, B or C license to a person who is under twenty-one years of age, except that the department may issue a class A, B or C license that is restricted to only intrastate driving to a person who is at least eighteen years of age.

3. A license to a person whose license or driving privilege has been suspended, during the suspension period.

4. Except as provided in section 28–1715, a license to a person whose license or driving privilege has been revoked.

5. A class A, B or C license to a person who has been disqualified from obtaining a commercial driver license.

6. A license to a person who on application notifies the department that the person is an alcoholic as defined in section 36–2021 or a drug dependent person as defined in section 36–2501, unless the person successfully completes the medical screening process pursuant to section 28–1532 or submits a medical examination report that includes a current evaluation from a certified substance abuse counselor indicating that, in the opinion of the counselor, the condition does not affect or impair the person's ability to safely operate a motor vehicle.

7. A license to a person who has been adjudged to be incapacitated pursuant to section 14–5304 and who at the time of application has not obtained a termination of incapacity as provided by law.

8. A license to a person who is required by this chapter to take an examination unless the person successfully passes the examination.

9. A license to a person who is required under the motor vehicle financial responsibility laws of this state to deposit proof of financial responsibility and who has not deposited the proof.

10. A license to a person if the department has good cause to believe that the operation of a motor vehicle on the highways by the person would threaten the public safety or welfare.

B. The department shall not issue a driver license to or renew the driver license of the following persons:

1. A person about whom the court notifies the department that the person violated the person's written promise to appear in court when charged with a violation of the motor vehicle laws of this state until the department receives notification in a manner approved by the department that the person appeared either voluntarily or involuntarily or that the case has been adjudicated, that the

case is being appealed or that the case has otherwise been disposed of as provided by law.

2. If notified pursuant to section 28-3801, a person who fails to pay a civil penalty as provided in section 28-3801, except for a parking violation, until the department receives notification in a manner approved by the department that the person paid the civil penalty, that the case is being appealed or that the case has otherwise been disposed of as provided by law.

C. The magistrate or the clerk of the court shall provide the notification to the department prescribed by subsection B of this section.

§ 28-1594. Class D instruction permit

A. A person who is at least fifteen years and seven months of age may apply to the department for an instruction permit for a class D license. The department may issue an instruction permit to the applicant after the applicant successfully passes all parts of the examination other than the driving test.

B. The instruction permit entitles the permittee to drive a motor vehicle requiring a class D license on the highways for twelve months when both of the following conditions are met:

1. The permittee has the permit in the permittee's immediate possession.

2. The permittee is accompanied by a person who has a class A, B, C or D license and who occupies a seat beside the permittee.

§ 28-1595. Restricted instruction permit

A. On receipt of a proper application, the department may issue a restricted instruction permit for a class D license to an applicant who is enrolled in a driver training program approved by the department and who is at least fifteen years of age. The restricted instruction permit is effective for a school year or a more restricted period.

B. After the applicant successfully passes all parts of the examination other than the driving test, the department may issue a restricted instruction permit to the applicant. The permit entitles the permittee to operate a motor vehicle requiring a class D license when all of the following conditions are met:

1. The permittee has the permit in the permittee's immediate possession.

2. The permittee drives on a designated highway or within a designated area.

3. An approved instructor who has a class A, B, C or D license occupies a seat beside the permittee.

§ 28-1596. Class M instruction permit

A. A person who is at least fifteen years and seven months of age may apply to the department for an instruction permit for a class M license. The department may issue an instruction permit to the applicant after the applicant successfully passes all parts of the examination other than the motorcycle skill test.

B. The permit entitles the permittee to operate a motorcycle requiring a class M license or endorsement when the permittee has the permit in the permittee's immediate possession. The permit is valid for six months from the date of issuance.

C. The permittee shall not operate a motorcycle as follows:

1. On a controlled access highway as defined in section 28-2001.

2. On a highway from sunset to sunrise or when there is insufficient light to clearly discern a person and a vehicle on the highway at a distance of five hundred feet.

D. The department shall not issue more than two class M permits to the same person within twenty-four months.

§ 28–1597. **Temporary driver permit**

A. The department may issue a temporary driver permit to an applicant for a driver license. The permit entitles the driver to operate a motor vehicle while the department is completing its investigation and determining all facts relative to the applicant's privilege to receive a driver license.

B. The permittee shall have the permit in the permittee's immediate possession while operating a motor vehicle. The permit is invalid when the permittee is issued a driver license or when a driver license is refused for good cause.

§ 28–1598. **Driver license or instruction permit application**

A. A person who applies for an instruction permit or for a driver license shall use a form furnished by the department.

B. An applicant shall pay the fee prescribed by section 28–1502 for a driver license or for an instruction permit issued under section 28–1594, 28–1595, 28–1596 or 28–1665. Payment of the fee required by this section entitles the applicant to not more than three attempts to pass the examination within twelve months from the date of the application. The department shall refund an application fee pursuant to section 28–373.

C. An applicant for an instruction permit or a driver license shall give the department satisfactory proof of the applicants' full name, date of birth, sex and residence address.

D. The application for an instruction permit or a driver license shall state the following:

1. A brief description of the applicant and any other identifying information required by the department.

2. Whether the applicant has been licensed, and if so, the type of license issued, when the license was issued, what state or country issued the license and whether the license was suspended or revoked.

3. Whether an application was ever refused, and if so, the date of and reason for the suspension, revocation or refusal.

4. If the applicant was never licensed, the applicant's last previous state of residence.

5. The name of the state in which the principal vehicle the applicant uses is registered and the name of the owner of the vehicle.

6. If the application is for a class A, B or C driver license or instruction permit, the social security number of the applicant unless the application is for a nonresident commercial driver license.

E. On request of an applicant, the department shall allow the applicant to provide on the application a post office box address that is regularly used by the applicant and that is located in the county in which the applicant resides.

F. The department may request an applicant who appears in person for a license, a duplicate license or reinstatement of a driving privilege to complete satisfactorily the vision screening prescribed by the department.

§ 28–1599. **Restricted licenses**

A. With good cause, the department may issue the following restricted driver licenses:

1. A driver license with any of the following:

(a) Restrictions suitable to the licensee's driving ability for the type of motor vehicle or special mechanical control devices required on a motor vehicle that the licensee may operate.

(b) Restrictions suitable to the licensee's ability to drive a motor vehicle in areas, at locations or on highways or during certain times.

(c) Other restrictions as the department determines appropriate to ensure the safe operation of a motor vehicle by the licensee.

2. A class A, B or C driver license that restricts the driver from operating:

(a) A commercial motor vehicle equipped with air brakes, if the applicant either fails the air brake component of the knowledge examination or performs the skills test in a vehicle that is not equipped with air brakes.

(b) A vehicle in interstate operation, if the applicant is not subject to 49 Code of Federal Regulations part 391.

(c) A commercial motor vehicle interstate, if an applicant for a class A, B or C license is at least eighteen years of age.

3. A class M license that restricts the driver from driving a vehicle other than a motorcycle, motor driven cycle or moped with a maximum piston displacement of one hundred cubic centimeters or less, if the applicant performs the driving examination with a motorcycle, motor driven cycle or moped with a maximum piston displacement of one hundred cubic centimeters or less.

B. The department may either issue a special restricted license or display the restrictions on the usual driver license form.

§ 28–1600. Applications of minors; liability

A. Except as provided in section 28–1601, the following person or persons shall sign and verify before a person authorized to administer oaths the application of a person under eighteen years of age for an instruction permit, a class D or M driver license or an endorsement to a class D or M driver license:

1. If both the father and mother of the applicant are living, have custody of the applicant and are married to each other, either the father or the mother of the applicant.

2. If both the father and mother of the applicant are living, have custody of the applicant and are not married to each other, both the father and mother of the applicant.

3. If one parent of the applicant has custody of the applicant, the parent who has custody.

4. If neither parent of the applicant is living, the person or guardian who has custody of the applicant or an employer of the applicant.

5. If the applicant resides with a foster parent, the foster parent.

6. If there is no guardian or employer of the applicant, a responsible person who is willing to assume the obligation imposed by this chapter on a person who signs the application of a minor.

B. Negligence or wilful misconduct of a minor when driving a motor vehicle on a highway is imputed to the person who signs the application of the minor for a permit or license. Except as otherwise provided in subsection D of this section, the person who signs the application is jointly and severally liable with the minor for damage caused by the negligence or wilful misconduct.

C. Notwithstanding section 25–214, subsection C, a spouse who signs the application pursuant to subsection A of this section binds the marital community.

D. The parents or guardian of a minor are not liable under subsection B of this section during the time proof of financial responsibility is maintained by the minor or

on behalf of the minor in the form and in amounts required by law for the operation of a motor vehicle the minor owns, or if the minor is not the owner of a motor vehicle, for the operation of any motor vehicle.

§ 28–1601. Application of student minor; instructor liability

A. A person who is at least fifteen years of age, who is attending school and who is not living or residing with the person's parent or guardian may apply for a restricted instruction permit issued pursuant to section 28–1595. An approved instructor of the drivers training program for which the permit is issued may sign the application in lieu of the requirements of section 28–1600.

B. The permit is valid only when the instructor who signed the application is in the vehicle with the permittee.

C. If the person is under eighteen years of age, an approved instructor assumes the obligations imposed on a person signing the application of a minor only when the instructor who signed the application is in the vehicle with the permittee.

D. The application for a restricted instruction permit shall include a statement that the instructor who signs the application understands that the instructor is liable for damage caused by negligence or wilful misconduct of the permittee while operating a motor vehicle when the instructor is in the vehicle.

§ 28–1602. Cancellation of minor's driver license; release from liability

A. A person who signs the application of a minor for a driver license may file with the department a verified written request that the department cancel the driver license of the minor. On receipt of the request, the department shall cancel the driver license of the minor and the person who signed the application of the minor is released from the liability for subsequent negligence or wilful misconduct of the minor in operating a motor vehicle.

B. A parent of a minor who applies for a driver license may file a verified written request to cancel the driver license if the parent has custody of the minor and if the parent is subject to section 28–1600, subsection A but does not sign the application.

C. On receipt of satisfactory evidence of the death of the person or persons who signed the application of a minor for a driver license, the department shall cancel the driver license and shall not issue a new license until a new application is made, duly signed and verified as required by this chapter. This subsection does not apply if the minor has reached eighteen years of age.

§ 28–1603. Unlicensed minor; liability

An owner of a motor vehicle who causes or who knowingly permits an unlicensed minor to drive a vehicle on a highway and a person who gives or furnishes a motor vehicle to an unlicensed minor are jointly and severally liable with the minor for damages caused by the negligence or wilful misconduct of the minor in driving the vehicle.

§ 28–1604. Original applicants; examination

A. The department shall examine an applicant for an original driver license or the department may accept the examination conducted by a third party tester pursuant to section 28–1670. The examination shall include all of the following:

1. A test of the:

(a) Applicant's eyesight.

(b) Ability to read and understand official traffic control devices.

(c) Knowledge of safe driving practices and the traffic laws of this state.

(d) An actual demonstration of ability to exercise ordinary and reasonable control in the operation of a vehicle or vehicle combination of the type covered by the license classification or endorsement for which the applicant applies.

(e) Other physical and mental examinations if the department finds them necessary to determine the applicant's fitness to safely operate a motor vehicle on the highways.

B. The department shall examine an original applicant for a class M license or a motorcycle endorsement or the department may accept the examination conducted by a third party tester pursuant to section 28–1670. The department may examine an applicant who has a motorcycle license from another jurisdiction. This examination shall be the same as for all applicants, except that the department may make modifications it finds necessary to determine the applicant's fitness to operate a motorcycle, motor driven cycle or moped on the highways.

C. The department shall examine a person who holds a driver license issued by another country and who applies for an initial license in this state as an original applicant, except that the department may waive an actual demonstration of the ability to exercise ordinary and reasonable control in the operation of a motor vehicle if the person applies for a class D license and appears to meet the department's medical qualifications and if the license issued by another state or a Canadian province is not revoked or is not expired for more than one year.

D. The department may waive the driving examination for initial applicants for a class M license or a motorcycle endorsement if all of the following conditions exist:

1. The applicant's current license indicates the applicant has been specifically licensed to operate a motorcycle.

2. The applicant appears to meet the department's medical qualifications.

3. The applicant's out of state license is not revoked or is not expired for more than one year.

§ 28–1605. Third party tester program

A. The department may establish a third party tester program that is limited as prescribed in section 28–1670 and that is limited to determining an applicant's full or partial eligibility for a class D or M license. The department may certify a third party tester to administer all tests required pursuant to this chapter to obtain a class D or M license.

B. The third party tester program shall meet the requirements of and be administered pursuant to section 28–1670.

§ 28–1606. Nonoperating identification license; immunity; rules

A. On receipt of an application, the department shall issue a nonoperating identification license that contains a distinguishing number assigned to the licensee, the full name, the date of birth, the residence address and a brief description of the licensee and either a facsimile of the signature of the licensee or a space on which the licensee is required to write the licensee's usual signature with pen and ink.

B. On request of an applicant, the department shall allow the applicant to provide on the nonoperating identification license a post office box address that is regularly used by the applicant and that is located in the county in which the applicant resides.

C. A person who is issued a license pursuant to this section shall use it only for identification purposes of the licensee. The nonoperating identification license does not grant authority to operate a motor vehicle in this state. The department shall clearly label the nonoperating identification license "for identification only, not for operation of a motor vehicle".

D. A nonoperating identification license shall contain the photograph of the licensee. The department shall take the photograph in such a manner that the exposure photographs the applicant and the application simultaneously. The department shall use a process in the issuance of nonoperating identification licenses that prohibits as nearly as possible the ability to superimpose a photograph on the license without ready detection. The department shall process nonoperating identification licenses and photo attachments in color.

E. On original application for a nonoperating identification license, the applicant shall provide the department with satisfactory proof of the name and date of birth of the applicant.

F. A nonoperating identification license issued by the department is solely for the voluntary use and convenience of the applicant for identification purposes. The department does not certify that the person in possession of a nonoperating identification license is the person whose name appears on the license. The department and this state are not liable for damages that arise from the acceptance or use of the nonoperating identification license by the applicant and others.

G. The department shall adopt rules and establish fees for issuance of an identification license, except that the department shall not require an examination and a person who is sixty-five years of age or older and a person who is a recipient of public monies as disabled individuals under title XVI of the social security act, as amended, are exempt from the fees.

H. If a person qualifies for a nonoperating identification license and is under the legal drinking age, the department shall issue a license that is marked by color, code or design to immediately distinguish it from a nonoperating identification license issued to a person of legal drinking age. The department shall indicate on the nonoperating identification license issued pursuant to this subsection the year in which the person will attain the legal drinking age.

§ 28–1607. **Driver license content and application; marked licenses**

A. The department shall issue a driver license to a qualified applicant. The driver license shall contain a distinguishing number assigned to the licensee, the license class, any endorsements, the licensee's full name, date of birth and residence address, a brief description of the licensee and either a facsimile of the signature of the licensee or a space on which the licensee is required to write the licensee's usual signature with pen and ink. A driver license is not valid until it is signed by the licensee. On request of an applicant, the department shall allow the applicant to provide on the driver license a post office box address that is regularly used by the applicant and that is located in the county in which the applicant resides.

B. An application for a driver license and the driver license issued shall contain the photo image of the applicant or licensee. The department shall use a process in the issuance of driver licenses that prohibits as nearly as possible the ability to alter or reproduce the license or that prohibits the ability to superimpose a photo image on the license without ready detection. The department shall process driver licenses and photo images in color. This subsection does not apply to a driver license that is renewed by mail pursuant to section 28–1613.

C. An applicant who is sixteen or older but under twenty-four years of age shall provide the department with satisfactory proof of the applicant's date of birth.

D. If a person is qualified for a driver license and is under the legal drinking age, the department shall issue a license that is marked by color, code or design to immediately distinguish it from a license issued to a person of legal drinking age. The department shall indicate on the driver license issued pursuant to this subsection the year in which the person will attain the legal drinking age.

§ 28–1608. Medical code information on license; rules; immunity

A. The department shall provide on each driver license and on each nonoperating identification license a space where a licensee may indicate that the licensee suffers from some type of adverse medical condition using a medical code prescribed by the department if the licensee presents a signed statement from a physician licensed pursuant to title 32, chapter 13 or 17 stating that the person suffers from the condition.

B. The department shall prescribe by rule a medical code to identify the medical conditions using a system of numerals or letters commonly accepted by the medical profession. The department is not required to maintain the medical code in the department computer.

C. The department and this state are exempt from liability for damages from the use of medical code information provided on a license pursuant to this section.

§ 28–1609. Organ or tissue donor designation

A. The department shall provide a space on the front of each driver license and nonoperating identification license for indication of participation in or rejection of the anatomical gift act pursuant to title 36, chapter 7, articles 3 and 3.1.

B. If the space is marked "no", it indicates the licensee's refusal of permission to donate organs or tissues pursuant to title 36, chapter 7, articles 3 and 3.1. This refusal of permission is final and is not subject to change.

C. If the space is marked "yes", the licensee agrees to the provisions of title 36, chapter 7, articles 3 and 3.1.

D. If permission has not been given or refused, an anatomical gift may be executed pursuant to title 36, chapter 7, articles 3 and 3.1.

E. The department shall provide a space on the back of each driver license and nonoperating identification license for revocation by the licensee of an anatomical gift.

§ 28–1610. Possession and display of driver license; defense

A. A licensee shall have a legible driver license in the licensee's immediate possession at all times when operating a motor vehicle. On demand of a justice of the peace, a police officer or a field deputy or inspector of the department, a licensee shall display the license.

B. A person who is served a complaint for violating this section is not responsible if the person produces in court or the office of the police officer or field deputy or inspector of the department a legible driver license or an authorized duplicate of the license issued to the person that was valid at the time of the alleged violation of this section.

§ 28–1611. Duplicate permit or license

If an instruction permit or driver license issued under this chapter is lost, destroyed or made illegible, if the name or address of the applicant changes or if a new photo image is desired, the person to whom the permit or license was issued may obtain a duplicate, update or substitute of the permit or license, on payment of the fee required by section 28–1502.

§ 28–1612. Driver license expiration and renewal; exception; extension by mail

A. Except as provided in subsection B, D or E of this section and section 28–1663 and unless medical restrictions require a shorter expiration period, a driver license:

1. Is valid until the applicant's sixtieth birthday.

2. Is renewable for successive periods of five years after the applicant's sixtieth birthday.

3. Expires on the applicant's birthday if the license was issued pursuant to subsection B of this section.

B. Notwithstanding subsection A of this section:

1. The department shall issue to an applicant a driver license that is valid for not more than five years and six months if the applicant applies within six months of the applicant's next birthday and if the applicant is fifty-nine years of age or older, unless medical restrictions require a shorter expiration period.

2. On presentation of satisfactory proof of qualification, the director may issue a class D or M license for a period of five years to:

(a) A person who is an out-of-state student or who is the spouse of an out-of-state student. For the purposes of this subdivision, "out-of-state student" has the same meaning prescribed in section 28–701.

(b) An immediate family member of any active duty military personnel temporarily stationed in this state.

(c) Any other person for whom the director determines other circumstances justify the issuance.

C. An applicant shall apply for renewal of a driver license before the expiration of a current license. The department may require an examination of a renewal applicant for a class D or M license as required of an original applicant.

D. A veteran, as defined in section 41–601, whose driver license expires is not required to renew the veteran's driver license for six months from the date of the veteran's discharge from military service.

E. The department may extend the expiration date of a class D or M license by mail for a resident if the applicant is not in this state at the time the license expires and will not be in this state for at least thirty consecutive days after the expiration of the driver license. The department shall not extend the expiration date of a license for more than six months. On payment by the applicant of the fee prescribed in section 28–1502, the department shall issue a certificate of extension that is valid only if accompanied by the applicant's previous license. An applicant for extension of a license by mail shall comply with the following:

1. The application requirements of section 28–1598.

2. The licensing requirements of section 28–1593.

3. Medical requirements applicable to all license applicants, except that the applicant is not required to obtain an eyesight examination.

§ 28–1613. Driver license renewal by mail; application; requirements

A. On payment of the fee prescribed in section 28–1502, the department may renew by mail a class D or M license issued to the following persons:

1. A spouse or child who is living with a veteran who is assigned to active duty in the armed forces of the United States outside of this state. A driver license renewed by mail pursuant to this paragraph is not required to contain a photograph of the licensee. The department shall not renew a license by mail if the applicant would be denied a license if the applicant applied for the license while the applicant was in this state. An applicant for renewal of a driver license by mail pursuant to this paragraph shall comply with:

(a) The application requirements of section 28–1598.

(b) The licensing requirements of section 28–1593.

(c) Medical requirements applicable to all license applicants.

2. A person who meets all of the following requirements:

(a) According to the records of the department, the person's license has not been suspended, revoked, canceled or denied immediately preceding the determination of eligibility for renewal under this paragraph.

(b) Is renewing the license for the same class of license currently held.

(c) Is under seventy years of age.

(d) If sixty years of age or older, has presented or mailed to the department on a form prescribed by the department a report based on a vision test by the department or an examination of the applicant's eyesight by an optometrist licensed pursuant to title 32, chapter 16 or a physician licensed pursuant to title 32, chapter 13 or 17. The vision test or examination shall be conducted not more than three months before the date of its submission.

B. The department shall notify a person who meets the requirements of subsection A, paragraph 2 of this section that the person may renew the person's license by mail and shall enclose an application as prescribed by the director. An applicant who renews a driver license by mail shall complete and return the application to the department.

C. The department shall issue a certificate of renewal to a qualified applicant that includes the applicant's name, date of birth, address and driver license expiration date, the number of the license renewed and other information that the department requires. The certificate is not valid until it is signed by the applicant and attached to the last license issued by this state that contains the photograph of the applicant.

D. The department shall decide if the eyesight reported by each applicant pursuant to subsection A, paragraph 2, subdivision (d) of this section is sufficient to meet current eyesight standards.

E. The department may renew by mail a class 1, 2 or 3 license of a person who meets all of the requirements of subsection A, paragraph 2 of this section if the license was issued before January 1, 1990.

§ 28–1614. License update

A. By written notice the department shall require a licensee to update the licensee's photograph or present or mail to the department in a form prescribed by the department a report based on a vision test performed by the department or an examination by an optometrist licensed pursuant to title 32, chapter 16 or a physician licensed pursuant to title 32, chapter 13 or 17, if the license has not been updated in the preceding twelve years.

B. The director may require a licensee to update the licensee's license at any time during the twelve year period from the date of issuance.

ARTICLE 5. COMMERCIAL DRIVER LICENSING

§ 28–1661. Commercial driver license

The department shall mark a license issued to a qualified person for a class A, B or C license as a commercial driver license or a CDL.

§ 28–1662. Domicile change

A person who operates a commercial motor vehicle and who changes domicile from another state or jurisdiction to this state shall obtain the appropriate class of commercial driver license from this state within thirty days of changing domicile to

this state and shall surrender the person's current commercial driver license as a condition of receiving a commercial driver license in this state.

§ 28–1663. Additional application requirements; expiration; renewal examination

A. In addition to the requirements applicable to all driver license applicants, an original applicant for a class A, B or C license is subject to the following requirements:

1. The applicant shall submit evidence of compliance with medical standards and requirements that the department adopts by rule.

2. The applicant must have held a driver license for at least one year either in this state, any other state or a foreign country.

3. The applicant shall take additional knowledge examinations to demonstrate understanding of the following:

(a) Safety operation rules.

(b) Commercial motor vehicle safety control systems.

(c) Safe vehicle control.

(d) The relationship of cargo to vehicle control.

(e) Basic hazardous materials knowledge.

(f) The objectives and proper procedures for performing vehicle safety inspections.

(g) Air brake systems.

(h) Legal requirements for size, weight and vehicle configurations.

(i) Emergency procedures.

4. In addition to the other requirements of this section, an applicant for a class A driver license shall demonstrate a knowledge and understanding of:

(a) Vehicle coupling and uncoupling.

(b) Unique combination vehicle inspections.

5. Unless an employer certification is provided, the applicant shall take a driving test in a vehicle or vehicle combination that at least meets the minimum size requirements for the class of driver license sought. The driving test shall include a demonstration of familiarity with pretrip inspection procedures.

B. Notwithstanding section 28–1612, a class A, B or C driver license is valid for five years and expires on the applicant's birthday.

C. The department may administer an examination to a renewal applicant for a class A, B or C driver license. This examination on renewal shall include the following:

1. Evidence of compliance with medical standards adopted by the department.

2. Administration of knowledge tests as required of an original applicant.

3. Administration of a road test if the applicant cannot present an employer certification or other evidence of driving a vehicle of a class for which a renewal is sought within the last two years. The department may require a road test even if an employer certification or other evidence of recent driving is presented if the department has reasonable concern about the applicant's ability to exercise ordinary and reasonable control of a motor vehicle or vehicle combination for which licensing is sought.

§ 28–1664. Nonresident commercial driver license

A. The department may issue a nonresident commercial driver license to a resident of a foreign jurisdiction if the United States secretary of transportation determines that the commercial motor vehicle testing and licensing standards in the foreign jurisdiction do not meet the testing standards established in 49 Code of Federal Regulations part 383.

B. On receipt of a proper application, the department may issue a nonresident commercial driver license to an applicant who meets the requirements for a class A, B or C license pursuant to section 28–1663.

C. The department shall mark a license issued pursuant to this section as a nonresident commercial driver license or a nonresident CDL.

D. A person applying for a nonresident commercial driver license shall surrender any nonresident commercial driver license issued by another state as a condition of receiving a nonresident commercial driver license in this state.

§ 28–1665. Commercial driver instruction permit

A. A person who is at least eighteen years of age may apply to the department for an instruction permit for a class A, B or C license. The department may issue an instruction permit to the applicant after the applicant passes all parts of the examination and meets all other requirements for a class A, B or C license other than the driving test.

B. The permit entitles the permittee to drive a motor vehicle requiring a class A, B or C license on the highways for six months from the date of issuance when the following conditions are met:

1. The permittee has the permit in the permittee's immediate possession.

2. The permittee is accompanied by a person who has a class A, B or C license issued by this state and who occupies a seat beside the driver.

3. If the permittee is under twenty-one years of age, the permittee does not operate a commercial motor vehicle interstate.

§ 28–1666. Limitation on number of driver licenses

A driver of a commercial motor vehicle shall not have more than one driver license, except during the ten day period beginning on the date the person is issued a driver license in this state to allow the driver to return to the department a commercial driver license currently held by the driver.

§ 28–1667. Commercial drivers; convictions; notification requirements; violation

A. A driver of a commercial motor vehicle who has a driver license issued by this state and who is convicted of violating a state law or local ordinance relating to motor vehicle traffic in any state or a federal, provincial, territorial or municipal law of another country, other than a parking violation, shall notify the department within thirty days of the date of the conviction in the manner prescribed by the department.

B. A driver of a commercial motor vehicle who has a driver license issued by this state and who is convicted of violating a state law or local ordinance relating to motor vehicle traffic in any state or a federal, provincial, territorial or municipal law of another country, other than a parking violation, shall notify the person's employer in writing of the conviction within ten days of the date of conviction.

C. A driver whose driver license is suspended, revoked or canceled by a state, who loses the privilege to drive a commercial motor vehicle in a state for any period of time or who is disqualified from driving a commercial motor vehicle for any period

of time shall notify the person's employer of the action before the end of the business day following the day the driver receives notice of the action.

D. A person who applies for employment as a driver of a commercial motor vehicle shall provide the person's employer, at the time of application, with the following information for the ten years preceding the date of application:

1. A list of the names and addresses of the applicant's previous employers for which the applicant was a driver of a commercial motor vehicle.

2. The date the applicant was employed by each employer.

3. The reason for leaving each employment.

4. Other information required by the employer.

E. The applicant shall certify that all information furnished pursuant to subsection D of this section is true and complete.

F. A driver of a commercial motor vehicle who provides false or fraudulent information to an employer or who fails to report the information required in subsection A, B, C or D of this section is guilty as provided in section 28–1820.

§ 28–1668. **School bus drivers; requirements; rules; cancellation**

A. A person shall not operate a school bus transporting school children unless the person possesses the appropriate license class for the size of school bus being operated that is issued by the department of transportation, a bus endorsement that is issued by the department of transportation and a school bus certificate that is issued by the department of public safety.

B. To be certified as a school bus driver a person shall do both of the following:

1. Meet and maintain the minimum standards prescribed by this section and rules adopted by the department of administration in consultation with the department of public safety and with the school bus advisory council established by section 28–1533.

2. Complete an initial instructional course on school bus driver safety and training including behind the wheel training.

C. The department of administration in consultation with the department of public safety and with the school bus advisory council established by section 28–1533 shall adopt rules that establish minimum standards for the certification of school bus drivers. In cooperation with local school districts, the department of public safety shall provide for school bus driver safety and training courses. The standards established shall:

1. Include requirements concerning moral character, knowledge of school bus operation, pupil and motor vehicle safety, physical impairments that might affect the applicant's ability to safely operate a school bus or that might endanger the health or safety of school bus passengers, knowledge of first aid, establishment of school bus safety and training courses, a refresher course to be completed on at least a biennial basis and other matters as the department of administration in consultation with the department of public safety and the school bus advisory council established by section 28–1533 prescribes for the protection of the public.

2. Require tests to detect the presence of alcohol or the use of a drug in violation of title 13, chapter 34 that may adversely affect the ability of the applicant to safely operate a school bus.

3. Authorize the performance of hearing tests with or without the use of a hearing aid as provided in 49 Code of Federal Regulations section 391.41.

D. The department of public safety shall require applicants to furnish fingerprints and shall obtain criminal history record information pursuant to section 41–1750. For the purposes of this subsection, the applicant shall pay a fee to the

department of public safety to reimburse the department of public safety for the cost of obtaining the applicant's criminal history record information required by this subsection. The fee shall not exceed the actual cost of obtaining the applicant's criminal history record information.

E. The department of public safety shall issue a school bus driver certificate to an applicant who meets the requirements of this section. The certificate is valid if the applicant maintains the minimum standards established by this section.

F. The department of public safety may cancel the certificate if the person's license to drive is suspended, canceled, revoked or disqualified. The department of public safety shall cancel the certificate if the person fails to maintain the minimum standards established pursuant to this section. A person whose application for a certificate is refused or whose certificate is canceled for failure to meet or maintain the minimum standards may request and receive a hearing from the department of public safety.

G. The department of public safety shall enforce the rules adopted pursuant to this section.

§ 28-1669. Employer certification program

A. The department may establish an employer certification program that designates employers as agents of the department and that authorizes employers to certify the applicant's driving experience in exercising ordinary and reasonable control in the operation of a vehicle that requires a class A, B or C driver license.

B. To qualify under the employer certification program, an employer shall meet and maintain the minimum standards required by this section and any rules adopted by the department.

C. If the department determines that the employer is qualified for the employer certification program, the department shall issue a certificate to the employer evidencing qualification and authorizing the employer to sign the department's prescribed form certifying that the applicant is qualified by experience in driving the class of vehicle for which licensing is sought.

D. An employer certification is valid if all of the following conditions exist:

1. The applicant is or has been employed pursuant to a contract with the employer.

2. The employer certifies that the applicant is able to drive a vehicle requiring a class A, B or C driver license.

3. The certificate is issued within thirty days of the date of application for licensing.

E. The department may reject an applicant's employer certification and may administer a driving examination if the department has reason to question the applicant's ability to exercise ordinary and reasonable control in the operation of a motor vehicle.

F. If a political subdivision qualifies under the employer certification program established by this section, a political subdivision may enter into an intergovernmental agreement with the qualifying political subdivision pursuant to title 11, chapter 7, article 3 to certify its drivers.

G. An employer authorized to certify an employee under this section is not criminally or civilly liable for the certification unless the employer issued the certification in a grossly negligent manner.

H. The department may revoke the certification issued to an employer for one year if the department finds that the employer is not in compliance with this section or a rule adopted by the department. If cause exists, the department may order a

reexamination of a licensee who was certified by an employer whose certification was revoked.

§ 28–1670. **Third party testing program**

A. The department may establish a program designating the following:

1. Third party testers to administer a driving examination to determine an applicant's demonstrated ability to perform a pretrip inspection and to exercise ordinary and reasonable control in the operation of a vehicle requiring a class A, B or C driver license and limited to determining an applicant's full or partial eligibility for a class D or M license.

2. Third party application processors to process applications submitted pursuant to sections 28–1594 through 28–1598 and 28–1606 as prescribed in this section.

B. The department may certify a third party tester to administer all tests required to obtain a class D or M license pursuant to this chapter. The department may certify a third party application processor to assist persons with the applications required in sections 28–1594 through 28–1598 and 28–1606 and to submit application materials to the department on behalf of applicants.

C. To qualify as a third party tester or application processor, the third party shall meet and maintain the minimum standards required by this section and rules adopted by the department.

D. If the department determines that an applicant for certification as a third party tester is qualified for the third party testing program, the department shall issue a certificate evidencing qualification and authorizing the third party tester to sign the department's prescribed form certifying that the applicant satisfactorily completed the prescribed course in pretrip inspections and in driving the class of vehicle for which licensing is sought.

E. A certification for an applicant is not valid unless it is issued within thirty days of the application date for licensing.

F. The third party tester or application processor shall prominently display in the place of business of the third party tester or application processor the certificate issued by the department authorizing the third party tester or application processor to administer the testing or to process applications.

G. A third party tester shall administer the examination as prescribed by the department.

H. Third party testers and application processors shall meet the minimum standards and qualifications established by the department. The department shall annually review and recertify third party testers and application processors to ensure compliance with rules and standards adopted by the department.

I. Third party testers and application processors that are certified by the department and that conduct testing or application processing for class A, B and C licensing may collect a fee that is reasonable and commensurate for the testing or application processing but not more than fifty dollars.

J. The department may make on-site inspections during regular business hours and at locations the department deems appropriate to determine qualification of ongoing compliance by third party testers and application processors with the requirements prescribed by this section. If the inspection is conducted at a place located outside this state, the third party tester or application processor shall reimburse the department for the reasonable per diem and travel costs incurred by the department's inspectors.

K. The department may revoke the certification issued to a third party tester or application processor for one year if the department finds that the third party tester or application processor is not in compliance with this section or a rule adopted by

the department. If cause exists, the department may order a reexamination of a licensee who was certified by a third party tester whose certification was revoked. If cause exists, the department may require a licensee to submit a new application if certification of the third party application processor that processed the licensee's application materials is revoked.

L. The department may reject an applicant's certification issued pursuant to this section and may administer a driving examination if the department has reason to question the applicant's ability to exercise ordinary and reasonable control in the operation of a motor vehicle.

M. A third party tester or application processor authorized under this section to administer a driving examination or to process application materials is not criminally or civilly liable for the administration of the examination or the processing unless the third party tester or processor administered the examination or processed the application in a grossly negligent manner.

ARTICLE 6. REGULATION

§ 28–1701. Driver license or permit cancellation

A. The department may cancel a driver license or permit on determining any of the following:

1. The licensee was not entitled to the issuance of the license or permit under this chapter.

2. The licensee failed to give the required or correct information in the application or committed fraud in making the application.

3. A person who signed an application for a driver license or permit or who was issued a driver license or permit files a written request with the department for cancellation of the license or permit including all of the following information:

(a) The name of the licensee or permittee.

(b) The driver license or permit number.

(c) The date of birth of the licensee or permittee or the expiration date of the driver license or permit.

4. The licensee failed to respond to a request by the department to update the licensee's license.

B. If the department determines that a person under twenty-one years of age falsely or fraudulently applied for an original or duplicate driver license, nonoperating identification license or permit by indicating the person's age as twenty-one or older, the department shall cancel the license or permit issued to the person and suspend the person's privilege to operate a motor vehicle for six months from the date of cancellation for the first offense and for one year from the date of cancellation for the second or a subsequent offense.

C. Cancellation of a license or permit under this section does not affect a pending action against the licensee or permittee.

D. The cancellation of a license is without prejudice. A person whose license is canceled may apply for a new license at any time after the cancellation.

§ 28–1702. Nonresident driver privilege; suspension or revocation; reporting convictions

A. The privilege of driving a motor vehicle on the highways of this state that is given to a nonresident driver under this chapter is subject to suspension or revocation by the department in the same manner and for the same cause as a driver license that is issued under this chapter is subject to suspension or revocation.

B. On receipt of a record of the conviction in this state of a nonresident driver of a motor vehicle of an offense under the motor vehicle laws of this state, the department may forward a certified copy of the record to the motor vehicle administrator in the state in which the person who is convicted is a resident.

§ 28–1703. Suspension or revocation of driver license or privilege for actions outside of state

A. The department may suspend or revoke the license of a resident of this state or the privilege of a nonresident to drive a motor vehicle in this state on receipt of notice of the conviction of the person of an offense committed in another state that would be grounds for the suspension or revocation of the person's driver license if the offense had been committed in this state.

B. The department may suspend or revoke the driver license of a resident of this state who fails to comply with the terms of a traffic citation that is lawfully issued in a jurisdiction outside this state pursuant to the nonresident violator compact adopted by article 10 of this chapter.

C. For the purposes of this section, the department may accept convictions that are reported by a court of the United States government or an Indian tribe.

§ 28–1704. Mandatory revocation of license; notice

In addition to the grounds for mandatory revocation provided for in chapters 5, 6, 7 and 8 of this title, the department shall revoke the license of a driver on receipt of a record of the driver's conviction of any of the following offenses if the conviction is final:

1. A homicide or aggravated assault resulting from the operation of a motor vehicle.

2. Driving a motor vehicle while under the influence of a drug as defined in section 13–3401 or in violation of section 28–2881, subsection A, paragraph 3.

3. A felony in the commission of which a motor vehicle is used.

4. Failure to stop and render aid as required under the laws of this state if a motor vehicle accident results in the death or personal injury of another.

5. Perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of a motor vehicle.

6. Conviction or forfeiture of bail not vacated on a second or subsequent charge of the following offenses that are committed within sixty months:

(a) Reckless driving.

(b) Racing on highways.

(c) Any combination of a violation of section 28–2881 and reckless driving, of a violation of section 28–2881 and racing on highways, or of reckless driving and racing on highways, if they do not arise out of the same event.

7. Conviction or forfeiture of bail not vacated on a second charge of violating section 28–2881 within sixty months.

8. Conviction or forfeiture of bail not vacated on a third or subsequent charge of violating section 28–2881 within sixty months.

§ 28–1705. Court action on conviction

A. If a person is convicted of an offense or if a judgment is entered against the person for which revocation of the driver license of the person by the department is mandatory pursuant to this chapter, the court that ordered the conviction or judgment shall:

1. Require the person to surrender to the court all driver licenses held by the person.

2. Invalidate or destroy the driver licenses.

3. Forward a record of the conviction or judgment to the department.

B. A court with jurisdiction over offenses or civil traffic violations committed under this chapter, any other law of this state or a municipal ordinance regulating the operation of motor vehicles on highways shall forward a record of the conviction of or judgment against a person in the court, except for a violation related to standing or parking, to the department and may recommend the suspension of the driver license of the person.

C. If a court declares that an entire civil penalty is due pursuant to section 28-3801, the court shall immediately notify the department. After payment of the civil penalty, the court shall give notice immediately of full satisfaction of the civil penalty by a method approved by the department. On payment of a reinstatement fee as provided in section 28-1502, the department shall terminate the suspension of a driver license, a drivers permit or the privilege of a nonresident to drive a motor vehicle in this state if no other grounds for suspension exist.

§ 28-1706. Discretionary license suspension or revocation; driver improvement school; hearing

A. The department may suspend or revoke the license of a driver or require a licensee to attend and successfully complete approved training and educational sessions designed to improve the safety and habits of drivers on a showing by department records or other sufficient evidence that the licensee:

1. Has committed an offense for which mandatory revocation of the license is required on conviction.

2. Has been involved as a driver in an accident resulting in the death or personal injury of another or serious property damage.

3. Has been convicted of or adjudged to have violated traffic regulations governing the movement of vehicles with such a frequency that it indicates a disrespect for traffic laws and a disregard for the safety of other persons on the highways.

4. Has been convicted of reckless driving as provided in section 28-2161 or is a habitually reckless or negligent driver of a motor vehicle.

5. Is medically, psychologically or physically incapable of operating a motor vehicle and, based on law enforcement, medical or other department information, the continued operation of a motor vehicle by the licensee would endanger the public health, safety and welfare.

6. Has committed or permitted an act involving an unlawful or fraudulent use of the license.

7. Has committed an offense in another state that if committed in this state is grounds for suspension or revocation.

8. Has been convicted of a violation of section 28-2881.

B. On receipt of satisfactory evidence of a violation of a driver license restriction, the department may suspend or revoke the driver license.

C. On suspending or revoking the license of a person or requiring a licensee to attend and successfully complete approved training and educational sessions designed to improve the safety and habits of drivers pursuant to this section, the department shall notify the licensee in writing immediately.

D. On the person's request, the department shall provide an opportunity for a hearing on the action taken pursuant to this section as early as practicable but not later than thirty days after receipt of the request. The department shall hold the

hearing in the county where the licensee resides unless the law enforcement agency issuing the citation or affidavit that authorizes the suspension or revocation requests at the time of issuance that the hearing be held in the county where the violation allegedly occurred.

E. If a hearing is held, the department or its duly authorized agent may administer oaths, may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee.

F. At the hearing, the department shall either rescind its order of suspension or its order requiring the licensee to attend and successfully complete approved training and educational sessions or, if good cause exists, the department may uphold or extend the order, revoke the license or make any order within its discretionary power under this section that is in the interest of public safety.

G. If a licensee receives notice requiring the licensee to attend and successfully complete approved training and educational sessions and the department receives information of noncompliance with this order, the department may amend the order to suspend or revoke the license.

H. A person whose driver license is suspended or revoked as provided in subsection A, paragraph 5 of this section may submit a written request to the department for an administrative hearing. The person shall submit the request for a hearing within fifteen days after the department provides the person with notice of suspension or revocation. On receipt of a proper request for a hearing, the department shall provide the person with an opportunity for a hearing in the county where the person resides within thirty days after the department receives the request. The request for a hearing does not stay a summary suspension issued by the department.

§ 28–1707. Order to complete driver training and educational sessions; training fee

A. If the department orders a licensee to attend and successfully complete approved training and educational sessions designed to improve the safety and habits of drivers pursuant to section 28–1706, the department shall indicate on the computer record that the licensee is required to complete training and educational sessions.

B. On successful completion of the training and educational sessions, the department shall record satisfaction of the requirement on the licensee's computer record.

C. Governmental agencies, corporations or other individuals that conduct training and educational sessions approved by the department may collect a fee that is reasonable and commensurate for the training but not more than twenty-five dollars.

§ 28–1708. Mandatory suspension; failure to appear

On notification that a person failed to appear as directed for a scheduled court appearance after service of the complaint alleging a violation of a provision of this title, the department shall suspend the person's driver license or nonresident operating privilege until the person appears, the fine or civil penalty is paid or a bond is forfeited.

§ 28–1709. License suspension and denial; improper use by persons under legal drinking age

A. The department shall promptly suspend a driver license or nonoperating identification license issued to a person who is under the legal drinking age and who is convicted of using a license in violation of section 4–241, subsection C or E for not less than:

1. Six months for a first conviction.

2. Twelve months for a second or subsequent conviction.

B. The department shall promptly deny the right of an otherwise qualified person to apply for a driver and identification license if the person does not have a valid driver or identification license and the person is convicted of using the driver or identification license of another person in violation of section 4-241, subsection C or E for not less than:

1. Six months for a first conviction.

2. Twelve months for a second or subsequent conviction.

C. The department shall promptly suspend the driver license of a child on receiving an order from the court pursuant to section 8-249.

§ 28-1710. Improper use of license; peace officer affidavit; license suspension; hearing

A. A peace officer who arrests a person for the commission of an offense for which, on conviction, suspension of any license or privilege to operate a motor vehicle is required by section 28-1709, subsection A or B shall file an affidavit with the department. The peace officer shall make the affidavit on a form furnished or in a manner prescribed by the department. The affidavit shall contain a form of certification that is prescribed by and subject to the penalty for perjury pursuant to section 28-3761. The affidavit shall include the name, date of birth, social security number and address of the person arrested, the number, if any, of the person's driver or nonoperating identification license, the nature of the offense, the date of the offense and the officer's reasonable grounds to believe the person committed the offense. The officer shall file the affidavit with the department within fifteen days after the date the offense was committed.

B. On the receipt of an affidavit that is in compliance with subsection A of this section, the department shall suspend any drivers and identification license issued to the person, the privilege to obtain the licenses and the privilege to operate a motor vehicle on a highway of this state for not less than:

1. Six months for a first offense.

2. Twelve months for a second or subsequent offense.

C. Except as provided in subsection D of this section, the suspension pursuant to subsection B of this section is effective fifteen days after the department gives written notice by mail to the address provided to the department by the licensee or provided on the affidavit. The notice shall indicate the action taken pursuant to this section and shall state that the department will provide an opportunity for a hearing if the department receives a written request for a hearing from the person within fifteen days after the notice is sent.

D. On receipt of a written request, the department shall provide an opportunity for a hearing as early as practicable and within thirty days after the request. The department shall hold the hearing in the county where the person named in the affidavit resides, unless the law enforcement agency issuing the affidavit requests at the time of filing the affidavit that the hearing be held in the county where the offense occurred. The request stays the suspension by the department until a hearing is held.

E. At the hearing, the department may administer oaths, issue subpoenas for the attendance of witnesses and the production of relevant books and papers and require a reexamination of the person named in the affidavit. If at the hearing the department suspends the person's privilege to operate a motor vehicle, the suspension is effective fifteen days after the department gives written notice of the suspension, except as provided in section 28-1711.

F. If the suspension or determination of a denial of issuance is sustained after the hearing, the person whose driver license, nonoperating identification license or permit to drive or nonresident operating privilege is suspended or the person to whom a driver license, nonoperating identification license or permit is denied under this section may file a petition in the superior court to review the final order in the same manner as provided in section 28–1717.

G. If the suspension or determination of a denial of issuance is not sustained, the ruling is not admissible in and does not affect any civil or criminal court proceeding.

§ 28–1711. Concurrent suspensions

Periods of suspension required pursuant to section 28–1709, subsection A or B or section 28–1710 arising from the same offense run concurrently and begin on the date the original suspension is effective.

§ 28–1712. Mandatory disqualification of commercial driver license; definition

A. The department shall disqualify a person from driving a commercial motor vehicle as follows:

1. Except as otherwise provided in this subsection, for at least one year from the date a person is convicted of a first violation of any of the following:

(a) Driving a commercial motor vehicle under the influence of alcohol or a controlled substance.

(b) Leaving the scene of an accident involving a commercial motor vehicle driven by the person.

(c) Using a commercial motor vehicle in the commission of a felony.

2. For at least three years, if any of the violations prescribed in paragraph 1 of this subsection occurred while the person was transporting a hazardous material in the quantity and under the circumstances that require placarding of the transport vehicle under the department's safety rules pursuant to chapter 14 of this title.

3. Except as provided in subsection B of this section, for the life of the person, if the person is convicted of two or more violations of any of the offenses prescribed in paragraph 1 of this subsection or of any combination of those offenses arising from two or more separate incidents. The department shall consider only offenses committed from and after December 31, 1989 in applying this paragraph.

4. For the life of the person, if the person uses a commercial motor vehicle in the commission of a felony involving the manufacture, distribution or dispensing of a controlled substance or possession with intent to manufacture, distribute or dispense a controlled substance.

5. For at least sixty consecutive days, if the person is convicted of two serious traffic violations committed in a commercial motor vehicle arising from separate incidents occurring within a three year period from the date of the conviction.

6. For at least one hundred twenty consecutive days, if the person is convicted of three serious traffic violations committed in a commercial motor vehicle arising from separate incidents occurring within a three year period from the date of the conviction.

B. The department may adopt rules establishing guidelines and conditions under which the department may reduce a disqualification for life pursuant to subsection A, paragraph 3 to a disqualification of at least ten years.

C. For purposes of this section, "serious traffic violation" means a conviction for any of the following:

1. Excessive speeding involving a single offense for a speed of fifteen miles per hour or more above the posted speed limit.

2. Reckless driving as provided by section 28–2161.

3. Racing as defined in section 28–2162.

4. Following the vehicle ahead too closely as provided by section 28–2200.

5. Improper or erratic traffic lane changes as provided by section 28–2199.

6. A violation of this title that is connected with a fatal traffic accident.

§ 28–1713. Record update

A. Within ten days of the suspension, revocation, cancellation or disqualification of a commercial driver license for a period of sixty days or more, the department shall update its records to reflect the action and shall notify the commercial driver license information system of the action taken.

B. Within ten days of the suspension, revocation, cancellation or disqualification of a commercial driver license issued by another state or of a nonresident commercial driver license, the department shall notify the state licensing authority that issued the license of the action taken.

§ 28–1714. Incompetent driver; license reexamination

A. If the department has good cause to believe that a licensed driver is incapable of operating a motor vehicle pursuant to section 28–1706, subsection A, paragraph 5 or is otherwise not qualified to be licensed, the department may require the licensee to submit to an examination as prescribed by the department after the department gives at least five days' advance written notice to the licensee. After the examination, the department shall take action as appropriate and may:

1. Suspend or revoke the license.

2. Permit the licensee to retain the license.

3. Restrict the licensee's driving privileges as permitted under section 28–1599.

B. Refusal or neglect of the licensee to submit to the examination under this section is grounds for suspension or revocation of the license.

C. The department may use accident information received pursuant to this title and from other governmental agencies to determine if good cause exists to believe that a licensed driver is incapable of operating a motor vehicle pursuant to section 28–1706, subsection A, paragraph 5 or is otherwise not qualified to be licensed.

§ 28–1715. Period of suspension, revocation or disqualification; unlicensed drivers

A. Except as permitted by sections 28–1712, 28–1719 and 28–2883 and except as provided in subsections D, E and F of this section, the department shall not suspend, revoke or disqualify a driver license or privilege to drive a motor vehicle on the highways for more than one year from either:

1. The date of a conviction or judgment, if any, against a person for which this chapter makes mandatory the revocation, suspension or disqualification.

2. The date the notice was sent pursuant to section 28–1718 if a conviction was not involved.

B. A person whose license or privilege to drive a motor vehicle on the highways has been revoked may apply for a new license as provided by law after the cause of the revocation is removed or after expiration of the revocation period prescribed by law. The department shall not issue a new license unless it is satisfied after investigation of the character, habits and driving ability of the person that it will be safe to grant the privilege of driving a motor vehicle on the highways.

C. If the revocation is related to alcohol or other drugs, the person shall provide the department with a current evaluation from a physician licensed pursuant to title 32, chapter 13, 17 or 29, a psychologist licensed pursuant to title 32, chapter 19.1 or a certified substance abuse counselor as defined in section 28–1505 indicating that, in the opinion of the physician, psychologist or counselor, the condition does not affect or impair the person's ability to safely operate a motor vehicle.

D. Notwithstanding subsections A and B of this section:

1. A person whose license or privilege to drive is revoked pursuant to section 28–1704, subsection A, paragraph 1 or 8 or section 28–2883, subsection D is not entitled to have the person's license or privilege renewed or restored for three years.

2. Except for a suspension pursuant to section 28–1708 or 28–3801, on receipt of a record of the conviction of a person under section 28–1816, the department shall:

(a) Extend the period of the suspension for an additional like period but not more than one year from the date the person would otherwise be entitled to apply for a new license on a charge of driving a vehicle while the driver license privilege of the person was suspended.

(b) Not issue a new license for an additional period of one year from and after the date the person otherwise would have been entitled to apply for a new license on a charge of driving while the driver license privilege was revoked.

E. Except as provided in subsection D, paragraph 2 of this section, if an unlicensed driver commits an offense for which a driver license could be suspended, revoked or disqualified, the department shall not accept the unlicensed driver's application for a driver license for a period equal to the period of time that applies to a driver with a license. If the offense is one for which a driver license could be revoked, the department shall not accept the unlicensed driver's application for a driver license unless it investigates the character, habits and driving ability of the person and is satisfied that it is safe to grant the privilege of driving a motor vehicle on the highways.

F. The expiration of a person's license during the period of time it is under suspension, revocation or disqualification does not invalidate or terminate the suspension, revocation or disqualification.

G. A person whose license or privilege to drive a motor vehicle on the highways has been suspended pursuant to section 28–1706, subsection a, paragraph 5 or section 28–1714 may apply for a new license as provided by law after the cause for suspension is removed or after expiration of the suspension period prescribed by law if both of the following conditions are met:

1. The department is satisfied, after reviewing the medical condition and driving ability of the person, that it is safe to grant the person the privilege of driving a motor vehicle on the highways.

2. If the person has a medical condition related to alcohol or other drugs, the person provides the department with a current evaluation form from a physician licensed pursuant to title 32, chapter 13, 17 or 29, a psychologist licensed pursuant to title 32, chapter 19.1 or a certified substance abuse counselor as defined in section 28–1505 indicating that, in the opinion of the physician, psychologist or counselor, the condition does not affect or impair the person's ability to operate a motor vehicle in a safe manner.

H. If the department receives a record of the conviction of a person on a charge of driving a commercial motor vehicle while the person was disqualified from driving a commercial motor vehicle, the department shall promptly extend the period of the disqualification for not more than one year from the date the person would otherwise have been eligible to apply for a new commercial driver license as defined in section 28–1501.

I. If the department receives a record of the conviction of a person on a charge of driving a motor vehicle while the person's driver license privilege was cancelled, the department shall promptly suspend the person's driver license privilege for a period of not less than:

1. Three months for the first conviction.

2. Six months for a second or subsequent conviction.

§ 28–1716. Operation of vehicle prohibited during suspension or revocation

A resident or nonresident whose driver license or privilege to operate a motor vehicle in this state is suspended or revoked pursuant to this chapter shall not operate a motor vehicle in this state under the authority of a license, permit or registration certificate issued by another jurisdiction or authority during the suspension or after the revocation until a new license is obtained pursuant to this chapter.

§ 28–1717. Appeal

A. A person who is denied a license or whose license is canceled, suspended or revoked by the department may seek judicial review pursuant to title 12, chapter 7, article 6, unless the cancellation or revocation is mandatory under this chapter.

B. The court shall expedite the disposition of appeals pursuant to this section.

§ 28–1718. Service of notice

A. The department shall provide written notice to a person possessing a driver license, to an unlicensed driver or to a nonresident driver of the following:

1. A suspension, revocation, cancellation or disqualification of the license or privilege to operate a motor vehicle.

2. Required attendance at training and education sessions.

B. The department shall send the notice by mail to the address provided to the department on the licensee's application or provided to the department pursuant to section 28–448. If an address has not been provided to the department as provided in this subsection, the department shall send the notice to any address known to the department, including the address listed on a traffic citation received by the department.

C. Service of the notice provided by this section is complete on mailing. The department shall provide further service of notice only if the department is notified of a change of address pursuant to section 28–448.

D. On compliance with the notice provisions of this section, notice of the revocation is provided for purposes of prosecution under section 28–1816 or 28–2883. The state is not required to prove actual receipt of the notice or actual knowledge of the revocation.

§ 28–1719. Action after license suspension, revocation or denial for driving under the influence or refusal of test

A. If pursuant to section 28–2821 or 28–2882 the license of a driver or the driving privilege of a nonresident is suspended or revoked, the department shall not terminate the suspension or revocation until the person provides proof of financial responsibility pursuant to chapter 9, article 3 of this title.

B. If pursuant to section 28–2821 or 28–2882 an unlicensed resident is denied a license or permit to operate a motor vehicle, the department shall not issue a license or permit until the person provides proof of financial responsibility pursuant to chapter 9, article 3 of this title.

C. Except as provided in section 36–2005, subsection E, if a person whose license or driving privilege is suspended or revoked pursuant to section 28–2821 or 28–2882 is ordered, pursuant to section 28–2882, to attend alcohol abuse classes or obtain treatment at a treatment facility approved by the division of behavioral health in the department of health services, the department shall not either:

1. Terminate the suspension until the person provides proof from the treatment facility that the person has completed or is participating satisfactorily in alcohol abuse classes or treatment.

2. Issue a new license to operate a motor vehicle after the revocation until the person provides proof from the treatment facility that the person has completed alcohol abuse classes or treatment.

ARTICLE 7. DEFENSIVE DRIVING SCHOOL

§ 28–1761. Definition of court

In this article, unless the context otherwise requires, "court" means a juvenile division of the superior court, a justice of the peace court or a municipal court.

§ 28–1762. Defensive driving school; eligibility

A. A court:

1. Shall allow an individual who is issued a citation for a civil traffic moving violation pursuant to chapter 5 or 6 of this title or a local civil traffic ordinance relating to the same subject matter to attend a defensive driving school for the purposes provided in this article.

2. May allow an individual who is issued a citation for a violation of section 28–2113 to attend a defensive driving school.

B. A person who attends a defensive driving school pursuant to this article is not eligible to attend a defensive driving school again within twenty-four months from the day of the last violation for which the person was authorized by this article to attend a defensive driving school.

C. Notwithstanding subsection A of this section, an individual who commits a civil or criminal traffic violation resulting in death or serious physical injury is not eligible to attend a defensive driving school, except that the court may order the individual to attend a defensive driving school in addition to another sentence imposed by the court on an adjudication or admission of the traffic violation.

§ 28–1763. Attendance; primary provider

A. An eligible individual who elects to attend a defensive driving school shall attend one of the following within the time allowed by the court:

1. A defensive driving school that is a primary provider for the court having jurisdiction over the civil or criminal traffic offense.

2. If the court does not have a primary provider, any defensive driving school.

B. A court:

1. May select more than one primary provider.

2. May select a primary provider for defensive driving schools using more stringent criteria than required for state certification.

3. On application of an eligible traffic offender, shall permit the offender to attend another defensive driving school on the showing of reasonable justification by the offender that includes the fact that the offender resides in another area and that attendance at the court's primary provider school creates a hardship on the offender.

§ 28–1764. **Successful course completion**

A. If an eligible individual successfully completes the course at a defensive driving school:

1. The court shall dismiss the civil or criminal traffic citation for which the individual attended the school.

2. The department shall not include a record of the civil or criminal traffic citation for which the individual attended the school on the individual's driving record.

B. The dismissal of a civil or criminal traffic citation pursuant to this section does not preclude the introduction of evidence pertaining to the issuance of the citation in a civil or criminal proceeding.

§ 28–1765. **Supreme court authority and duties; rules; record**

A. The supreme court may contract with a public or private agency that does not provide defensive driving schools in this state pursuant to this article to provide assistance in carrying out the duties of this article.

B. The supreme court shall:

1. Supervise the use of defensive driving schools by the courts in this state.

2. Make public the amount of the court diversion fee assessed by each court in this state pursuant to this article and the total cost to attend a defensive driving school in each court.

3. Establish an automated statewide data base for keeping a record of persons who attend a defensive driving school.

4. Adopt rules that establish criteria for the certification of qualified defensive driving schools and instructors used by the courts.

5. Establish procedures for courts and schools to remit reports that are required by the supreme court.

6. Certify and monitor defensive driving schools and instructors that serve as a court authorized diversion program.

C. The information contained in the data base required by this section is not a public record.

§ 28–1766. **Court diversion fee**

A. The presiding judge of each court shall:

1. Set the amount of the court diversion fee that an individual who attends a defensive driving school may be assessed.

2. Immediately inform the supreme court in writing of the amount of the court diversion fee that is established for the court and the total cost to attend a defensive driving school.

3. Immediately inform the supreme court in writing of any changes in the total cost to attend a defensive driving school.

B. Payment of the court diversion fee is in lieu of payment of a civil penalty or criminal fine that is imposed for a traffic violation. On receipt of the diversion fee, the defensive driving school shall transmit the fee promptly to the appropriate court pursuant to procedures prescribed by the supreme court.

C. The driving school shall collect the court diversion fee before or at the time an individual attends the school. On receipt of the diversion fee, the defensive driving school shall transmit the fee promptly to the appropriate court pursuant to procedures prescribed by the supreme court.

§ 28–1767. **Additional fees; disposition**

A. In addition to the court diversion fee and the fee for the cost to attend a defensive driving school, a person who attends a defensive driving school pursuant to this article or by a court order shall pay a fee of not more than fifteen dollars that is established by the supreme court.

B. Before or at the time an individual attends a defensive driving school, the school shall collect the defensive driving school fund fee established pursuant to this section and the fee, if any, charged by the defensive driving school for the course.

C. The defensive driving school shall transmit the fee established by the supreme court pursuant to this section to the supreme court. The supreme court shall transmit the fee to the state treasurer. The state treasurer shall deposit the fee in the defensive driving school fund established by section 28–1768 pursuant to procedures established by the supreme court.

§ 28–1768. **Defensive driving school fund**

A. A defensive driving school fund is established in the state treasury consisting of monies collected for the fee established by the supreme court pursuant to section 28–1767. The department shall administer the fund.

B. The state treasurer shall transfer the monies in the fund on the last day of each month to the supreme court to be used to supervise the use of defensive driving schools by the courts in this state and to expedite the processing of all offenses prescribed in chapters 5 and 6 of this title.

C. The fund established in this section is not subject to reversion. On notice from the supreme court, the state treasurer may invest and divest monies in the fund as provided by section 35–313. The state treasurer shall credit all interest earned on the fund monies to the fund.

§ 28–1769. **Audit**

The supreme court may require a defensive driving school to be audited for compliance with the requirements of this article.

ARTICLE 8. LICENSE VIOLATIONS

§ 28–1811. **Violation; civil penalty**

A person who violates a provision of this chapter is subject to a civil penalty unless a different classification is provided by law.

§ 28–1812. **Falsification of license; classification**

A. A person who intentionally alters, forges or counterfeits a driver license or nonoperating identification license issued by this state, any other state or a Canadian province is guilty of falsification of a license.

B. A person counterfeits a driver license or nonoperating identification license if a person produces, prints, issues or sells a card or document that meets all of the following conditions:

1. Is not a driver license or nonoperating identification license that is issued by this state, any other state or a Canadian province.

2. Is similar to or in the likeness of a driver license or nonoperating identification license that is issued by this state, any other state or a Canadian province.

3. Does not have printed on the front in at least twelve point bold type "Not an official license".

C. Falsification of a license is a class 1 misdemeanor, except that falsification of a license in which serious physical injury as defined in section 13–105 occurred as a result of the act from which the violation occurred is a class 6 felony.

§ 28–1813. False certification; renewal of license by mail; classification

Notwithstanding section 13–2704, a person who makes a false certification on an application for renewal of a driver license by mail authorized by section 28–1613 is guilty of a class 1 misdemeanor.

§ 28–1814. Unlawful use of license; classification

It is a class 2 misdemeanor for a person:

1. To knowingly display, cause or permit to be displayed or have in the person's possession a canceled, revoked, suspended, fictitious or fraudulently altered driver license.

2. To lend the person's driver license to another person or to knowingly permit the use of the person's driver license by another person.

3. To knowingly display or represent as the person's own driver license a driver license not issued to the person.

4. In a driver license application to:

(a) Knowingly use a false or fictitious name.

(b) Knowingly make a false statement.

(c) Knowingly conceal a material fact.

(d) Otherwise commit fraud.

5. To permit an unlawful use of the person's driver license.

§ 28–1815. Perjury

A person who makes a false affidavit or who knowingly swears or affirms falsely to a matter or thing required by this chapter to be sworn to or affirmed is guilty of perjury and is subject to punishment as provided by law.

§ 28–1816. Driving violations; classification

A. Except as provided in subsection B or C of this section, a person who drives a motor vehicle on a highway when the person's privilege to drive a motor vehicle is suspended, revoked, canceled or refused or when the person is disqualified from driving is guilty of a class 1 misdemeanor.

B. A person who drives a motor vehicle on a highway when the person's privilege to drive a motor vehicle is restricted, suspended, revoked, disqualified, canceled or refused for a violation of section 28–2881 or 28–2883, under section 28–2885 or as a result of a conviction for an act in another state that if committed in this state is a violation of section 28–2881 or 28–2883 is guilty of a class 1 misdemeanor and shall be sentenced to serve at least forty-eight consecutive hours in jail. A judge shall not grant probation, pardon or suspension of sentence or release on any basis other than on the condition that the person serve at least forty-eight consecutive hours in jail.

C. A person who drives a motor vehicle on a highway when the person's privilege to do so is suspended pursuant to either section 28–1708 or 28–3801 is guilty of a class 1 misdemeanor. For a first conviction under this subsection, the court shall impose a fine of at least three hundred dollars, except that on proper evidence of payment of a civil penalty imposed by the court for the original civil violation that resulted in the suspension, the court shall impose a fine of at least fifty dollars. For a second or subsequent conviction under this subsection within one year after the

date of the first conviction, the court shall impose a fine of at least five hundred dollars. A judge shall not grant probation to or suspend any part or all of the imposition or execution of a sentence required by this subsection, except on the condition that the person pay not less than the stated fine. A judge shall not dismiss an action brought under this subsection only because the defendant has paid the civil penalty that resulted in the suspension.

§ 28–1817. **Permitting unauthorized person to drive; classification**

A. A person who knowingly causes or permits the person's child or ward or a minor to drive a motor vehicle on a highway if the child, ward or minor is not authorized under this chapter or in violation of this chapter is guilty of a class 2 misdemeanor.

B. A person shall not authorize or knowingly permit a person who is not authorized under this chapter to drive a motor vehicle that the person owns or that is under the person's control on a highway or in violation of this chapter.

§ 28–1818. **Renting or leasing motor vehicle; restrictions**

A. A person shall not rent or lease a motor vehicle to another person unless either:

1. The other person is licensed to operate the vehicle under this chapter.

2. If the other person is a nonresident, the other person is licensed under the laws of the state or country of the other person's residence or the state or country of the nonresident does not require a driver to be licensed.

B. A person shall not rent or lease a motor vehicle to another person until the person inspects the driver license of the other person and compares and verifies the signature on the license with the signature of the other person that is written in the person's presence.

C. A person who rents or leases a motor vehicle to another person shall keep a record of the registration number of the rented or leased motor vehicle, the name and address of the other person, the number of the license of the other person and the date and place the license was issued. The person who rents or leases a motor vehicle shall allow a police officer or employee of the department to inspect the record.

D. A person shall not rent or lease a motorcycle or motor driven cycle to a person unless the operator is equipped with protective headgear and face gear as required in section 28–3361.

§ 28–1819. **Operation in violation of restriction; classification**

A person who operates a motor vehicle in violation of a driver license restriction is guilty of a class 2 misdemeanor.

§ 28–1820. **Commercial motor vehicle drivers; violations; classification**

A. A person who drives a commercial motor vehicle on a highway in this state without a valid appropriate class of commercial driver license is guilty of a class 3 misdemeanor.

B. A driver of a commercial motor vehicle who provides false or fraudulent information to an employer as required by section 28–1667 is guilty of a class 3 misdemeanor.

C. A driver of a commercial motor vehicle who fails to report the information required in section 28–1667 is guilty of a class 3 misdemeanor.

ARTICLE 9. DRIVER LICENSE COMPACT

§ 28–1851. Definitions

In this article, unless the context otherwise requires:

1. "Executive head" means the governor of the state of Arizona.

2. "Licensing authority" means the department.

§ 28–1852. Adoption of compact

The driver license compact is entered into and enacted as follows:

DRIVER LICENSE COMPACT

ARTICLE I

FINDINGS AND DECLARATION OF POLICY

(a) The party states find that:

(1) The safety of their streets and highways is materially affected by the degree of compliance with state and local ordinances relating to the operation of motor vehicles.

(2) Violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property.

(3) The continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles, in whichever jurisdiction the vehicle is operated.

(b) It is the policy of each of the party states to:

(1) Promote compliance with the laws, ordinances and administrative rules and regulations relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles.

(2) Make the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable by considering the overall compliance with motor vehicle laws, ordinances and administrative rules and regulations as a condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states.

ARTICLE II

DEFINITIONS

AS USED IN THIS COMPACT:

(a) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(b) "Home state" means the state which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle.

(c) "Conviction" means a conviction of any offense related to the use or operation of a motor vehicle which is prohibited by state law, municipal ordinance or administrative rule or regulation, or a forfeiture of bail, bond or other security deposited to secure appearance by a person charged with having committed any such offense, and which conviction or forfeiture is required to be reported to the licensing authority.

ARTICLE III

REPORTS OF CONVICTION

The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted, describe the violation, specifying the section of the statute, code or ordinance violated, identify the court in which action was taken, indicate whether a plea of guilty or not guilty was entered, or the conviction was a result of the forfeiture of bail, bond or other security, and shall include any special findings made in connection therewith.

ARTICLE IV

EFFECT OF CONVICTION

(a) The licensing authority in the home state, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to article III of this compact, as it would if such conduct had occurred in the home state, in the case of convictions for:

(1) Manslaughter or negligent homicide resulting from the operation of a motor vehicle.

(2) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle.

(3) Any felony in the commission of which a motor vehicle is used.

(4) Failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

(b) As to other convictions, reported pursuant to article III, the licensing authority in the home state shall give such effect to the conduct as is provided by the laws of the home state.

(c) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (a) of this article, such party state shall construe the denominations and descriptions appearing in subdivision (a) hereof as being applicable to and identifying those offenses or violations of a substantially similar nature and the laws of such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this article.

ARTICLE V

APPLICATIONS FOR NEW LICENSES

Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

(1) The applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated.

(2) The applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of one year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after

investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the highways.

(3) The applicant is the holder of a license to drive issued by another party state and currently in force unless the applicant surrenders such license.

ARTICLE VI

APPLICABILITY OF OTHER LAWS

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance nor to invalidate or prevent any driver license agreement or other cooperative arrangement between a party state and a non-party state.

ARTICLE VII

COMPACT ADMINISTRATOR AND INTERCHANGE OF INFORMATION

(a) The head of the licensing authority of each party state shall be the administrator of this compact for his state. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(b) The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this compact.

ARTICLE VIII

ENTRY INTO FORCE AND WITHDRAWAL

(a) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

ARTICLE IX

CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

§ 28–1853. Exchange of information

The licensing authority shall furnish to the appropriate authorities of any other party state any information or documents reasonably necessary to facilitate the administration of articles III, IV and V of the driver license compact.

§ 28–1854. **Compensation and expenses of administrator**

The compact administrator provided for in article VII of the driver license compact is not entitled to any additional compensation because of the administrator's services as administrator of the compact. The administrator shall be reimbursed for travel and other necessary expenses incurred in the performance of the administrator's official duties under the compact pursuant to title 38, chapter 4, article 2.

§ 28–1855. **Report by courts and agencies**

Any court, other agency or subdivision of a court or agency that has jurisdiction to take any action suspending, revoking or otherwise limiting a license to drive shall report the action and the adjudication on which it is based to the licensing authority within ten days on forms furnished by the licensing authority.

ARTICLE 10. NONRESIDENT VIOLATOR COMPACT

§ 28–1871. **Definitions**

In this article, unless the context otherwise requires:

1. "Jurisdiction executive" means the governor of this state.

2. "Licensing authority" means the department.

§ 28–1872. **Adoption of compact**

The nonresident violator compact is adopted and enacted into law as follows:

NONRESIDENT VIOLATOR COMPACT

ARTICLE I

FINDINGS, DECLARATION OF POLICY AND PURPOSE

(a) The party jurisdictions find that:

(1) In most instances, a motorist who is cited for a traffic violation in a jurisdiction other than his home jurisdiction either:

(i) Must post collateral or bond to secure appearance for trial at a later date.

(ii) If unable to post collateral or bond, is taken into custody until the collateral or bond is posted.

(iii) Is taken directly to court for the trial to be held.

(2) In some instances, the motorist's driver license may be deposited as collateral to be returned after he has complied with the terms of the citation.

(3) The purpose of the practices described in paragraphs (1) and (2) above is to ensure compliance with the terms of a traffic citation by the motorist who, if permitted to continue on his way after receiving the traffic citation, could return to his home jurisdiction and disregard his duty under the terms of the traffic citation.

(4) A motorist receiving a traffic citation in his home jurisdiction is permitted, except for certain violations, to accept the citation from the officer at the scene of the violation and to immediately continue on his way after promising or being instructed to comply with the terms of the citation.

(5) The practice described in paragraph (1) above causes unnecessary inconvenience and, at times, a hardship for the motorist who is unable at the time to post collateral, furnish a bond, stand trial or pay the fine, and thus is compelled to remain in custody until some arrangement can be made.

(6) The deposit of a driver license as a bail bond, as directed in paragraph (2) above, is viewed with disfavor.

(7) The practices described herein consume an undue amount of law enforcement time.

(b) It is the policy of the party jurisdictions to:

(1) Seek compliance with the laws, ordinances and administrative rules and regulations relating to the operation of motor vehicles in each of the jurisdictions.

(2) Allow motorists to accept a traffic citation for certain violations and proceed on their way without delay whether or not the motorist is a resident of the jurisdiction in which the citation was issued.

(3) Extend cooperation to its fullest extent among the jurisdictions for obtaining compliance with the terms of a traffic citation issued in one jurisdiction to a resident of another jurisdiction.

(4) Maximize effective utilization of law enforcement personnel and assist court systems in the efficient disposition of traffic violations.

(c) The purpose of this compact is to:

(1) Provide a means through which the party jurisdictions may participate in a reciprocal program to effectuate the policies enumerated in paragraph (b) above in a uniform and orderly manner.

(2) Provide for the fair and impartial treatment of traffic violators operating within party jurisdictions in recognition of the motorist's right of due process and the sovereign status of a party jurisdiction.

ARTICLE II
DEFINITIONS

(a) In the nonresident violator compact, the following words have the meaning indicated, unless the context requires otherwise.

(b)(1) "Citation" means any summons, ticket or other official document issued by a police officer for a traffic violation containing an order which requires the motorist to respond.

(2) "Collateral" means any cash or other security deposited to secure an appearance for trial, following the issuance by a police officer of a citation for a traffic violation.

(3) "Compliance" means the act of answering a citation, summons or subpoena through appearance at court or a tribunal or payment of fines and costs.

(4) "Court" means a court of law or traffic tribunal.

(5) "Driver license" means any license or privilege to operate a motor vehicle issued under the laws of the home jurisdiction.

(6) "Home jurisdiction" means the jurisdiction that issued the driver license of the traffic violator.

(7) "Issuing jurisdiction" means the jurisdiction in which the traffic citation was issued to the motorist.

(8) "Jurisdiction" means a state, territory or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, provinces of Canada or other countries.

(9) "Motorist" means driver of a motor vehicle operating in a party jurisdiction other than the home jurisdiction.

(10) "Personal recognizance" means an agreement by a motorist made at the time of issuance of the traffic citation that he will comply with the terms of that traffic citation.

(11) "Police officer" means any individual authorized by the party jurisdiction to issue a citation for a traffic violation.

(12) "Terms of the citation" means those options expressly stated on the citation.

ARTICLE III

PROCEDURE FOR ISSUING JURISDICTION

(a) When issuing a citation for a traffic violation, a police officer shall issue the citation to a motorist who possesses a driver license issued by a party jurisdiction and shall not, subject to the exceptions noted in paragraph (b) of this article, require the motorist to post collateral to secure appearance, if the officer receives the motorist's personal recognizance that he or she will comply with the terms of the citation.

(b) Personal recognizance is acceptable only if not prohibited by law. If mandatory appearance is required, it should take place immediately following issuance of the citation.

(c) On failure of a motorist to comply with the terms of a traffic citation, the appropriate official shall report the failure to comply to the licensing authority of the jurisdiction in which the traffic citation was issued. The report shall be made in accordance with procedures specified by the issuing jurisdiction and shall contain information as specified in the compact manual as minimum requirements for effective processing by the home jurisdiction.

(d) On receipt of the report, the licensing authority of the issuing jurisdiction shall transmit to the licensing authority in the home jurisdiction of the motorist the information in a form and content as contained in the compact manual.

(e) The licensing authority of the issuing jurisdiction need not suspend the privilege of a motorist for whom a report has been transmitted.

(f) The licensing authority of the issuing jurisdiction shall not transmit a report on any violation if the date of transmission is more than six months after the date on which the traffic citation was issued.

(g) The licensing authority of the issuing jurisdiction shall not transmit a report on any violation where the date of issuance of the citation predates the most recent of the effective dates of entry for the two jurisdictions affected.

ARTICLE IV

PROCEDURE FOR HOME JURISDICTION

(a) On receipt of a report of a failure to comply from the licensing authority of the issuing jurisdiction, the licensing authority of the home jurisdiction shall notify the motorist and initiate a suspension action in accordance with the home jurisdiction's procedures to suspend the motorist's driver license until satisfactory evidence of compliance with the terms of the traffic citation has been furnished to the home jurisdiction licensing authority. Due process safeguards will be accorded.

(b) The licensing authority of the home jurisdiction shall maintain a record of actions taken and make reports to issuing jurisdictions as provided in the compact manual.

ARTICLE V

APPLICABILITY OF OTHER LAWS

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party jurisdiction to apply any of its other laws relating to license to drive to any person or circumstance, or to invalidate or prevent any driver license agreement or other cooperative arrangements between a party jurisdiction and a nonparty jurisdiction.

ARTICLE VI

COMPACT ADMINISTRATOR PROCEDURES

(a) For the purpose of administering the provisions of this compact and to serve as a governing body for the resolution of all matters relating to the operation of this compact, a board of compact administrators is established. The board shall be composed of one representative from each party jurisdiction to be known as the compact administrator. The compact administrator shall be appointed by the jurisdiction executive and will serve and be subject to removal in accordance with the laws of the jurisdiction he represents. A compact administrator may provide for the discharge of his duties and the performance of his functions as a board member by an alternate. An alternate may not be entitled to serve unless written notification of his identity has been given to the board.

(b) Each member of the board of compact administrators shall be entitled to one vote. No action of the board shall be binding unless taken at a meeting at which a majority of the total number of votes on the board are cast in favor. Action by the board shall be only at a meeting at which a majority of the party jurisdictions are represented.

(c) The board shall elect annually, from its membership, a chairman and vice-chairman.

(d) The board shall adopt bylaws, not inconsistent with the provisions of this compact or the laws of a party jurisdiction, for the conduct of its business and shall have the power to amend and rescind its bylaws.

(e) The board may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any jurisdiction, the United States or any other governmental agency, and may receive, utilize and dispose of the same.

(f) The board may contract with or accept services or personnel from any governmental or intergovernmental agency, person, firm or corporation, or any private nonprofit organization or institution.

(g) The board shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of this compact. All procedures and forms adopted pursuant to board action shall be contained in the compact manual.

ARTICLE VII

ENTRY INTO COMPACT AND WITHDRAWAL

(a) This compact shall become effective when it has been adopted by at least two jurisdictions.

(b)(1) Entry into the compact shall be made by a resolution of ratification executed by the authorized officials of the applying jurisdiction and submitted to the chairman of the board.

(2) The resolution shall be in a form and content as provided in the compact manual and shall include statements that in substance are as follows:

(i) A citation of the authority by which the jurisdiction is empowered to become a party to this compact.

(ii) Agreement to comply with the terms and provisions of the compact.

(iii) That compact entry is with all jurisdictions then party to the compact and with any jurisdiction that legally becomes a party to the compact.

(3) The effective date of entry shall be specified by the applying jurisdiction, but it shall not be less than sixty days after notice has been given by the chairman of the board of compact administrators or by the secretariat of the board to each party jurisdiction that the resolution from the applying jurisdiction has been received.

(c) A party jurisdiction may withdraw from this compact by official written notice to the other party jurisdictions, but a withdrawal shall not take effect until ninety days after notice of withdrawal is given. The notice shall be directed to the compact administrator of each member jurisdiction. No withdrawal shall affect the validity of this compact as to the remaining party jurisdictions.

ARTICLE VIII

EXCEPTIONS

The provisions of this compact shall not apply to parking or standing violations, highway weight limit violations and violations of law governing the transportation of hazardous materials.

ARTICLE IX

AMENDMENTS TO THE COMPACT

(a) This compact may be amended from time to time. Amendments shall be presented in resolution form to the chairman of the board of compact administrators and may be initiated by one or more party jurisdictions.

(b) Adoption of an amendment shall require endorsement of all party jurisdictions and shall become effective thirty days after the date of the last endorsement.

(c) Failure of a party jurisdiction to respond to the compact chairman within one hundred twenty days after receipt of the proposed amendments shall constitute endorsement.

ARTICLE X

CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes stated herein. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the construction of any party jurisdiction or of the United States or the applicability thereof to any government agency, person or circumstance, the compact shall not be affected thereby. If this compact shall be held contrary to the constitution of any jurisdiction party thereto, the compact shall remain in full force and effect as to the remaining jurisdictions and in full force and effect as to the jurisdiction affected as to all severable matters.

ARTICLE XI

TITLE

This compact shall be known as the nonresident violator compact of 1977.

§ 28–1873. Documents; duties

The licensing authority shall execute all documents and perform all acts necessary to enter into and to carry out the nonresident violator compact adopted by this article.

§ 28–1874. Compensation and expenses of administrator

The compact administrator of this state is not entitled to any additional compensation for the administrator's service but is eligible for reimbursement for expenses incurred with the compact administrator's responsibilities as administrator in the same manner as expenses incurred in connection with other responsibilities of the compact administrator's office or employment.

CHAPTER 5

VEHICLE TRAFFIC REGULATION

ARTICLE 1. DEFINITIONS AND POWERS OF GOVERNOR

§ 28–2001. Definitions

In this chapter, unless the context otherwise requires:

1. "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used to transport passengers or property if the motor vehicle either:

(a) Has a gross combined weight rating of twenty-six thousand one or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten thousand pounds.

(b) Has a gross vehicle weight rating of twenty-six thousand one or more pounds.

(c) Is a school bus.

(d) Is a bus.

(e) Is used in the transportation of materials found to be hazardous for the purposes of the hazardous materials transportation act (49 United States Code appendix section 1801 et seq.) and is required to be placarded under 49 Code of Federal Regulations section 172.504, as adopted by the department pursuant to chapter 14 of this title.

2. "Controlled access highway" means a highway, street or roadway to or from which owners or occupants of abutting lands and other persons have no legal right of access except at such points only and in the manner determined by the public authority that has jurisdiction over the highway, street or roadway.

3. "Crosswalk" means:

(a) That part of a roadway at an intersection included within the prolongations or connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in absence of curbs, from the edges of the traversable roadway.

(b) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

4. "Explosives" means any chemical compound, mixture or device that is commonly used or intended for the purpose of producing an explosion and that is defined in 49 Code of Federal Regulations part 173.

5. "Flammable liquid" means any liquid that has a flash point of less than one hundred degrees Fahrenheit and that is defined in 49 Code of Federal Regulations part 173.

6. "Intersection" means the area embraced within the prolongation or connection of the lateral curb lines, or if none, the lateral boundary lines of the roadways of two highways that join one another at, or approximately at, right angles, or the area within which vehicles traveling on different highways joining at any other angle may come in conflict. If a highway includes two roadways thirty or more feet apart, each crossing of each roadway of the divided highway by an intersecting highway is a separate intersection. If the intersecting highway also includes two roadways thirty or more feet apart, each crossing of two roadways of the highways is a separate intersection.

7. "License" means any license, temporary instruction permit or temporary license issued under the laws of this state or any other state that pertain to the licensing of persons to operate motor vehicles.

8. "Motorized wheelchair" means any self-propelled vehicle that is designed for, and used by, a physically disabled person.

9. "Official traffic control device" means any sign, signal, marking or device that is not inconsistent with this chapter and that is placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning or guiding traffic.

10. "Park", if prohibited, means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.

11. "Police officer" means an officer authorized to direct or regulate traffic or make arrests for violations of traffic rules.

12. "Private road or driveway" means a way or place that is in private ownership and that is used for vehicular travel by the owner and those persons who have express or implied permission from the owner but not by other persons.

13. "Railroad" means a carrier of persons or property on cars operated on stationary rails.

14. "Railroad sign or signal" means a sign, signal or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

15. "Railroad train" means a steam engine or any electric or other motor that is with or without cars coupled to the steam engine or electric or other motor and that is operated on rails.

16. "Roadway" means that portion of a highway that is improved, designed or ordinarily used for vehicular travel, exclusive of the berm or shoulder. If a highway includes two or more separate roadways, roadway refers to any such roadway separately but not to all such roadways collectively.

17. "Safety zone" means the area or space that is both:

(a) Officially set apart within a roadway for the exclusive use of pedestrians.

(b) Protected or either marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

18. "Sidewalk" means that portion of a street that is between the curb lines or the lateral lines of a roadway and the adjacent property lines and that is intended for the use of pedestrians.

19. "Solid tire" means a tire that both:

(a) Is made of rubber or other resilient material.

(b) Does not depend on compressed air for the support of the load.

20. "Stop", if required, means complete cessation from movement.

21. "Stop, stopping or standing", if prohibited, means any stopping or standing of an occupied or unoccupied vehicle, except when necessary to avoid conflict with other traffic or in compliance with directions of a police officer or traffic control sign or signal.

22. "Through highway" means a highway or portion of a highway at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing and when stop signs are erected as provided in this chapter.

23. "Traffic" means pedestrians, ridden or herded animals, vehicles and other conveyances either singly or together while using a highway for purposes of travel.

24. "Traffic control signal" means a device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.

25. "Truck" means a motor vehicle that is designed, used or maintained primarily for the transportation of property.

§ 28–2002. Powers of governor; federal highway safety act

A. In addition to other duties and responsibilities conferred on the governor by the constitution and laws of this state, the governor may contract and do all other things necessary to secure the full benefits available to this state under the federal highway safety act of 1966 (23 United States Code section 401 et seq.), including cooperating with federal and state agencies, private and public organizations, and persons to effectuate the purposes of the federal act and any amendments to the federal act.

B. The governor is responsible for and may administer the highway safety programs of this state and those of its political subdivisions through the appropriate agency of this state that the governor designates and pursuant to the federal highway safety act of 1966 and federal regulations adopted to implement the federal act and as further provided by law.

ARTICLE 2. OBEDIENCE TO AND EFFECT OF TRAFFIC LAWS

§ 28–2021. Applicability to vehicles on highways; exceptions

The provisions of this chapter and chapters 6, 7 and 8 of this title relating to the operation of vehicles refer exclusively to the operation of vehicles on highways except:

1. If a different place is specifically provided by law.

2. Article 20 of this chapter and chapter 6 of this title apply on highways and elsewhere throughout this state.

§ 28–2022. Persons riding animals or driving animal drawn vehicles

A person riding an animal or driving an animal drawn vehicle on a roadway has all of the rights and is subject to all of the duties applicable to the driver of a vehicle by this chapter and chapters 6, 7 and 8 of this title, except the provisions of this chapter and chapters 6, 7 and 8 of this title that by their very nature can have no application.

§ 28–2023. Obedience by public officers and employees; exceptions

A. Except as provided in this section and subject to specific exceptions prescribed in this chapter and chapters 6, 7 and 8 of this title with reference to authorized emergency vehicles, the provisions of this chapter and chapters 6, 7 and 8 of this title applicable to the drivers of vehicles on the highways apply to the drivers of all vehicles owned or operated by the United States, this state or any county, city, town, district or other political subdivision of this state.

B. Unless specifically made applicable by law, this chapter and chapters 6, 7 and 8 of this title:

1. Do not apply to persons, teams, motor vehicles and other equipment while actually engaged in work on the surface of a highway.

2. Do not apply to railroad employees working on a railroad track or tracks crossing the highway.

3. Apply to persons and vehicles described in this section if they are traveling to or from work on the surface of a highway or on a railroad track or tracks crossing the highway.

§ 28–2024. Uniform application of laws throughout state

The provisions of this chapter and chapters 6, 7 and 8 of this title are applicable and uniform throughout this state and in all political subdivisions in this state.

§ 28–2025. **Local ordinances or regulations; civil traffic violation**

A. A local authority:

1. Shall not enact or enforce an ordinance or regulation in conflict with this chapter or chapter 6, 7 or 8 of this title unless expressly authorized by this chapter or chapter 6, 7 or 8 of this title.

2. May adopt additional traffic regulations that are not in conflict with this chapter or chapter 6, 7 or 8 of this title.

3. Shall adopt ordinances or regulations relating to the control and movement of traffic, including parking or standing ordinances or regulations that provide for the imposition of civil penalties or penalties on the violation of the ordinance or regulation.

4. Shall not erect or maintain a stop sign or traffic control signal at any location that requires the traffic on any state highway to stop before entering or crossing any intersecting highway unless approval in writing has first been obtained from the director.

B. Unless a local ordinance or regulation authorized by this section provides for the imposition of a criminal penalty, a violation of the ordinance or regulation constitutes a civil traffic violation.

§ 28–2026. **Powers of local authorities; traffic regulations**

A. This chapter and chapters 6, 7 and 8 of this title do not prohibit a local authority, with respect to streets and highways under its jurisdiction and within the reasonable exercise of the police power, from:

1. Regulating the standing or parking of vehicles.

2. Regulating traffic by means of police officers, traffic control signals or volunteer posse organization members authorized by the sheriff under section 11–441 for the purpose of directing traffic only.

3. Regulating or prohibiting processions or assemblages on the highways.

4. Designating particular highways as one-way highways and requiring that all vehicles on one-way highways be moved in one specific direction.

5. Regulating the speed of vehicles in public parks.

6. Designating any highway as a through highway and requiring that all vehicles stop before entering or crossing the highway or designating any intersection as a stop intersection and requiring all vehicles to stop at one or more entrances to the intersection.

7. Restricting the use of highways as authorized in section 28–3415.

8. Regulating the operation of bicycles and requiring the registration and licensing of bicycles, including the requirement of a registration fee.

9. Regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections.

10. Altering the prima facie speed limits as authorized by this chapter.

11. Designating routes over streets and highways for vehicles not exceeding one hundred two inches in width, exclusive of safety equipment.

12. Adopting other traffic regulations that are specifically authorized by this chapter or chapter 6, 7 or 8 of this title.

B. An ordinance or regulation enacted under subsection A, paragraph 4, 5, 6, 7, 9 or 10 of this section is not effective until signs giving notice of the local traffic regulations are posted on or at the entrances to the highway or part of the highway affected as is most appropriate.

§ 28–2027. **Local authorities; unarmed police aides; traffic investigators**

A. In addition to the appointment of peace officers, a local authority may provide by ordinance for the appointment of:

1. Unarmed police aides who are employed by the police department and who are empowered to commence an action or proceeding before a court or judge for a violation of the local authority's ordinances regulating the standing or parking of vehicles. The authority of the unarmed police aide as authorized in this section is limited to the enforcement of the ordinances of local authorities regulating the standing or parking of vehicles and does not grant other powers or benefits to which peace officers of this state are entitled.

2. Traffic investigators who may:

(a) Investigate traffic accidents within the jurisdiction of the local authority.

(b) Commence an action or proceeding before a court or judge for any violation of a state statute or local ordinance relating to traffic, if the violation is related to a traffic accident within the jurisdiction of the local authority.

B. A traffic investigator appointed pursuant to this section shall:

1. Be unarmed at all times during the course of the traffic investigator's duties.

2. Be an employee of the appointing local authority.

3. File written reports as required pursuant to section 28–2648.

C. This section does not grant other powers or benefits to traffic investigators to which peace officers of this state are entitled.

§ 28–2028. **Local authority; reasonable access**

Pursuant to section 28–3402, a local authority shall provide reasonable access to and from terminals and service facilities on highways under its jurisdiction.

§ 28–2029. **Rights of real property owners**

This chapter does not prevent the owner of real property that is used by the public for purposes of vehicular travel by permission of the owner and not as a matter of right from:

1. Prohibiting that use.

2. Requiring other, different or additional conditions than those specified in this chapter.

3. Otherwise regulating the use as deemed best by the owner.

§ 28–2030. **Authorized emergency vehicles**

A. If an authorized emergency vehicle is driven in response to an emergency call, in pursuit of an actual or suspected violator of law or in response to but not on return from a fire alarm, the driver may exercise the privileges provided in this section subject to the conditions stated in this section.

B. If the driver of an authorized emergency vehicle is operating at least one lighted lamp displaying a red or red and blue light or lens visible under normal atmospheric conditions from a distance of five hundred feet to the front of the vehicle, the driver may:

1. Notwithstanding this chapter, park or stand.

2. Proceed past a red or stop signal or stop sign, but only after slowing down as necessary for safe operation.

3. Exceed the prima facie speed limits if life or property is not endangered.

4. Disregard laws or rules governing the direction of movement or turning in specified directions.

C. The exemptions authorized by this section for an authorized emergency vehicle apply only if the driver of the vehicle while in motion sounds an audible signal by bell, siren or exhaust whistle as reasonably necessary and if the vehicle is equipped with at least one lighted lamp displaying a red or red and blue light or lens visible under normal atmospheric conditions from a distance of five hundred feet to the front of the vehicle, except that an authorized emergency vehicle operated as a police vehicle need not be equipped with or display a red or red and blue light or lens visible from in front of the vehicle.

D. This section does not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons and does not protect the driver from the consequences of the driver's reckless disregard for the safety of others.

§ 28–2031. Failure to comply with police officer; classification

A. A person shall not wilfully fail or refuse to comply with any lawful order or direction of a police officer invested by law with authority to direct, control or regulate traffic.

B. A person who violates this section is guilty of a class 2 misdemeanor.

§ 28–2032. Unlawful flight from pursuing law enforcement vehicle; classification; vehicle marking required

A. A driver of a motor vehicle who wilfully flees or attempts to elude a pursuing official law enforcement vehicle that is being operated in the manner described in section 28–2030, subsection C is guilty of a class 5 felony.

B. The law enforcement vehicle shall be appropriately marked to show that it is an official law enforcement vehicle.

ARTICLE 3. TRAFFIC CONTROL DEVICES

§ 28–2071. Traffic control device manual and specifications

The director shall adopt a manual and specifications for a uniform system of traffic control devices for use on highways in this state. The uniform system shall correlate with and as far as possible conform to the system set forth in the most recent edition of the manual on uniform traffic control devices for streets and highways prepared by the national joint committee on uniform traffic control devices.

§ 28–2072. Traffic control signs on state highways; rules

A. The director shall place and maintain traffic control devices that conform to the manual and specifications prescribed in section 28–2071 on all state highways as the director deems necessary to indicate and to carry out this chapter or to regulate, warn or guide traffic.

B. A local authority shall not place or maintain a traffic control device on a highway under the jurisdiction of the director except by the director's permission.

C. In cooperation with local authorities, the director shall synchronize traffic control signals on a state highway that has a traffic flow exceeding fifteen thousand motor vehicles per day in a vehicle emissions control area as defined in section 49–541.

D. The director shall adopt rules pursuant to title 41, chapter 6 to establish criteria for the installation and maintenance of directional signs for universities

prescribed in section 15–1601, for community colleges as defined in section 15–1401 and for the campus of a regionally accredited college or university.

§ 28–2073. Local traffic control devices

Local authorities in their respective jurisdictions shall place and maintain the traffic control devices on highways under their jurisdiction as they deem necessary to indicate and to carry out this chapter or local traffic ordinances or to regulate, warn or guide traffic. All traffic control devices erected shall conform to the manual and specifications prescribed in section 28–2071.

§ 28–2074. Obedience to and required traffic control devices

A. Unless otherwise directed by a traffic or police officer and subject to the exemptions granted the driver of an authorized emergency vehicle in this chapter, the driver of a vehicle shall obey the instructions of an official traffic control device applicable to the driver that is placed in accordance with this chapter.

B. Any provision of this chapter that requires signs shall not be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. If a particular section of law does not state that signs are required, that section is effective even though no signs are erected or in place.

§ 28–2075. Traffic control signal legend

A. If traffic is controlled by traffic control signals exhibiting different colored lights or colored lighted arrows successively one at a time or in combination, only the colors green, red and yellow shall be used, except for special pedestrian signals carrying a word legend. The lights shall indicate and apply to drivers of vehicles and pedestrians as follows:

1. Green indication:

(a) Vehicular traffic facing a green circular signal may proceed straight through or turn right or left unless a sign at that place prohibits either turn. Vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time the signal is exhibited.

(b) Vehicular traffic facing a green arrow signal, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow or such other movement as is permitted by other indications shown at the same time. Vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(c) Unless otherwise directed by a pedestrian control signal as provided in section 28–2076, pedestrians facing any green signal, except if the sole green signal is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

2. Steady yellow indication:

(a) Vehicular traffic facing a steady yellow signal is warned by the signal that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter when vehicular traffic shall not enter the intersection.

(b) Unless otherwise directed by a pedestrian control signal as provided in section 28–2076, pedestrians facing a steady yellow signal are advised by the signal that there is insufficient time to cross the roadway before a red indication is shown and a pedestrian shall not then start to cross the roadway.

3. Red indication:

(a) Except as provided in subdivisions (b) and (c) of this paragraph, vehicular traffic facing a steady red signal alone shall stop before entering the intersection and shall remain standing until an indication to proceed is shown.

(b) The driver of a vehicle that is stopped as close as practicable at the entrance to the crosswalk on the near side of the intersection, or if there is no crosswalk, then at the entrance to the intersection, in obedience to a red signal may make a right turn but shall yield the right-of-way to pedestrians and other traffic proceeding as directed by the signal. A right turn may be prohibited against a red signal at any intersection if a sign is erected at the intersection prohibiting the turn.

(c) The driver of a vehicle on a one-way street that intersects another one-way street on which traffic moves to the left shall stop in obedience to a red signal but may then make a left turn into the one-way street but shall yield the right-of-way to pedestrians and other traffic proceeding as directed by the signal at the intersection, except that such left turn may be prohibited if a sign is erected at the intersection giving notice of the prohibition.

(d) Unless otherwise directed by a pedestrian control signal as provided in section 28–2076, a pedestrian facing a steady red signal alone shall not enter the roadway.

B. If an official traffic control signal is erected and maintained at a place other than an intersection, this section applies except as to those provisions of this section that by their nature can have no application. Any stop required shall be made at a sign or marking on the pavement indicating where the stop shall be made, but in the absence of a sign or marking the stop shall be made at the signal.

§ 28–2076. Pedestrian control signals; loitering prohibited

A. If special pedestrian control signals exhibiting the words "walk" or "don't walk" are in place, the signals shall indicate as follows:

1. Walk. Pedestrians facing the signal may proceed across the roadway in the direction of the signal and shall be given the right-of-way by the drivers of vehicles.

2. Don't walk. A pedestrian shall not start to cross the roadway in the direction of the signal, but a pedestrian who has partially completed his crossing on the walk signal shall proceed to a sidewalk or safety island while the don't walk signal is showing.

B. A pedestrian shall not loiter or unduly delay crossing the roadway after traffic has stopped to give the right-of-way.

§ 28–2077. Flashing signals

If an illuminated flashing red or yellow signal is used in a traffic sign or signal it requires obedience by vehicular traffic as follows:

1. Flashing red stop signal. If a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line if marked, or if none, then before entering the intersection, and the right to proceed is subject to the rules applicable after making a stop at a stop sign.

2. Flashing yellow caution signal. When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past the signal only with caution.

§ 28–2078. Display of unauthorized signs, signals or markings

A. A person shall not place, maintain or display on or in view of a highway an unauthorized sign, signal, marking or device that either:

1. Purports to be or is an imitation of or resembles an official traffic control device or railroad sign or signal.

2. Attempts to direct the movement of traffic.

3. Hides from view or interferes with the effectiveness of an official traffic control device or a railroad sign or signal.

B. A person shall not place or maintain and a public authority shall not permit on a highway a traffic sign or signal bearing any commercial advertising.

C. This section does not prohibit the erection on private property adjacent to highways of a sign giving useful directional information and of a type of sign that cannot be mistaken for an official sign.

D. A sign, signal or marking prohibited by this section is a public nuisance, and the authority having jurisdiction over the highway may remove it or cause it to be removed without notice.

§ 28–2079. Interference with official traffic control device or railroad sign or signal

A person shall not attempt to or in fact alter, deface, injure, knock down or remove without lawful authority an official traffic control device, a railroad sign or signal or an inscription, shield or insignia on or any part of the device, sign or signal.

§ 28–2080. Warning devices at construction sites

A person, contractor or political subdivision performing work on roads, streets or highways shall post and maintain warning signs, signals, markers and barricades that are in compliance with the manual and specifications prescribed in section 28–2071 at the work site until the work is completed or until such time as the governing body authorizes removal to warn those using the street, road or highway.

§ 28–2081. Use of private property to avoid traffic control device prohibited

A person shall not drive on or through any private property, road or driveway to avoid obedience to traffic rules or traffic control devices.

ARTICLE 4. SPEED RESTRICTIONS

§ 28–2111. Definition of freeway

In this article, unless the context otherwise requires, "freeway" means a highway that is declared to be a freeway by the director and that the owners of abutting lands have either:

1. No right or easement of access to or from their abutting lands.

2. Only limited or restricted right or easement of access.

§ 28–2112. Reasonable and prudent speed

A. A person shall not drive a vehicle on a highway at a speed greater than is reasonable and prudent under the circumstances, conditions and actual and potential hazards then existing. A person shall control the speed of a vehicle as necessary to avoid colliding with any object, person, vehicle or other conveyance on, entering or adjacent to the highway in compliance with legal requirements and the duty of all persons to exercise reasonable care for the protection of others.

B. Except as provided in subsections C and E of this section or except if a special hazard requires a lesser speed, any speed in excess of the following speeds is prima facie evidence that the speed is too great and therefore unreasonable:

1. Fifteen miles per hour approaching a school crossing.

2. Twenty-five miles per hour in a business or residential district.

3. Sixty-five miles per hour in other locations.

C. The maximum speed provided in this section is reduced to the speed that is reasonable and prudent under the conditions and with regard to the actual and potential hazards then existing, including the following conditions:

1. Approaching and crossing an intersection or railroad crossing.

2. Approaching and going around a curve.

3. Approaching a hillcrest.

4. Traveling on a narrow or winding roadway.

5. A special hazard exists with respect to pedestrains or other traffic or by reason of weather or highway conditions.

D. A person shall not drive a motor vehicle at a speed that is less than the speed that is reasonable and prudent under existing conditions.

E. The speed limits prescribed in this section may be altered as authorized in sections 28–2122 and 28–2124.

§ 28–2113. Excessive speeds; classification

A. A person shall not:

1. Exceed thirty-five miles per hour approaching a school crossing.

2. Exceed the posted speed limit in a business or residential district by more than twenty miles per hour, or if no speed limit is posted, exceed forty-five miles per hour.

3. Exceed eighty-five miles per hour in other locations.

B. A person who violates subsection A of this section is guilty of a class 3 misdemeanor.

C. A person charged with a violation of this section may not be issued a civil complaint for a violation of section 28–2112 if the civil complaint alleges a violation arising out of the same circumstances.

§ 28–2114. Maximum speed limit; authority to increase; waste of a finite resource

A. Notwithstanding any other higher maximum speed limit previously established pursuant to any other provision of law, a maximum speed limit on any highway in this state shall not exceed fifty-five miles per hour. This subsection does not alter an existing maximum speed limit that is less than fifty-five miles per hour and does not prevent the appropriate jurisdiction from establishing, altering or lowering a maximum speed limit that is less than fifty-five miles per hour within its respective jurisdiction.

B. The speed limit for all types of motor vehicles is fifty-five miles per hour on any portion of any highway that both:

1. Has four or more traffic lanes, the opposing lanes of which are physically separated other than by striping.

2. Had a speed limit for all types of motor vehicles of fifty-five miles per hour or more on November 1, 1973.

C. The director may order the increase of the maximum speed limit prescribed in subsection B of this section to seventy-five miles per hour on an individual highway or on all highways in this state if the governor declares by proclamation that an emergency does not exist and that the receipt of federal highway monies would not be withheld.

D. A person shall not drive a motor vehicle at a speed in excess of fifty-five miles per hour or in excess of a higher maximum speed if changed pursuant to subsection C of this section.

E. If a person is found responsible for violating subsection D of this section and the speed at which the defendant is alleged to have driven as provided in section 28–2127 is sixty-five miles per hour or less or if the court finds that the defendant violated subsection D of this section and that the speed at which the defendant drove was not in excess of sixty-five miles per hour, the offense is designated as the waste of a finite resource currently in short supply and is a civil traffic violation.

F. If a person is charged with violating and the court finds the person violated subsection D of this section and if the speed at which the defendant is alleged to have driven as provided in section 28–2127 is more than sixty-five miles per hour, the offense is designated as an unlawful speed and is a civil traffic violation.

G. If a person is found responsible for a civil traffic violation pursuant to subsection E of this section:

1. A department or agency of this state shall not consider the violation for the purpose of determining whether the person's driver license should be suspended or revoked and a court shall not transmit abstracts of records of conviction for the violation to the department.

2. An insurer shall not consider the violation as a moving traffic violation against the person for the purpose of establishing rates of motor vehicle insurance charged by the insurer and shall not cancel or refuse to renew a policy of insurance for the violation.

3. The civil penalty shall not exceed fifteen dollars plus the penalty assessments imposed pursuant to sections 12–116.01 and 12–116.02.

4. A report shall not be made under section 28–3760.

H. This section does not apply to an interstate system highway located outside of an urbanized area, as defined in section 28–2115, with a population of fifty thousand or more persons.

§ 28–2115. Maximum speed limit on interstate highways outside urbanized areas; definition

A. The speed limit for all types of motor vehicles is sixty-five miles per hour on the interstate system highways located outside of an urbanized area with a population of fifty thousand or more persons, except that the director may declare a lower speed limit on the highways pursuant to section 28–2122.

B. A person shall not drive a motor vehicle at a speed in excess of the maximum speed limit prescribed by this section.

C. The director may order the increase of the maximum speed limit prescribed in subsection A of this section to seventy-five miles per hour on an individual interstate system highway subject to this section or on all of the interstate system highways in this state subject to this section if the governor declares by proclamation that an emergency does not exist and that the receipt of federal highway monies would not be withheld.

D. A violation of this section is a civil traffic violation, and the person is subject to a civil penalty that does not exceed the amount provided by section 28–3798.

E. For the purposes of this section, "urbanized area" means an urbanized area as defined in the decennial census by the United States bureau of the census.

§ 28–2116. Maximum speed limit violation in another state; effect

If a resident of this state is convicted of violating the maximum speed limit of fifty-five miles per hour on the interstate system highways of another state and the

speed at which the person is alleged to have driven is sixty-five miles per hour or less:

1. A department or agency of this state shall not consider the violation for the purpose of determining whether the person's driver license should be suspended or revoked.

2. An insurer shall not consider the violation as a moving traffic violation against the person for the purpose of establishing rates of motor vehicle insurance charged by the insurer, and the insurer shall not cancel or refuse to renew a policy of insurance for the violation.

§ 28–2117. Minimum speed limits

A. A person shall not drive a motor vehicle at a slow speed that impedes or blocks the normal and reasonable movement of traffic unless reduced speed is necessary for safe operation or except in compliance with law.

B. If the director or local authority within the director's or local authority's respective jurisdiction determines on the basis of an engineering and traffic investigation that slow speeds on any part of a highway consistently impede the normal and reasonable movement of traffic, the director or the local authority may determine and declare a minimum speed limit below which a person shall not drive a vehicle except when necessary for safe operation or except in compliance with law.

§ 28–2118. Slow speed; required to turn off roadway

If a person is driving a vehicle at a speed less than the normal flow of traffic at a particular time and place on a two lane highway where passing is unsafe and if five or more vehicles are formed in a line behind the vehicle, the person shall turn the vehicle off the roadway at the nearest place designated as a turnout by signs erected by the director or a local authority or wherever sufficient area for a safe turnout exists to permit the vehicles following to proceed.

§ 28–2119. Special speed limitation; motor driven cycles

A person shall not operate a motor driven cycle at any time provided in section 28–3163 at a speed of more than thirty-five miles per hour unless the motor driven cycle is equipped with a head lamp or head lamps that are adequate to reveal a person or vehicle at a distance of three hundred feet ahead.

§ 28–2120. Special speed limitations

A. A person shall not drive a vehicle equipped with solid rubber or cushion tires at a speed of more than ten miles per hour.

B. A person shall not drive a vehicle over any bridge or other elevated structure constituting a part of a highway at a speed that is greater than the maximum speed that can be safely maintained to the bridge or structure if the structure is signposted as provided in this section.

C. On request from any local authority or on the director's own initiative, the director may conduct an investigation of any bridge or other elevated structure constituting a part of a highway. If the director finds that the structure cannot safely withstand vehicles traveling at the speed otherwise permissible under this article, the director shall:

1. Determine and declare the maximum speed of vehicles that the structure can withstand.

2. Cause or permit suitable signs stating the maximum speed to be erected and maintained at a distance of three hundred feet before each end of the structure.

D. At the trial of a person charged with a violation of this section, proof of a determination of the maximum speed by the director and the existence of the signs are conclusive evidence of the maximum speed that can be maintained with safety to the bridge or structure.

§ 28–2121. Towing trailer

A person shall not drive a vehicle towing a trailer or semitrailer at a rate of speed that causes the trailer or semitrailer to sway laterally from the line of traffic.

§ 28–2122. State speed zones

A. If the director determines on the basis of an engineering and traffic investigation that any maximum speed limit is greater or less than is reasonable or safe under the conditions found to exist on any part of a state highway, the director may determine and declare a reasonable and safe maximum speed limit for the location.

B. The maximum speed limit determined pursuant to this section is effective when appropriate signs giving notice of the maximum speed limit are erected.

C. The director may declare a maximum speed limit that is determined pursuant to this section to be effective at all times or at such times as indicated on the speed limit signs. The director may establish varying speed limits for different times of day, different types of vehicles, varying weather conditions and other factors bearing on safe speeds. The varying limits are effective when posted on appropriate fixed or variable signs.

§ 28–2123. Authority to change speed signs on freeways

If the director determines on the basis of an engineering and traffic survey that the safe and orderly movement of traffic on any state highway that is a freeway will be facilitated by the establishment of variable speed limits, the department may erect, regulate and control signs on the freeway or any portion of the freeway. The department shall design the signs to permit the display of different speed limits at various times of the day or night and to be of sufficient size and clarity to give adequate notice of the applicable speed limit. The speed limit on the freeway at a particular time and place is the speed limit displayed on the sign at that time and place.

§ 28–2124. Alteration of speed limits by local authority

A. If a local authority determines on the basis of an engineering and traffic investigation that the maximum speed permitted under this article is greater or less than is reasonable or safe under the conditions found to exist on any part of a street or highway in its jurisdiction, the local authority may determine and declare a reasonable and safe maximum speed limit at the location and based on the investigation may:

1. Decrease the limit at intersections.

2. Increase the limit within any business or residence district to not more than sixty-five miles per hour.

3. Decrease the limit outside any business or residence district.

4. Increase or decrease the limit on streets adjacent to school grounds.

B. A local authority shall determine by an engineering and traffic investigation the proper maximum speed for all arterial streets in its jurisdiction and shall declare a reasonable and safe maximum limit on the arterial streets in its jurisdiction that is more or less than the maximum speed permitted under this article for a business or residence district.

C. An altered limit established pursuant to this section is effective at all times or during hours of darkness or at other times if appropriate signs giving notice of the limit are erected on the street or highway.

D. The alteration of maximum speed limits on state highways or extensions of state highways in a municipality by a local authority is not effective until the director approves the alteration.

E. A local authority shall not make more than six alterations per mile along a street or highway pursuant to this section, except for reduced limits at intersections. The difference between adjacent limits shall not be more than ten miles per hour except for school crossings.

§ 28–2125. End of speed zone; signs required

The agency or authority establishing a speed zone under section 28–2122 or 28–2124 is responsible for erecting:

1. At the beginning of each zone a sign designating the maximum allowable speed within the zone.

2. At the end of each zone a sign bearing either the legend "resume speed" or setting forth the new maximum speed limit.

§ 28–2126. Establishing speed on multiple lane highways

On multiple lane highways and on freeways with two or more separate roadways, different prima facie speed limits may be established for different roadways under any of the procedures specified in sections 28–2122, 28–2124 and 28–2125.

§ 28–2127. Charging speed violation; burden of proof

A. In a charge of violating a speed restriction in this article, the complaint and the summons or notice to appear shall specify the speed at which the defendant is alleged to have driven and the maximum speed applicable within the district or at the location.

B. The provision of this article declaring maximum speed limitations does not relieve the plaintiff in any civil action, other than a civil action to impose a civil penalty, from the burden of proving negligence on the part of the defendant as the proximate cause of an accident.

§ 28–2128. Commercial vehicles; finding on speed

If a person is charged with a criminal offense, except for excessive speed under section 28–2113, or cited for a civil traffic violation under this article and if the person is operating a commercial motor vehicle as defined by section 28–1501, the court, on conviction of the offense or on adjudication of the civil traffic complaint, shall make a finding based on either an admission or the evidence as to whether the speed that the vehicle was operated was fifteen miles per hour or more over the speed limit.

ARTICLE 5. RECKLESS USE OF VEHICLE

§ 28–2161. Reckless driving; classification; license; surrender

A. A person who drives a vehicle in reckless disregard for the safety of persons or property is guilty of reckless driving.

B. A person convicted of reckless driving is guilty of a class 2 misdemeanor.

C. In addition, the judge may require the surrender to the judge of any driver license of the convicted person and, on surrender of the license, shall forward to the

department the abstract of conviction with an order of the court suspending the driving privileges of the person for a period of not more than ninety days. On receipt of the abstract of conviction and order, the department shall suspend the driving privilege of the person for the period of time ordered by the judge.

D. If a person who is convicted of a violation of this section has been previously convicted of a violation of this section, section 13–1102 or section 13–1103, subsection A, paragraph 1, in the driving of a vehicle, or section 28–2162 or 28–2881 within a period of twenty-four months:

1. The person is guilty of a class 1 misdemeanor.

2. The person is not eligible for probation, pardon, suspension of sentence or release on any basis until the person has served not less than twenty days in jail.

3. The judge shall require the surrender to the judge of any driver license of the convicted person and shall immediately forward the abstract of conviction to the department.

4. On receipt of the abstract of conviction, the department shall revoke the driving privilege of the person.

E. The dates of the commission of the offense are the determining factor in applying subsection D of this section. A second or subsequent violation for which a conviction occurs as provided in this section does not include a conviction for an offense arising out of the same series of acts. A judge shall not grant probation to, suspend the imposition or execution of a jail sentence of or fail to secure the surrender to the judge of any license of a person for a second or subsequent conviction.

F. On pronouncement of a jail sentence under this section, the court may provide in the sentence that if the defendant is employed and can continue employment the defendant may continue the employment for not more than twelve hours per day nor more than six days per week and shall spend the remaining day, days or parts of days in jail until the sentence is served. The defendant shall be allowed out of jail only long enough to complete the defendant's actual hours of employment.

§ 28–2162. Racing on highways; classification; exception; definitions

A. A person shall not drive a vehicle or participate in any manner in a race, speed competition or contest, drag race or acceleration contest, test of physical endurance or exhibition of speed or acceleration or for the purpose of making a speed record on a street or highway.

B. A person who violates this section is guilty of a class 2 misdemeanor. If a person is convicted of a second or subsequent violation within twenty-four months of a first conviction, the person is guilty of a class 2 misdemeanor and is not eligible for probation, pardon or suspension of sentence or release on any other basis until the person has served not less than ten days in jail.

C. On pronouncement of a jail sentence under this section and in cases of extreme hardship, the court may provide in the sentence that if the defendant is employed and can continue employment the defendant may continue the employment for not more than twelve hours per day nor more than six days per week, and the defendant shall spend the remaining day, days or parts of days in jail until the sentence is served. The court may allow the defendant to be out of jail only long enough to complete the defendant's actual hours of employment and no longer.

D. If a person is convicted of violating this section, the judge may, on a first conviction, and shall, on a second or subsequent conviction for an offense committed within a period of twenty-four months, require the surrender to the judge of any driver license of the person and immediately forward the abstract of conviction to the department. On a first conviction, the judge may order the suspension of the driving privileges of the person for a period of not more than ninety days. In the

case of a first conviction and on receipt of the license, abstract of conviction and order of the court, the department shall suspend the driving privileges of the person for the period of time ordered by the judge. In the case of a second or subsequent conviction for an offense committed within a period of twenty-four months and on receipt of the license and the abstract of conviction, the department shall revoke the driving privileges of the person.

E. The director may authorize in writing an organized and properly controlled event to utilize a highway or part of a highway even though it is prohibited by this section. The authorization shall specify the time of the event, the highway or part of a highway to be utilized and any special conditions the director may require for the particular event.

F. For the purposes of this section:

1. "Drag race" means either:

(a) The operation of two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other.

(b) The operation of one or more vehicles over a common selected course and from the same point for the purpose of comparing the relative speeds or power of acceleration of the vehicle or vehicles within a certain distance or time limit.

2. "Racing" means the use of one or more vehicles in an attempt to outgain or outdistance another vehicle or prevent another vehicle from passing.

§ 28–2163. Obstruction to view; interference with driving

A. A person shall not drive a vehicle when the vehicle's load or passengers obstruct the driver's view to the front or sides of the vehicle or interfere with the driver's control over the vehicle's driving mechanism.

B. A passenger in a vehicle shall not ride in a position that interferes with the driver's view ahead or to the sides or that interferes with the driver's control over the vehicle's driving mechanism.

§ 28–2164. Opening vehicle door

A person shall not open a door on a motor vehicle unless it is reasonably safe to do so and can be done without interfering with the movement of other traffic. A person shall not leave a door open on a side of a motor vehicle exposed to moving traffic for a period of time longer than necessary to load or unload a passenger.

§ 28–2165. Mechanical raising and lowering devices

A person shall not raise or lower the height of a motor vehicle by mechanical means while the motor vehicle is in motion on a highway at a speed in excess of fifteen miles per hour.

§ 28–2166. Liability for emergency responses in flood areas; definitions

A. A driver of a vehicle who drives the vehicle on a public street or highway that is temporarily covered by a rise in water level, including groundwater or overflow of water, and that is barricaded because of flooding is liable for the expenses of any emergency response that is required to remove from the public street or highway the driver or any passenger in the vehicle that becomes inoperable on the public street or highway or the vehicle that becomes inoperable on the public street or highway, or both.

B. A person convicted of violating section 28–2161 for driving a vehicle into any area that is temporarily covered by a rise in water level, including groundwater or overflow of water, may be liable for expenses of any emergency response that is required to remove from the area the driver or any passenger in the vehicle that

becomes inoperable in the area or the vehicle that becomes inoperable in the area, or both.

C. The expenses of an emergency response are a charge against the person liable for those expenses pursuant to subsection A or B of this section. The charge constitutes a debt of that person and may be collected proportionately by the public agencies, for-profit entities or not-for-profit entities that incurred the expenses. The person's liability for the expenses of an emergency response shall not exceed two thousand dollars for a single incident. The liability imposed under this section is in addition to and not in limitation of any other liability that may be imposed.

D. An insurance policy may exclude coverage for a person's liability expenses of an emergency response under this section.

E. For the purposes of this section:

1. "Expenses of an emergency response" means reasonable costs directly incurred by public agencies, for-profit entities or not-for-profit entities that make an appropriate emergency response to an incident.

2. "Public agency" means this state and any city, county, municipal corporation, district or other public authority located in whole or in part in this state that provides police, fire fighting, medical or other emergency services.

3. "Reasonable costs" includes the costs of providing police, fire fighting, rescue and emergency medical services at the scene of an incident and the salaries of the persons who respond to the incident but does not include charges assessed by an ambulance service that is regulated pursuant to title 36, chapter 21.1, article 2.

ARTICLE 6. ROADWAY USAGE

§ 28-2191. Driving on right side of roadway; exceptions

A. On all roadways of sufficient width, a person shall drive a vehicle on the right half of the roadway except as follows:

1. When overtaking and passing another vehicle proceeding in the same direction under the rules governing the movement.

2. When the right half of a roadway is closed to traffic while under construction or repair.

3. On a roadway divided into three marked lanes for traffic under the rules applicable on the roadway.

4. On a roadway designated and signposted for one-way traffic.

B. On all roadways, a person driving a vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall drive the vehicle in the right-hand lane then available for traffic or as close as practicable to the right-hand curb or edge of the roadway, except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway.

§ 28-2192. Passing vehicles proceeding in opposite directions

Drivers of vehicles proceeding in opposite directions shall pass each other to the right, and on roadways having width for not more than one line of traffic in each direction, each driver shall give to the other driver at least one-half of the main traveled portion of the roadway as nearly as possible.

§ 28-2193. Overtaking a vehicle on the left

The following rules govern the overtaking and passing of vehicles proceeding in the same direction:

1. The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left of the vehicle at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

2. Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal or blinking of head lamps at nighttime and shall not increase the speed of the overtaken vehicle until completely passed by the overtaking vehicle.

§ 28–2194. Overtaking on the right

A. The driver of a vehicle may overtake and pass on the right of another vehicle only under the following conditions:

1. When the vehicle overtaken is making or about to make a left turn.

2. On a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for two or more lines of moving vehicles in each direction.

3. On a one-way street or on a roadway on which traffic is restricted to one direction of movement and if the roadway is free from obstructions and of sufficient width for two or more lines of moving vehicles.

B. The driver of a vehicle may overtake and pass another vehicle on the right only under conditions permitting the movement in safety. The driver shall not make the movement by driving off the pavement or main traveled portion of the roadway.

§ 28–2195. Limitations on overtaking on the left

A person shall not drive a vehicle to the left side of the center of the roadway in overtaking and passing another vehicle proceeding in the same direction unless the left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit the overtaking and passing to be completed without interfering with the safe operation of any vehicle approaching from the opposite direction or any vehicle overtaken. The overtaking vehicle shall return to the right-hand side of the roadway before coming within one hundred feet of any vehicle approaching from the opposite direction.

§ 28–2196. Limitations on driving to left of roadway center

A. A person shall not drive a vehicle to the left side of the roadway under the following conditions:

1. When approaching the crest of a grade or on a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction.

2. When approaching within one hundred feet of or traversing any intersection or railroad grade crossing or where appropriate signs or markings have been installed to define a no passing zone.

3. When the view is obstructed on approaching within one hundred feet of any bridge, viaduct or tunnel.

B. The limitations provided in this section do not apply on a one-way roadway.

§ 28–2197. No passing zones

The director may determine those portions of a highway where overtaking and passing or driving to the left of the roadway would be especially hazardous and may indicate the beginning and end of the zones by appropriate signs or markings on the roadway. When the signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey the directions of the signs or markings.

§ 28–2198. One-way roadways and rotary traffic islands

A. The director may designate any highway or any separate roadway under the director's jurisdiction for one-way traffic and shall erect appropriate signs giving notice of one-way traffic.

B. On a roadway designated and signposted for one-way traffic, a person shall drive a vehicle only in the direction designated.

C. A person shall drive a vehicle passing around a rotary traffic island only to the right of the island.

§ 28–2199. Driving on roadways laned for traffic

If a roadway is divided into two or more clearly marked lanes for traffic, the following rules in addition to all others consistent with this section apply:

1. A person shall drive a vehicle as nearly as practicable entirely within a single lane and shall not move the vehicle from that lane until the driver has first ascertained that the movement can be made with safety.

2. On a roadway that is divided into three lanes, a person shall not drive a vehicle in the center lane except when overtaking and passing another vehicle where the roadway is clearly visible and the center lane is clear of traffic within a safe distance, in preparation for a left turn or where the center lane is at the time allocated exclusively to traffic moving in the direction the vehicle is proceeding and is signposted to give notice of the allocation.

3. Official signs may be erected directing slow-moving traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the roadway, and drivers of vehicles shall obey the directions of every sign.

§ 28–2200. Following too closely

A. The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent and shall have due regard for the speed of the vehicles on, the traffic on and the condition of the highway.

B. The driver of a motor truck or motor vehicle that is drawing another vehicle when traveling on a roadway outside of a business or residence district and that is following another motor truck or motor vehicle drawing another vehicle shall leave, if conditions permit, sufficient space so that an overtaking vehicle may enter and occupy the space without danger. This subsection does not prevent a motor truck or motor vehicle drawing another vehicle from overtaking and passing any like vehicle or other vehicles.

C. A person shall operate a motor vehicle driven on a roadway outside of a business or residence district in a caravan or motorcade, whether or not towing other vehicles, to allow sufficient space between each vehicle or combination of vehicles to enable any other vehicle to enter and occupy the space without danger. This subsection does not apply to funeral processions.

§ 28–2201. Driving on divided highways

If a highway is divided into two roadways by leaving an intervening space or by a physical barrier or clearly indicated dividing section constructed to impede vehicular traffic, a person shall drive a vehicle only on the right-hand roadway and shall not drive a vehicle over, across or within the dividing space, barrier or section, except through an opening in the physical barrier or dividing section or space or at a crossover or intersection established by public authority.

§ 28–2202. **Restricted access**

A person shall not drive a vehicle onto or from a controlled access roadway except at entrances and exits established by public authority.

§ 28–2203. **Restrictions on use of controlled access highway**

A. The director may, and local authorities by ordinance may, prohibit the use of any part of a controlled access highway under their respective jurisdictions by pedestrians, bicycles or other nonmotorized traffic or by any person operating a motor driven cycle.

B. The director or the local authority adopting the prohibition prescribed in subsection A shall erect and maintain official signs on the applicable controlled access highway, and when erected a person shall not disobey the restrictions stated on the signs.

§ 28–2204. **Backing limitations**

A. The driver of a vehicle shall not back the vehicle unless the movement can be made with reasonable safety and without interfering with other traffic.

B. The driver of a vehicle shall not back the vehicle on any access road, exit or entrance ramp or roadway of a controlled access highway.

§ 28–2205. **Driving through safety zone**

A person shall not drive a vehicle through or within a safety zone.

ARTICLE 7. RESTRAINT SYSTEMS

§ 28–2231. **Child passenger restraint system; violation; classification; exemptions; definition**

A. Except as provided in subsection G of this section, a person shall not operate a motor vehicle on the highways in this state when transporting a child four years of age or younger or forty or fewer pounds in weight unless that child is properly secured in a child passenger restraint system.

B. The department shall adopt standards in accordance with federal motor vehicle standards for the performance, design and installation of child passenger restraint systems for use in motor vehicles for children four years of age or younger or forty or fewer pounds in weight.

C. A person who violates this section is subject to a civil penalty of fifty dollars, except that a civil penalty shall not be imposed if the defendant makes a sufficient showing that the motor vehicle has been subsequently equipped with a child passenger restraint system that meets the standards adopted pursuant to subsection B of this section. A sufficient showing may include a receipt mailed to the appropriate court officer that evidences purchase or acquisition of a child passenger restraint system. Notwithstanding section 13–811 or 22–404, the court imposing and collecting the fine shall transfer the monies, exclusive of any assessments imposed pursuant to sections 12–116.01 and 12–116.02, to the state treasurer for deposit in the child passenger restraint fund established by section 28–2233.

D. If a law enforcement officer stops a vehicle for an apparent violation of this section, the officer shall determine from the driver whether the unrestrained child or children in the vehicle are four years of age or younger or forty or fewer pounds in weight.

E. If the information given to the officer indicates that a violation of this section has not been committed, the officer shall not detain the vehicle any further unless some additional violation is involved. The stopping of a vehicle for an apparent or

actual violation of this section is not probable cause for the search or seizure of the vehicle unless there is probable cause for another violation of law.

F. The requirements of this section or evidence of a violation of this section are not admissible as evidence in a judicial proceeding except in a judicial proceeding for a violation of this section.

G. This section does not apply to any of the following:

1. A person who operates a motor vehicle that was originally manufactured without passenger restraint devices.

2. A person who operates a motor vehicle that is also a recreational vehicle as defined in section 41–2142.

3. A person who operates a commercial motor vehicle and who holds a current commercial driver license issued pursuant to chapter 4 of this title.

4. A person who must transport a child in an emergency to obtain necessary medical care.

5. A person who transports more than one child four years of age or younger or forty or fewer pounds in weight in a motor vehicle that because of the restricted size of the passenger area does not provide sufficient area for the required number of child passenger restraint devices, if both of the following conditions are met:

(a) At least one child is restrained as required by this section.

(b) The person has secured as many of the other children in child passenger restraint devices pursuant to this section as is reasonable given the restricted size of the passenger area and the number of passengers being transported in the motor vehicle.

§ 28–2232. Notice of law to parent

Before the release of any newly born child from a hospital, the hospital in conjunction with the attending physician shall provide the parents of the child with a copy of section 28–2231 and information with regard to the availability of loaner or rental programs for child passenger restraint devices that may be available in the community where the child is born.

§ 28–2233. Child passenger restraint fund; distribution of child passenger restraint systems; definition

A. A child passenger restraint fund is established in the state treasury. The fund consists of all civil penalties deposited pursuant to section 28–2231 and any monies donated by the public. The department of economic security shall administer the fund.

B. The department of economic security shall purchase child passenger restraint systems that meet the requirements of section 28–2231 from monies deposited in the fund. If a licensed hospital, a public or private agency providing shelter services to victims of domestic violence, a public or private agency providing shelter services to homeless families or a health clinic requests and if available, the department of economic security shall distribute child passenger restraint systems to the requesting hospital, public or private agency or health clinic.

C. On the application of a person to a hospital, a public or private agency providing shelter services to victims of domestic violence, a public or private agency providing shelter services to homeless families or a health clinic on a finding by the hospital, public or private agency or health clinic to which the application was made that the applicant is unable to acquire a child passenger restraint system because the person is indigent and subject to availability, the hospital, public or private agency or health clinic shall loan the applicant a child passenger restraint system at

no charge for as long as the applicant has a need to transport a child who is subject to section 28–2231.

D. Monies in the child passenger restraint fund shall not exceed twenty thousand dollars. The state treasurer shall deposit all monies collected over the twenty thousand dollar limit in the Arizona highway user revenue fund established in section 28–6533.

E. For the purposes of this section, "indigent" has the same meaning prescribed in section 11–297, subsection B.

§ 28–2234. **Vehicle restraints required; exceptions; civil penalty**

A. Each front seat occupant of a motor vehicle that is designed for carrying ten or fewer passengers, that is manufactured for the model year 1972 and thereafter and that is required to be equipped with an integrated lap and shoulder belt or a lap belt pursuant to the federal motor vehicle safety standards prescribed in 49 Code of Federal Regulations section 571.208 shall either:

1. Have the lap and shoulder belt properly adjusted and fastened while the vehicle is in motion.

2. If only a lap belt is installed where the occupant is sitting, have the lap belt properly adjusted and fastened while the vehicle is in motion.

B. The operator of a motor vehicle that is subject to the requirements of this section shall require each front seat passenger under sixteen years of age to comply with this section.

C. A peace officer shall not stop or issue a citation to a person operating a motor vehicle on a highway in this state for a violation of this section unless the peace officer has reasonable cause to believe there is another alleged violation of a motor vehicle law of this state.

D. If a person is found responsible for a civil traffic violation under this section, a department or agency of this state shall not consider the violation for the purpose of determining whether the person's driver license should be suspended or revoked. A court shall not transmit abstracts of records of violations of this section to the department.

E. An insurer shall not consider a civil traffic violation under this section as a traffic violation against the person for the purposes of establishing rates for motor vehicle liability insurance or determining the insurability of the person. An insurer shall not cancel or refuse to renew any policy of insurance for such a violation.

F. This section does not apply to:

1. A child subject to the requirements of section 28–2231.

2. A person possessing a written statement from a physician that the person is unable for medical or psychological reasons to wear a lap and shoulder belt or a lap belt.

3. A letter carrier of the United States postal service while the letter carrier is performing the letter carrier's duties.

G. If a person is found responsible for a civil traffic violation under this section, the person is subject to a maximum civil penalty of ten dollars for each violation.

H. The driver of a motor vehicle found responsible for a civil traffic violation under this section relating to passengers under the age of sixteen years is subject to a maximum civil penalty of ten dollars for each violation.

ARTICLE 8. TURNING AND STARTING

§ 28–2271. Required position and method of turning

The driver of a vehicle intending to turn shall do so as follows:

1. Right turns. Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

2. Left turns. The driver of a vehicle intending to turn left shall approach the turn in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of the vehicle. If practicable the driver shall make the left turn from the left of the center of the intersection and shall make the turn to the left lane immediately available for the driver's direction of traffic.

3. The director or local authorities in their respective jurisdictions may cause markers, buttons or signs to be placed and may require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection, and when markers, buttons or signs are so placed, a driver of a vehicle shall not turn a vehicle other than as directed and required by the markers, buttons or signs.

4. Two-way left turn lanes. If a special lane for making left turns by drivers proceeding in opposite directions has been indicated by official traffic control devices:

(a) A driver shall not make a left turn from any other lane.

(b) A driver shall not drive a vehicle in the lane except if preparing for or making a left turn from or into the roadway or if preparing for or making a u-turn if otherwise permitted by law.

§ 28–2272. Limitations on turning around

A person shall not turn a vehicle to proceed in the opposite direction on a curve or on the approach to or near the crest of a grade if the vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred feet.

§ 28–2273. Starting parked vehicle

A person shall not start a vehicle that is stopped, standing or parked unless the movement can be made with reasonable safety.

§ 28–2274. Turning movements and required signals

A. A person shall not turn a vehicle at an intersection unless the vehicle is in proper position on the roadway as required in section 28–2271, turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or move right or left on a roadway unless the movement can be made with reasonable safety and an appropriate signal is given in the manner provided by this article in the event any other traffic may be affected by the movement.

B. The driver shall give continuously during not less than the last one hundred feet traveled by the vehicle before turning a signal of intention to turn right or left when required.

C. A person shall not stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided by this article to the driver of any vehicle immediately to the rear if there is an opportunity to give the signal.

§ 28–2275. Hand or arm signals or signal device

A person shall give a stop or turn signal if required by this article by means of the hand and arm or by a signal lamp or lamps or mechanical signal device of a type approved by the department. If a vehicle is constructed or loaded so that a hand and arm signal would not be visible both to the front and rear of the vehicle, the signals must be given by a lamp or lamps or signal device.

§ 28–2276. Method of giving hand and arm signals

A. Except as provided by subsection B, a person shall give all signals required by this article to be given by hand and arm from the left side of the vehicle in the following manner, and the signals shall indicate as follows:

1. Left turn. Hand and arm extended horizontally.

2. Right turn. Hand and arm extended upward.

3. Stop or decrease speed. Hand and arm extended downward.

B. A person operating a bicycle may give a right turn signal by extending the right hand and arm horizontally to the right side of the bicycle.

ARTICLE 9. RIGHT-OF-WAY

§ 28–2301. Vehicle at intersection; exception; entering freeway

A. When two vehicles enter or approach an intersection from different streets or highways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right. This subsection does not apply to vehicles approaching or entering an uncontrolled "T" intersection when the vehicle on the left is on a continuing street or highway and the vehicle on the right is on the terminating street or highway. The vehicle on the terminating street or highway shall yield to the vehicle on the continuing street or highway.

B. The right-of-way rule prescribed in subsection A of this section is modified at through highways and otherwise as stated in this article.

C. Intersecting road crossings between the main roadway of a freeway and acceleration lanes, ramps or any other approach roads are not intersections within the meaning of section 28–2001 and subsection A of this section does not control questions of right-of-way at the crossings. A vehicle entering a freeway from an acceleration lane, a ramp or any other approach road shall yield the right-of-way to a vehicle on the main roadway of the freeway entering the merging area at the same time.

§ 28–2302. Vehicle turning left at intersection

The driver of a vehicle within an intersection intending to turn to the left shall yield the right-of-way to a vehicle that is approaching from the opposite direction and that is within the intersection or so close to the intersection as to constitute an immediate hazard.

§ 28–2303. Through highway; intersection entrance

A. The driver of a vehicle shall stop as required by section 28–2411 at the entrance to a through highway and shall yield the right-of-way to other vehicles that have entered the intersection from the through highway or that are approaching so closely on the through highway as to constitute an immediate hazard, but the driver having so yielded may proceed and the drivers of all other vehicles approaching the intersection on the through highway shall yield the right-of-way to the vehicle that is proceeding into or across the through highway.

B. The driver of a vehicle shall stop in obedience to a stop sign as required by this chapter at an intersection where a stop sign is erected at one or more entrances to the intersection although not a part of a through highway, shall proceed cautiously and shall yield to vehicles that are not obliged to stop and that are within the intersection or are approaching so closely as to constitute an immediate hazard, but may then proceed.

§ 28–2304. Highway access from private road or driveway

The driver of a vehicle about to enter or cross a highway from a private road or driveway shall yield the right-of-way to all closely approaching vehicles on the highway.

§ 28–2305. Approach of authorized emergency vehicle; following fire apparatus

A. Except when otherwise directed by a police officer, on the immediate approach of an authorized emergency vehicle equipped with at least one lighted lamp exhibiting a red or red and blue light or lens visible under normal atmospheric conditions from a distance of five hundred feet to the front of the vehicle, other than a police vehicle when operated as an authorized emergency vehicle, and when the driver is giving an audible signal by siren, exhaust whistle or bell, the driver of a vehicle shall:

1. Yield the right-of-way.

2. Immediately drive to a position parallel to and as close as possible to the right-hand edge or curb of the roadway clear of any intersection.

3. Stop and remain in the position prescribed in paragraph 2 until the authorized emergency vehicle has passed.

B. The driver of a vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than five hundred feet or drive into or park the vehicle within the block where fire apparatus has stopped in answer to a fire alarm.

C. This section does not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

§ 28–2306. Funeral procession right-of-way; funeral escort vehicles; certification; fee; definition

A. Pedestrians and the operators of all vehicles, except emergency vehicles, shall yield the right-of-way to each vehicle that is a part of a funeral procession being led by a funeral escort vehicle. The driver of the funeral escort vehicle may direct the drivers of other vehicles in the procession to proceed through any intersection or to make turns or other movements, and the other vehicles may continue to follow and make the turns or other movements as are made by or as directed by the driver of the funeral escort vehicle notwithstanding any traffic control device prescribed by statute or local ordinance, except that the operator shall not exceed the posted speed limit and shall exercise reasonable and prudent care to avoid colliding with any other vehicle or pedestrian on the roadway. Each vehicle in a funeral procession shall have its headlights lighted.

B. A driver of a funeral escort vehicle who is certified pursuant to subsection D of this section may direct and control the drivers of vehicles in a funeral procession and any other vehicle in or approaching any intersection to stop, proceed or make the turns or other movements as required without regard to any traffic control device prescribed by statute or local ordinance. Funeral escort vehicles may exceed the speed limit by fifteen miles per hour when overtaking processions to direct

traffic at the next intersection. A funeral escort vehicle shall be equipped with at least one lighted lamp exhibiting a red or red and blue light or lens visible under normal atmospheric conditions from a distance of five hundred feet to the front of the vehicle.

C. The sheriff in each county shall register funeral escort vehicles and issue an identification sticker or plate that is affixed to the vehicle in order to identify the vehicle as a funeral escort vehicle. When acting as a funeral escort, the driver of a properly equipped and registered funeral escort vehicle has all of the rights and privileges of a driver of an authorized emergency vehicle proceeding to an emergency call as provided under section 28-2030.

D. The sheriff in each county may certify any person who holds at least a valid class D driver license issued by this state as a certified driver of a funeral escort vehicle if the person:

1. Completes a training program in motor vehicle safety and traffic control safety as prescribed by the sheriff.

2. Pays the fee that is prescribed by the sheriff for the program and that does not exceed the cost of the program.

E. For the purposes of this section, "funeral procession" means two or more vehicles accompanying the body of a deceased person, including a funeral escort vehicle registered by the sheriff.

ARTICLE 10. OBJECTS ON ROADWAY

§ 28-2331. Crossing fire hose

A person shall not drive a vehicle over an unprotected hose of a fire department when laid down on a street or private driveway to be used at a fire or alarm of fire without the consent of the fire department official in command.

§ 28-2332. Objects on roadway; prohibition

A. A person shall not throw or deposit on a roadway any glass bottle, glass, nails, tacks, wire, cans or other substance likely to injure a person, animal or vehicle on the roadway.

B. A person who drops or permits to be dropped or thrown on a roadway any destructive or injurious material shall immediately remove the material or cause it to be removed.

C. A person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped on the highway from the vehicle.

§ 28-2333. Barbed wire; damages

A person who owns, leases, has charge of or possesses a barbed wire fence along a highway:

1. Shall not permit or allow the wire of the fence to lie loose along or in the highway so as to endanger the safety of a person or animal passing along the highway.

2. Is liable for all damages arising from the loose wire.

§ 28-2334. Dropping objects from overpass; classification; definition

A. A person on an overpass who with criminal negligence drops, throws, shoots or otherwise propels an object at or on the lower level street or highway or at or on

a motor vehicle that is standing or being operated on the lower level street or highway is guilty of a class 1 misdemeanor.

B. For purposes of this section, "overpass" means the upper level of a crossing, at different levels, of two streets or highways or a street or highway and a pedestrian path or railroad.

ARTICLE 11. PEDESTRIAN RIGHTS AND DUTIES

§ 28–2351. Pedestrians subject to traffic rules

A. Pedestrians are subject to traffic control signals at intersections as provided in section 28–2075 unless required by local ordinance to comply strictly with the signals. At all places other than intersections, pedestrians are accorded the privileges and are subject to the restrictions stated in this article.

B. A local authority may require by ordinance that pedestrians strictly comply with the directions of an official traffic control signal and may prohibit by ordinance pedestrians from crossing a roadway in a business district or crossing a designated highway except in a crosswalk.

§ 28–2352. Right-of-way at crosswalk

A. Except as provided in section 28–2354, subsection B, if traffic control signals are not in place or are not in operation, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be in order to yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is on the half of the roadway on which the vehicle is traveling or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.

B. A pedestrian shall not suddenly leave a curb or other place of safety and walk or run into the path of a vehicle that is so close that it is impossible for the driver to yield.

C. If a vehicle is stopped at a marked crosswalk or at an unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of another vehicle approaching from the rear shall not overtake and pass the stopped vehicle.

§ 28–2353. Pedestrians to use right half of crosswalk

When practicable, pedestrians shall move expeditiously on the right half of crosswalks.

§ 28–2354. Crossing at other than crosswalk

A. A pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles on the roadway.

B. A pedestrian crossing a roadway at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles on the roadway.

C. Between adjacent intersections at which traffic control signals are in operation, pedestrians shall not cross at any place except in a marked crosswalk.

§ 28–2355. Pedestrian on roadways

A. If sidewalks are provided, it is unlawful for a pedestrian to walk along and on an adjacent roadway.

B. If sidewalks are not provided, a pedestrian walking along and on a highway shall walk when practicable only on the left side of the roadway or its shoulder facing traffic that may approach from the opposite direction.

C. A person shall not stand in a roadway for the purpose of soliciting a ride from the driver of a vehicle.

§ 28–2356. School crossings; definition

A. The director, with respect to state highways, or the officer, board or commission of the appropriate jurisdiction, with respect to county highways or city or town streets, by and with the advice of the school district governing board or county school superintendent may mark or cause to be marked by the department or local authorities crosswalks in front of each school building or school grounds abutting the crosswalks where children are required to cross the highway or street.

B. The department or local authorities may approve additional crossings across highways not abutting on school grounds on application of school authorities and with written satisfactory assurance given the department or local authorities that guards will be maintained by the school district at the crossings to enforce the proper use of the crossing by school children.

C. The manual prescribed in section 28–2071 shall provide for yellow marking of the school crossing, yellow marking of the center line of the roadway and the erection of portable signs indicating that vehicles must stop when persons are in the crossing. The manual shall also provide the type and wording of portable signs indicating that school is in session and permanent signs that warn of the approach to school crossings.

D. When the school crossings are established, school authorities shall place the portable signs indicating that school is in session within the highway but not more than three hundred feet each side of the school crossing, and "stop when children are in crosswalk" signs at school crossings. School authorities shall maintain these signs when school is in session and shall cause them to be removed immediately when school is not in session.

E. A vehicle approaching the crosswalk shall not proceed at a speed of more than fifteen miles per hour between the portable signs placed on the highway indicating "school in session" and "stop when children are in crosswalk".

F. When a school authority places and maintains the required portable "school in session" signs and "stop when children are in crosswalk" signs, all vehicles shall come to a complete stop at the school crossing when the crosswalk is occupied by a person.

G. Notwithstanding any other law:

1. An agency of appropriate jurisdiction may establish a school crossing on an unpaved highway or street adjacent to a school when the agency determines the need for the school crossing on the basis of a traffic study. School crossings on unpaved highways and streets shall be marked by the use of signs as prescribed in the manual prescribed in section 28–2071.

2. A local authority may establish a school crossing at an intersection containing a traffic control signal if the local authority determines the need for a school crossing on the basis of a traffic study.

H. For the purposes of this section, "school in session", when used either in reference to the period of time or to signs, means during school hours or while children are going to or leaving school during opening or closing hours.

§ 28–2357. Drivers to exercise due care

Notwithstanding the provisions of this chapter every driver of a vehicle shall:

1. Exercise due care to avoid colliding with any pedestrian on any roadway.

2. Give warning by sounding the horn when necessary.

3. Exercise proper precaution on observing a child or a confused or incapacitated person on a roadway.

§ 28–2358. Driving on sidewalk

A. A person shall not drive a vehicle on a sidewalk area except on a permanent or duly authorized temporary driveway.

B. This section does not apply to a motorized wheelchair, authorized emergency vehicle, security vehicle owned by this state or small service vehicle owned by this state or a political subdivision of this state.

§ 28–2359. Persons in wheelchairs

A person operating a wheelchair or motorized wheelchair has all of the rights and duties applicable to a pedestrian contained in this chapter and chapters 6, 7 and 8 of this title except provisions that by their nature can have no application.

ARTICLE 12. DRIVING ON GRADES

§ 28–2391. Driving on mountain highways

The driver of a motor vehicle traveling through defiles or canyons or on mountain highways shall hold the motor vehicle under control and as near the right-hand edge of the roadway as reasonably possible.

§ 28–2392. Coasting prohibited

A. The driver of a motor vehicle traveling on a down grade shall not coast with the gears of the vehicle in neutral.

B. The driver of a commercial motor vehicle traveling on a down grade shall not coast with the clutch disengaged.

ARTICLE 13. SPECIAL STOPS

§ 28–2411. Stop signs; yield signs

A. The director, with reference to state highways, and local authorities, with reference to other highways under their jurisdiction, may designate through highways and erect stop or yield signs at specified entrances to the through highways or may designate an intersection as a stop or yield intersection and erect like signs at one or more entrances to the intersection.

B. A driver of a vehicle approaching a stop sign shall stop before entering the crosswalk on the near side of the intersection, or if there is no crosswalk, shall stop at a clearly marked stop line, or if there is no line, shall stop at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection except when directed to proceed by a police officer.

C. The driver of a vehicle approaching a yield sign shall slow down in obedience to the sign to a speed reasonable for the existing conditions and shall yield the right-of-way to any vehicle in the intersection or approaching on another highway so closely as to constitute an immediate hazard during the time the driver is moving across or within the intersection. If after driving past a yield sign without stopping the driver is involved in a collision with a vehicle in the intersection, the collision is prima facie evidence of the driver's failure to yield the right-of-way.

§ 28-2412. **Emerging from alley, driveway or building**

The driver of a vehicle emerging from an alley, driveway or building within a business or residence district shall:

1. Stop the vehicle immediately before driving onto a sidewalk or onto the sidewalk area extending across any alleyway or private driveway.

2. Yield the right-of-way to any pedestrian as necessary to avoid collision.

3. On entering the roadway, yield the right-of-way to all closely approaching vehicles on the roadway.

§ 28-2413. **Approach of train signal**

A. When a person driving a vehicle approaches a railroad grade crossing under any of the following circumstances the driver of the vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of the railroad and shall not proceed until the driver can do so safely:

1. A clearly visible electric or mechanical signal device gives warning of the immediate approach of a railroad train.

2. A crossing gate is lowered or a human flagman gives or continues to give a signal of the approach or passage of a railroad train.

3. A railroad train approaching within approximately one thousand five hundred feet of the highway crossing emits a signal audible from such distance and the railroad train is an immediate hazard by reason of its speed or proximity to the crossing.

4. An approaching railroad train is plainly visible and is in hazardous proximity to the crossing.

B. A person shall not drive a vehicle through, around or under a crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed.

§ 28-2414. **Dangerous railroad grade crossing**

The director, and local authorities with the approval of the director, may designate particularly dangerous highway grade crossings of railroads and may erect stop signs at the crossings. If the stop signs are erected, the driver of a vehicle shall stop within fifty feet but not less than fifteen feet from the nearest rail of the railroad and shall proceed only on exercising due care.

§ 28-2415. **Railroad grade crossing; stop required of certain vehicles**

A. Except as otherwise provided in this article, before crossing at grade any track or tracks of a railroad, the driver of a motor vehicle carrying passengers for hire, of any school bus carrying any school child or of any vehicle carrying or returning after delivery of explosive substances or flammable liquids as a cargo or part of a cargo shall:

1. Stop the vehicle within fifty feet but not less than fifteen feet from the nearest rail of the railroad.

2. While stopped shall listen and look in both directions along the track for an approaching train and for signals indicating the approach of a train.

3. Not proceed until the driver can do so safely.

B. After stopping as required by this section and on proceeding when it is safe to do so, the driver of the vehicle shall cross only in a gear of the vehicle for which there is no need to change gears while traversing the crossing and shall not shift gears while crossing the track or tracks.

C. This section does not apply at:

1. A crossing where a police officer or a traffic control signal directs traffic to proceed.

2. A street railway grade crossing within a business or residence district.

§ 28–2416. Railroad grade crossing; heavy equipment; exception

A. A person shall not operate or move any crawler type tractor, steam shovel, derrick, roller or other equipment or structure having a normal operating speed of ten miles per hour or less or a vertical body or load clearance of less than one-half inch per foot of the distance between any two adjacent axles or in any event of less than nine inches measured above the level surface of a roadway on or across a track at a railroad grade crossing unless:

1. Notice of the intended crossing is given to a station agent of the railroad.

2. Before making the crossing, the person operating or moving the vehicle or equipment:

(a) Stops the vehicle or equipment at least fifteen feet but not more than fifty feet from the nearest rail of the railroad.

(b) While so stopped, listens and looks in both directions along the track for an approaching train and for signals indicating the approach of a train.

3. Does not proceed until the crossing can be made safely.

B. A person shall not make a crossing pursuant to this section when a warning is given by automatic signal, crossing gates or a flagman or otherwise of the immediate approach of a railroad train or car. If a flagman is provided by the railroad, movement over the crossing shall be under the flagman's direction.

C. This section does not apply to the normal movement of farm equipment in the regular course of a farm operation.

§ 28–2417. Overtaking and passing school bus; violation; classification; driver license suspension

A. On meeting or overtaking from either direction a school bus that has stopped on the highway, the driver of a vehicle on a highway shall:

1. Stop the vehicle before reaching the school bus, if the school bus is displaying the signal as provided in section 28–3321, subsection C and if alternately flashing lights are in use.

2. Not proceed until the school bus resumes motion or the signal and alternately flashing lights are no longer displayed.

B. The driver of a vehicle on a highway with separate roadways need not stop on meeting or passing a school bus that is:

1. On a different roadway.

2. On a controlled access highway and the school bus is stopped in a loading zone that is a part of or adjacent to the highway and where pedestrians are not permitted to cross the roadway.

C. For the purposes of subsection B, a lane or group of lanes on either side of a two-way left turn lane is not considered a separate roadway.

D. A person who violates subsection A is guilty of a class 3 misdemeanor. For a second conviction within one year the person is guilty of a class 2 misdemeanor. On a third or subsequent conviction within one year after the last conviction the person is guilty of a class 1 misdemeanor.

E. A person convicted of a violation of subsection A for a second or subsequent time may have the person's driver license suspended for a period of not more than six months by the judge or justice of the peace hearing the person's case.

§ 28–2418. Overtaking and passing school bus; report by school bus operator; notification letter

A. The operator of a school bus who observes a violation of section 28–2417 may prepare a signed written report that indicates that a violation occurred. The report shall include:

1. The date, time and approximate location of the violation.

2. The number and state of issuance of the license plate on the vehicle involved in the violation.

3. Identification of the vehicle as an automobile, a station wagon, a truck, a bus, a motorcycle or any other type of vehicle.

4. The color of the vehicle involved in the violation.

B. Within two days after the violation occurs, excluding weekends and holidays, the school bus operator shall send a copy of the report to the director. On receiving the report, the director shall promptly mail a notification letter to the last known registered owner of the vehicle. The letter shall include:

1. A notification containing the information included in the bus operator's report and stating that a vehicle registered in the vehicle owner's name was observed passing a school bus loading and unloading children.

2. A complete explanation of the provisions of section 28–2417.

3. An explanation that the notification letter is not a police citation but is an effort to call attention to the seriousness of the incident.

§ 28–2419. Stops at school

In receiving or discharging children at the school, a person who drives a vehicle carrying children to and from school shall stop the vehicle on the side of the highway on which the school is located.

§ 28–2420. Approaching horses and livestock

A person operating a motor vehicle on a highway and approaching a horse drawn vehicle, a horse on which a person is riding or livestock being driven on the highway shall exercise reasonable precaution to prevent frightening and to safeguard the animals and to ensure the safety of persons riding or driving the animals. If the animals appear frightened, the person in control of the vehicle shall reduce its speed and if requested by signal or otherwise shall not proceed further toward the animals unless necessary to avoid accident or injury until the animals appear to be under control.

ARTICLE 14. STOPPING, STANDING AND PARKING

§ 28–2451. Stopping, standing or parking prohibitions

Except if necessary to avoid conflict with other traffic or if in compliance with law or the directions of a police officer or traffic control device, a person shall not stop, stand or park a vehicle in any of the following places:

1. On a sidewalk.

2. In front of a public or private driveway.

3. Within an intersection.

4. Within fifteen feet of a fire hydrant.

5. On a crosswalk.

6. Within twenty feet of a crosswalk at an intersection.

7. Within thirty feet on the approach to any flashing beacon, stop sign, yield sign or traffic control signal located at the side of a roadway.

8. Between a safety zone and the adjacent curb or within thirty feet of points on the curb immediately opposite the ends of a safety zone, unless the director or a local authority indicates a different length by signs or markings.

9. Within fifty feet of the nearest rail or a railroad crossing or within eight feet six inches of the center of any railroad track, except while a motor vehicle with motive power attached is loading or unloading railroad cars.

10. Within twenty feet of the driveway entrance to a fire station and on the side of a street opposite the entrance to any fire station within seventy-five feet of the entrance when properly posted.

11. Alongside or opposite a street excavation or obstruction when stopping, standing or parking would obstruct traffic.

12. On the roadway side of a vehicle stopped or parked at the edge or curb of a street.

13. On a bridge or other elevated structure on a highway or within a highway tunnel.

14. At any place where official signs prohibit standing or stopping.

15. On a controlled access highway except for emergency reasons or except in areas specifically designated for parking such as rest areas.

§ 28-2452. Stopping, standing or parking outside business or residence district

A. On a highway outside of a business or residence district, a person shall not stop, park or leave standing a vehicle, whether attended or unattended, on the paved or main traveled part of the highway if it is practicable to stop, park or leave the vehicle off that part of the highway. If a person stops, parks or leaves standing a vehicle, the person shall leave an unobstructed width of the highway opposite the standing vehicle for the free passage of other vehicles and a clear view of the standing vehicle shall be available from a distance of two hundred feet in each direction on the highway.

B. This section does not apply to:

1. The driver of a vehicle that is disabled while on the paved or main traveled portion of a highway in a manner and to an extent that it is impossible to avoid stopping and temporarily leaving the disabled vehicle in the position.

2. A vehicle or the driver of a vehicle engaged in the official delivery of the United States mail that stops on the right-hand side of the highway for the purpose of picking up or delivering mail if the following conditions are met:

(a) A clear view of the vehicle is available from a distance of three hundred feet in each direction on the highway or a flashing amber light at least four inches in diameter with the letters "stop" printed on the light is attached to the rear of the vehicle.

(b) The vehicle has a uniform sign that:

(i) Is at least fourteen inches in diameter.

(ii) Is approved by the department.

(iii) Has the words "U.S. mail" printed on the sign.

(iv) Is attached to the rear of the vehicle.

§ 28–2453. **Removal of illegally stopped vehicles; liability for costs; hearing**

A. If a police officer finds a vehicle standing on a highway in violation of section 28–2452 the officer may move the vehicle or require the driver or other person in charge of the vehicle to move the vehicle to a position off the paved or main traveled part of the highway.

B. A police officer may remove or cause to be removed to a place of safety an unattended vehicle that is illegally left standing on a highway, bridge or causeway or in a tunnel in a position or under circumstances that obstruct the normal movement of traffic.

C. A police officer may remove or cause the removal of a vehicle to the nearest garage or other place of safety as follows:

1. If a report has been made that the vehicle has been stolen or taken without the consent of its owner.

2. If the person or persons in charge of the vehicle are unable to provide for its custody or removal.

3. If the person driving or in control of the vehicle is arrested for an alleged offense for which the officer is required by law to take the person arrested before a proper magistrate without unnecessary delay.

4. If the vehicle is left unattended for more than four hours on the right-of-way of a freeway that has full control of access and no crossings at grade.

5. If the vehicle is left unattended for more than two hours on the right-of-way of a freeway within the boundaries of a city that has full control of access and no crossings at grade.

D. Except as provided in subsection E of this section:

1. The public agency employing an officer who removes or causes the removal of a vehicle under this section is not liable for the cost of towing or storing the vehicle if the officer acts under color of the officer's lawful authority.

2. Before release of the vehicle by the towing service, the owner or the owner's agent of a vehicle that is removed or caused to be removed under this article shall pay or make satisfactory arrangements to pay for any reasonable towing and storage costs incurred in towing or storing the vehicle.

E. If a tow truck operator is required in writing by a public agency to tow or store a vehicle that is required as evidence in a criminal action or for future criminal investigation by the public agency, the public agency is liable for the towing and storage costs of the vehicle.

F. If a police officer removes or causes the removal of a vehicle as permitted by this section, the public agency employing the officer shall provide the registered owner of the vehicle or the registered owner's agent with the opportunity for a post storage hearing to determine the validity of the removal. This hearing shall be conducted within forty-eight hours after a request, excluding weekends and holidays. The public agency employing the officer may authorize its own officer or employee to conduct the hearing if the hearing officer is not the same person who removed or caused the removal of the vehicle. The public agency employing the officer who removes or causes the removal of the vehicle is responsible for the costs incurred for towing and storage if it is determined in the hearing that probable cause for the removal is not established.

§ 28–2454. **Additional parking rules**

A. Except as otherwise provided in this section, a person who stops or parks a vehicle on a roadway where there are adjacent curbs shall stop or park the vehicle with its right-hand wheels parallel to and within eighteen inches of the right-hand curb.

B. A local authority may permit:

1. Parking of vehicles with the left-hand wheels adjacent to and within eighteen inches of the left-hand curb of a one-way roadway.

2. Angle parking on any roadway, except that a local authority shall not permit angle parking on any federal aid or state highway unless the director has determined by resolution or order that the roadway is of sufficient width to permit angle parking without interfering with the free movement of traffic. With respect to highways under the director's jurisdiction, the director may place signs prohibiting or restricting the stopping, standing or parking of vehicles on any highway where in the director's opinion the stopping, standing or parking is dangerous to those using the highway or where the stopping, standing or parking of vehicles would unduly interfere with the free movement of traffic on the highway. The signs are official signs, and a person shall not stop, stand or park a vehicle in violation of the restrictions stated on the signs.

§ 28–2455. Law enforcement exception

The stopping, standing or parking restrictions provided in this article do not apply to a police or peace officer when the stopping, standing or parking is for the purpose of actual performance of a law enforcement duty.

ARTICLE 15. PARKING FOR PHYSICALLY DISABLED PERSONS

§ 28–2481. Parking restrictions; applicability

This article does not apply:

1. To zones where stopping, standing or parking is prohibited to all vehicles as provided in sections 28–2451, 28–2452 and 28–3176.

2. If there is a local ordinance that prohibits parking during heavy traffic periods such as rush hours or where parking clearly would present a traffic hazard for the general public.

§ 28–2482. Parking spaces for physically disabled persons

A. Each state agency having jurisdiction over street parking or publicly owned and operated parking facilities shall provide specially designated and marked motor vehicle parking spaces for the exclusive use of physically disabled persons.

B. Each political subdivision of this state having jurisdiction over street parking or publicly owned and operated parking facilities shall provide, as determined by the county board of supervisors or the governing body of a city or town, specially designated and marked motor vehicle parking spaces for the exclusive use of physically disabled persons.

C. Each parking space prescribed in this section shall be prominently outlined with paint and posted with a permanent sign that is located at least three feet but not more than six feet above the grade, that is of a color and design approved by the department and that bears the internationally accepted symbol of access and the caption "reserved parking".

§ 28–2483. Parking space for physically disabled persons; prohibition

A. Except as provided in subsection B, a person shall not stop, stand or park a motor vehicle within any specially designated and marked parking space provided pursuant to this article unless the motor vehicle is transporting a person who has been issued a valid placard or international symbol of access special plates and either:

1. The motor vehicle displays the valid permanently disabled or temporarily disabled removable windshield placard.

2. The motor vehicle displays international symbol of access special plates that are currently registered to the vehicle.

B. A person who is chauffeuring a physically disabled person without a placard or international symbol of access special plates may park momentarily in a parking space provided pursuant to this article for the purpose of loading or unloading the disabled person, and a complaint shall not be issued to the driver for the momentary parking.

§ 28–2484. Agreements with other jurisdictions; reciprocity

A. The director may enter into agreements with other jurisdictions, including foreign jurisdictions, on behalf of this state relating to the extension to residents of this state of parking privileges for persons with a permanent disability and to recognize international symbol of access special plates or the placard issued by the other jurisdictions.

B. This state shall grant the same parking privileges that are granted to a resident of this state to a nonresident for a motor vehicle licensed in another state or foreign country displaying the international symbol of access special plates or the placard issued in accordance with the laws of the nonresident's state or foreign country even if a written agreement to do so does not exist between this state and the nonresident's state or foreign country.

§ 28–2485. Volunteer program

A local authority may establish a volunteer parking enforcement specialist program for parking for physically disabled persons. Under this program, the local authority may authorize volunteers to issue citations only to persons who violate section 28–2483 or an ordinance regulating parking in parking spaces for physically disabled persons.

§ 28–2486. Civil traffic violation; civil penalty; recall of placards and plates

A. If a law enforcement officer or a parking enforcement specialist employed by a local authority finds a motor vehicle in violation of this article, the person shall issue a complaint to the operator or other person in charge of the motor vehicle or, if an operator or person in charge is not present, to the registered owner of the vehicle for a civil traffic violation. A court or duly appointed hearing officer shall impose on the operator, person in charge or owner of a vehicle parked in violation of this section a minimum civil penalty of fifty dollars plus the penalty assessments prescribed by statute.

B. If a person violates this article, the director may recall the placard or international symbol of access special plates issued to the person.

ARTICLE 16. OPERATION OF BICYCLES

§ 28–2511. Applicability

Except as otherwise provided in this article, the rules of this chapter apply to a bicycle when it is operated on a highway or on a path set aside for the exclusive use of bicycles.

§ 28–2512. Parent and guardian responsibility

The parent of a child and the guardian of a ward shall not authorize or knowingly permit the child or ward to violate this chapter.

§ 28-2513. Applicability of traffic laws to bicycle riders

A person riding a bicycle on a roadway or on a shoulder adjoining a roadway has all of the rights and is subject to all of the duties applicable to the driver of a vehicle by this chapter and chapters 6, 7 and 8 of this title, except special rules in this article and except provisions of this chapter and chapters 6, 7 and 8 of this title that by their nature can have no application.

§ 28-2514. Riding on bicycles

A. A person propelling a bicycle shall not ride other than on or astride a permanent and regular seat attached to the bicycle.

B. A person shall not use a bicycle to carry more persons at one time than the number for which it is designed and equipped.

§ 28-2515. Clinging to vehicle

A person riding on a bicycle, coaster, sled or toy vehicle or on roller skates shall not attach the bicycle, coaster, sled, toy vehicle or roller skates or himself to a vehicle on a roadway.

§ 28-2516. Riding on roadway and bicycle path

A. A person riding a bicycle on a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing shall ride as close as practicable to the right-hand curb or edge of the roadway, except under any of the following situations:

1. If overtaking and passing another bicycle or vehicle proceeding in the same direction.

2. If preparing for a left turn at an intersection or into a private road or driveway.

3. If reasonably necessary to avoid conditions, including fixed or moving objects, parked or moving vehicles, bicycles, pedestrians, animals or surface hazards.

4. If the lane in which the person is operating the bicycle is too narrow for a bicycle and a vehicle to travel safely side by side within the lane.

B. A person riding a bicycle on a roadway shall not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.

§ 28-2517. Bicycle path usage

A. A path or lane that is designated as a bicycle path or lane by state or local authorities is for the exclusive use of bicycles even though other uses are permitted pursuant to subsection B or are otherwise permitted by state or local authorities.

B. A person shall not operate, stop, park or leave standing a vehicle in a path or lane designated as a bicycle path or lane by a state or local authority except for use in the case of emergency or for use in crossing the path or lane to gain access to a public or private road or driveway.

C. Subsection B does not prohibit the use of the path or lane by the appropriate local authority.

§ 28-2518. Carrying article on bicycle

A person shall not carry a package, bundle or article while operating a bicycle if the package, bundle or article prevents the driver from keeping at least one hand on the handlebars.

§ 28–2519. Bicycle safety fund

A. A bicycle safety fund is established in the state treasury. The department shall administer the fund. The fund consists of monies received from:

1. The federal government or any agency of the federal government for any purpose authorized by this section.

2. Donations.

3. This state or any agency of this state for any purpose authorized by this section.

B. The department:

1. May designate monies deposited in the bicycle safety fund for use only for specified purposes consistent with this section and only for use in specified political subdivisions of this state.

2. Shall spend monies contributed by a political subdivision to the bicycle safety fund and any donation to the fund designated for use in a subdivision and any matching monies deposited in the fund as a result of the contribution or donation only for use in the political subdivision.

3. Shall only spend monies from the bicycle safety fund as follows:

(a) For planning, engineering, constructing and maintaining bicycle paths and bicycle lanes.

(b) As matching monies to be used with federal or local monies spent for planning, engineering, constructing or maintaining bicycle paths and bicycle lanes.

(c) As matching monies to be used with federal or local monies spent for planning and implementing safety programs.

C. Monies in the bicycle safety fund are exempt from the provisions of section 35–190 relating to lapsing of appropriations. The department may spend monies in the fund for purposes authorized by this section subject to legislative appropriation.

ARTICLE 17. OPERATION OF MOTORCYCLES

§ 28–2551. Riding on motorcycle

A person operating a motorcycle shall ride only on the permanent and regular seat attached to the motorcycle. The operator of a motorcycle shall not carry any other person and any other person shall not ride on a motorcycle unless the motorcycle is designed to carry more than one person, in which event a passenger may ride on the permanent and regular seat if designed for two persons or on another seat firmly attached to the motorcycle at the rear or side of the operator.

§ 28–2552. Operation of motorcycle on laned roadway; exceptions

A. A motorcycle is entitled to the full use of a lane. A person shall not:

1. Operate a motor vehicle in a manner that deprives a motorcycle of the full use of a lane, except that this paragraph does not apply to motorcycles operated two abreast in a single lane.

2. Overtake and pass in the same lane occupied by the vehicle being overtaken.

3. Operate a motorcycle between the lanes of traffic or between adjacent rows of vehicles.

4. Operate a motorcycle more than two abreast in a single lane.

B. Subsection A, paragraphs 2 and 3 do not apply to peace officers in the performance of their official duties.

§ 28–2553. **Motorcycle education fund; program**

A. The state motorcycle education fund is established in the state treasury. The department shall administer the fund.

B. Notwithstanding section 28–704, the director shall transmit one dollar of each motorcycle registration fee collected pursuant to section 28–703 to the state treasurer for deposit in the state motorcycle education fund.

C. The director shall use monies in the fund to implement a motorcycle testing program and a voluntary motorcycle education program. The director may contract with public and private agencies to implement the education program. As part of the motorcycle education program, the director may conduct motorcycle safety training classes and may charge tuition to defray the costs of the classes.

ARTICLE 18. OFF–HIGHWAY VEHICLES

§ 28–2581. **Definitions**

In this article, unless the context otherwise requires:

1. "Highway" means the entire width between the boundary lines of every way publicly maintained by the federal government, the department, a city, a town or a county if any part of the way is generally open to the use of the public for purposes of vehicular travel.

2. "Off-highway recreation facility" includes off-highway vehicle use areas and trails specifically developed and designated for use by off-highway vehicles.

3. "Off-highway vehicle":

(a) Means a motorized vehicle when operated off of highways on land, water, snow, ice or other natural terrain or on a combination of land, water, snow, ice or other natural terrain.

(b) Includes a two-wheel, three-wheel or four-wheel vehicle, motorcycle, four-wheel drive vehicle, dune buggy, amphibious vehicle, ground effects or air cushion vehicle and any other means of land transportation deriving motive power from a source other than muscle or wind.

(c) Does not include a vehicle that is either:

(i) Designed primarily for travel on, over or in the water.

(ii) Used in installation, inspection, maintenance, repair or related activities involving facilities for the provision of utility or railroad service.

4. "Off-highway vehicle trail" means a multiple use corridor that is all of the following:

(a) Open to recreational travel by an off-highway vehicle.

(b) Not normally suitable for travel by conventional two-wheel drive vehicles.

(c) Opened by the managing authority of the property that the trail traverses for the specific designated purpose of recreational off-highway vehicle use.

5. "Off-highway vehicle use area" means the entire area of a parcel of land, except for camping and approved buffer areas, that is managed specifically for off-highway vehicle use through the development or designation of off-highway vehicle trails.

§ 28–2582. **Applicability; private and Indian lands**

This article applies to all lands in this state except private land and Indian land.

§ 28–2583. **Enforcement**

All peace officers of this state and counties, cities or towns and other duly authorized state and federal employees shall enforce this article.

§ 28–2584. **Operation restrictions; violation; classification**

A. It is unlawful for a person to drive an off-highway vehicle with a wilful and wanton disregard for the safety of other persons or property.

B. A person who violates this section is guilty of a class 2 misdemeanor.

C. In addition to or in lieu of the fine prescribed by this section, a judge may order the person to perform at least eight but not more than twenty-four hours of community service or to complete an approved safety course, or both.

§ 28–2585. **Instruction course; fee**

A. The department shall conduct or approve an educational course of instruction in off-highway vehicle safety and environmental ethics. The course shall include instruction on off-highway vehicle uses that limit air pollution and harm to natural terrain, vegetation and animals. Successful completion of the course requires successful passage of a written examination.

B. Any governmental agency, corporation or other individual that conducts a training and educational course that is approved by the department may collect a fee that is reasonable and commensurate for the training and that does not exceed fifty dollars.

§ 28–2586. **Off-highway vehicle recreation fund**

A. An off-highway vehicle recreation fund is established in the state treasury. The fund consists of:

1. Monies appropriated by the legislature.

2. Monies deposited pursuant to section 28–5617.

3. Federal grants and private gifts.

4. Matching monies from federal, state, local or private entities.

B. Monies in the off-highway vehicle recreation fund are appropriated to the state parks board solely for the purposes provided in this article. Interest earned on monies in the fund shall be credited to the fund. Monies in the off-highway vehicle recreation fund are exempt from the provisions of section 35–190 relating to lapsing of appropriations.

C. The game and fish department shall spend thirty per cent of the monies in the off-highway vehicle recreation fund for an informational and educational program on off-highway vehicle recreation and law enforcement activities relating to this article and for off-highway vehicle law enforcement pursuant to title 17, chapter 4, article 3.

D. On or before December 31 of each year, the game and fish department shall submit an annual report to the president of the senate, the speaker of the house of representatives and the chairmen of the senate and house of representatives committees on transportation or their successor committees. The annual report shall include information on:

1. The amount of monies spent or encumbered in the fund during the preceding fiscal year for the purposes of law enforcement activities.

2. The amount of monies spent from the fund during the preceding fiscal year for employee services.

3. The number of full-time employees employed in the preceding fiscal year in connection with law enforcement activities.

E. The state parks board shall spend seventy per cent of the monies in the off-highway vehicle recreation fund for the following purposes:

1. No more than eighteen per cent to fund staff support to plan and administer the off-highway vehicle recreation fund.

2. To establish a facility development program based on the priorities established in the off-highway vehicle plan.

3. To provide monies to the Arizona conservation corps commission established by section 41–519.01 to be used in equal amounts for facility development and for mitigation of damage to the natural resources that is caused by off-highway vehicle use.

4. To establish a matching fund program for funding off-highway related law enforcement, informational and environmental education programs, mitigation of environmental damage, facility development, land acquisition and construction of off-highway vehicle related facilities.

F. The allocation of the monies in the matching fund program prescribed in subsection E of this section and the percentages allocated to each of the purposes prescribed in the program shall be determined by an off-highway vehicle plan prepared by the Arizona outdoor recreation coordinating commission and approved by the state parks board.

G. Monies in the matching fund program established under subsection E of this section shall be distributed in an amount determined by the Arizona outdoor recreation coordinating commission to a qualified state or federal agency, city, town, county or tribal government. The state parks board may require additional matching monies that may be direct monies or in-kind services from these entities before the distribution pursuant to this subsection.

H. Agencies receiving monies under this section shall use the monies:

1. To designate, construct, maintain and manage off-highway vehicle recreation facilities, off-highway vehicle use areas and off-highway vehicle trails within land under the jurisdiction of the particular agency.

2. For enforcement of off-highway vehicle laws.

3. For mitigation of damages to land.

4. For off-highway vehicle related environmental education.

I. The Arizona outdoor recreation coordinating commission shall examine applications for eligible projects and determine the amount of funding, if any, for each project.

J. The state parks board shall annually report to the legislature the expenditures made for the projects in conjunction with the report required by section 41–511.12. The annual report shall include the amount of monies spent or encumbered during the preceding fiscal year for the purposes described in subsection E of this section.

§ 28–2587. Off-highway vehicle advisory group

A. An off-highway vehicle advisory group is established consisting of nine members, no more than two of whom may reside in one county, as follows:

1. Seven members who are off-highway vehicle recreationists, at least five of whom are members of an organized off-highway vehicle group.

2. One member who is a member of an organized environmental group.

3. One member who represents the general public.

B. The state parks board shall contact organized clubs and other interested groups to determine persons qualified to serve as members of the advisory group. From a list of at least two names for each appointment submitted by the state parks board, the governor shall appoint members of the advisory group.

C. The term of each member is three years.

D. The office of a member is deemed vacant and the governor shall appoint a person to fill the remainder of the term from a list of at least two names for each appointment submitted by the state parks board under any of the following circumstances:

1. The member is no longer an active off-highway vehicle recreationist or a member of an organized environmental group.

2. The member is unable to perform the member's duties.

3. The member is absent from three consecutive meetings and the absences have not been excused by the group.

4. The member is a resident of another state.

E. The off-highway vehicle advisory group shall advise the Arizona outdoor recreation coordinating commission on the development and implementation of the statewide off-highway vehicle recreational plan pursuant to this section.

ARTICLE 19. MISCELLANEOUS RULES

§ 28-2621. Maximum number in school bus

Except for the purpose of conducting drills under school rules and in the emergency evacuation or dispersal of pupils and school personnel, a person shall not operate a school bus:

1. On a highway while carrying more passengers than can be properly seated.

2. While a person is standing in the school bus.

§ 28-2622. Repainting government vehicle

If a motor vehicle that is painted yellow and that is owned or operated by the state, a county, city, town or political subdivision of this state, a school district or a school is sold or transferred to a private owner, the private owner shall repaint the motor vehicle a different color and obliterate all official painted insignia before it is driven on a highway.

ARTICLE 20. ACCIDENTS

§ 28-2641. Accidents involving death or personal injuries; failure to stop; classification; driver license revocation

A. The driver of a vehicle involved in an accident resulting in injury to or death of a person shall:

1. Immediately stop the vehicle at the scene of the accident or as close to the accident scene as possible but shall immediately return to the accident scene.

2. Remain at the scene of the accident until the driver has fulfilled the requirements of section 28-2644.

B. A driver who is involved in an accident resulting in death or serious physical injury as defined in section 13-105 and who fails to stop or to comply with the requirements of section 28-2644 is guilty of a class 5 felony.

C. A person who is involved in an accident resulting in an injury other than death or a serious physical injury and who fails to stop or to comply with the requirements of section 28-2644 is guilty of a class 6 felony.

D. The department shall revoke the license or permit to drive and any nonresident operating privilege of a person convicted pursuant to this section.

§ 28–2642. Accidents involving death to drivers; testing alcohol concentration

A. A peace officer who investigates an accident that involves the death of one or more drivers shall promptly notify the county medical examiner of the death or deaths. If probable cause exists to believe that a deceased driver committed an alcohol related traffic offense, the county medical examiner shall test the deceased driver to determine the driver's alcohol concentration.

B. If a county medical examiner has not been appointed in the county in which the accident occurs, the peace officer shall notify and secure a physician licensed pursuant to title 32, chapter 13 or a person acting under the authority of a licensed physician to draw a sufficient sample of blood for determining alcohol concentration. The investigating officer shall forward the blood sample to the department of public safety crime laboratory for analysis.

C. The investigating officer shall record on the accident report required under section 28–2648 the results of the test to determine the alcohol concentration of the driver or drivers.

§ 28–2643. Accidents involving damage to vehicle; failure to stop; classification

A. The driver of a vehicle involved in an accident resulting only in damage to a vehicle that is driven or attended by a person shall:

1. Immediately stop the vehicle at the scene of the accident or as close to the accident scene as possible but shall immediately return to the accident scene.

2. Remain at the scene of the accident until the driver has fulfilled the requirements of section 28–2644.

3. Make the stop without obstructing traffic more than is necessary.

B. A person failing to stop or comply with this section under the circumstances is guilty of a class 3 misdemeanor.

§ 28–2644. Duty to give information and assistance; classification

A. The driver of a vehicle involved in an accident resulting in injury to or death of a person or damage to a vehicle that is driven or attended by a person shall:

1. Give the driver's name and address and the registration number of the vehicle the driver is driving.

2. On request, exhibit the person's driver license to the person struck or the driver or occupants of or person attending a vehicle collided with.

3. Render reasonable assistance to a person injured in the accident, including the making of arrangements for the carrying of the person to a physician, surgeon or hospital for medical or surgical treatment if it is apparent that treatment is necessary or if the carrying is requested by the injured person.

B. A person who fails to comply with this section is guilty of a class 3 misdemeanor.

§ 28–2645. Duty on striking unattended vehicle; classification

A. The driver of a vehicle that collides with a vehicle that is unattended shall immediately:

1. Stop.

2. Either:

(a) Locate and notify the operator or owner of the vehicle of the name and address of the driver and owner of the vehicle striking the unattended vehicle.

(b) Leave a written notice giving the name and address of the driver and of the owner of the vehicle doing the striking in a conspicuous place in the vehicle struck.

B. A person who violates this section is guilty of a class 3 misdemeanor.

§ 28–2646. **Duty on striking fixtures on a highway; violation; classification**

A. The driver of a vehicle involved in an accident resulting only in damage to fixtures or other property legally on or adjacent to a highway shall:

1. Take reasonable steps to locate and notify the owner or person in charge of the property of:

(a) The fact of the accident.

(b) The driver's name and address.

(c) The registration number of the vehicle the driver is driving.

2. On request, exhibit the driver's driver license.

B. A person who violates this section is guilty of a class 3 misdemeanor.

§ 28–2647. **Notice of accident**

The driver of a vehicle involved in an accident resulting in injury to or death of a person shall give notice of the accident immediately by the quickest means of communication, whether oral or written, to either:

1. The local police department if the accident occurs within a municipality.

2. The office of the county sheriff.

3. The nearest office of the highway patrol.

§ 28–2648. **Written accident report; definition**

A. A law enforcement officer or public employee who, in the regular course of duty, investigates a motor vehicle accident resulting in bodily injury, death or damage to the property of any person in excess of five hundred dollars, either at the time of and at the scene of the accident or after the accident by interviewing participants or witnesses, shall complete a written report of the accident within twenty-four hours after completing the investigation.

B. The agency employing the officer or public employee:

1. Shall not allow a person to examine the accident report or any related investigation report or a reproduction of the accident report or a related investigation report if the request is for a commercial solicitation purpose.

2. May require a person requesting the accident or related investigative report to state under penalty of perjury that the report is not examined or copied for a commercial solicitation purpose.

3. Shall retain the original report.

4. Shall forward a copy of the report to the department for its use.

C. The department may place notes, date stamps, identifying numbers, marks or other information on the copies as needed, if they do not alter the original information reported by the investigating officer or public employee.

D. For the purposes of this section, "commercial solicitation purpose" means a request for an accident report if there is neither:

1. A relationship between the person or the principal of the person requesting the accident report and any party involved in the accident.

2. A reason for the person to request the report other than for the purposes of soliciting a business or commercial relationship.

§ 28–2649. Accident report forms

A. The department shall prepare and on request supply to police departments, sheriffs and other suitable agencies forms for accident reports required under this article that are appropriate with respect to the persons required to make the reports and the purposes to be served. The written reports to be made by investigating officers shall call for sufficiently detailed information to disclose with reference to a traffic accident the cause, the conditions then existing and the persons and vehicles involved.

B. An accident report required to be made in writing shall be made on the appropriate form approved by the department and shall contain all of the information required in the form unless it is not available.

§ 28–2650. Accident report analysis

The department:

1. Shall tabulate all accident reports.

2. May analyze all accident reports.

3. Shall publish annually or at more frequent intervals statistical information based on the accident reports as to the number and circumstances of traffic accidents.

§ 28–2651. Accident reports required by city or town

Any incorporated city or town, by ordinance may require the driver of a vehicle involved in an accident to also file with a designated city or town department a report of an accident or a copy of any report required by this article to be filed with the department. The reports are for the confidential use of the city or town department.

CHAPTER 6

DRIVING UNDER THE INFLUENCE

ARTICLE 1. DEFINITIONS

§ 28–2801. Definitions

In this chapter, unless the context otherwise requires:

1. "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used to transport passengers or property if the motor vehicle either:

(a) Has a gross combined weight rating of twenty-six thousand one or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten thousand pounds.

(b) Has a gross vehicle weight rating of twenty-six thousand one or more pounds.

(c) Is a school bus.

(d) Is a bus.

(e) Is of any size, is used in the transportation of materials found to be hazardous for the purposes of the hazardous materials transportation act (49 United States Code appendix section 1801 et seq.) and is required to be placarded under 49 Code of Federal Regulations section 172.504, as adopted by the department pursuant to chapter 14 of this title.

2. "License" means any license, temporary instruction permit or temporary license issued under the laws of this state or any other state pertaining to the licensing of persons to operate motor vehicles.

ARTICLE 2. IMPLIED CONSENT AND TESTS

§ 28-2821. Implied consent; tests; refusal to submit to test; order of suspension; hearing; review; temporary permit; notification of suspension

A. A person who operates a motor vehicle in this state gives consent, subject to section 4-244, paragraph 34, section 28-2881 or section 28-2883, to a test or tests of the person's blood, breath, urine or other bodily substance for the purpose of determining alcohol concentration or drug content if arrested for any offense arising out of acts alleged to have been committed in violation of this chapter or section 4-244, paragraph 34 while the person was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor or drugs. The test or tests chosen by the law enforcement agency shall be administered at the direction of a law enforcement officer having reasonable grounds to believe that the person was driving or in actual physical control of a motor vehicle in this state while under the influence of intoxicating liquor or drugs, or if the person is under twenty-one years of age, with spirituous liquor in the person's body.

B. After an arrest a violator shall be requested to submit to and successfully complete any test or tests prescribed by subsection A of this section, and if the violator refuses the violator shall be informed that the violator's license or permit to drive will be suspended or denied for twelve months unless the violator expressly agrees to submit to and successfully completes the test or tests. A failure to expressly agree to the test or successfully complete the test is deemed a refusal. The violator shall also be informed that if the test results show a blood or breath alcohol concentration of 0.10 or more, or if the results show a blood or breath alcohol concentration of 0.04 or more and the violator was driving or in actual physical control of a commercial motor vehicle, the violator's license or permit to drive will be suspended or denied for not less than ninety consecutive days.

C. A person who is dead, unconscious or otherwise in a condition rendering the person incapable of refusal is deemed not to have withdrawn the consent provided by subsection A of this section and the test or tests may be administered, subject to section 4-244, paragraph 34, section 28-2881 and section 28-2883.

D. If a person under arrest refuses to submit to the test designated by the law enforcement agency as provided in subsection A of this section:

1. The test shall not be given, except as provided in section 28-2881, subsection *O* or pursuant to a search warrant.

2. The law enforcement officer directing the administration of the test shall:

(a) File a certified report of the refusal with the department.

(b) On behalf of the department, serve an order of suspension on the person that is effective fifteen days after the date the order is served.

(c) Require the immediate surrender of any license or permit to drive that is issued by this state and that is in the possession or control of the person.

(d) If the license or permit is not surrendered, state the reason why it is not surrendered.

(e) If a valid license or permit is surrendered, issue a temporary driving permit that is valid for fifteen days.

(f) Forward the certified report of refusal, a copy of the completed notice of suspension, a copy of any completed temporary permit and any driver license or permit taken into possession under this section to the department within five days after the issuance of the notice of suspension.

E. The certified report is subject to the penalty for perjury as prescribed by section 28-3761 and shall state all of the following:

1. The officer's reasonable grounds to believe the arrested person was driving or in actual physical control of a motor vehicle in this state while either:

(a) Under the influence of intoxicating liquor or drugs.

(b) If the person is under twenty-one years of age, with spirituous liquor in the person's body.

2. The manner in which the person refused to submit to the test or tests.

3. That the person was advised of the consequences of refusal.

F. On receipt of the certified report of refusal and a copy of the order of suspension and on the effective date stated on the order, the department shall enter the order of suspension on its records unless a written request for a hearing as provided in this section has been filed by the accused person. If the department receives only the certified report of refusal, the department shall notify the person named in the report in writing sent by mail that:

1. Fifteen days after the date of issuance of the notice the department will suspend the person's license or permit, driving privilege or nonresident driving privilege.

2. The department will provide an opportunity for a hearing if the person requests a hearing in writing and the request is received by the department within fifteen days after the notice is sent.

G. The order of suspension issued by a law enforcement officer or the department under this section shall notify the person that:

1. The person may submit a written request for a hearing.

2. The request for a hearing must be received by the department within fifteen days after the date of the notice or the order of suspension will become final.

3. The affected person's license or permit to drive or right to apply for a license or permit or any nonresident operating privilege will be suspended for twelve months from that date.

H. The order for suspension shall:

1. Be accompanied by printed forms that are ready to mail to the department and that may be filled out and signed by the person to indicate the person's desire for a hearing.

2. Advise the person that unless the person has surrendered any driver license or permit issued by this state the person's hearing request will not be accepted, except that the person may certify pursuant to section 28-1611 that the license or permit is lost or destroyed.

I. On the receipt of a request for a hearing, the department shall set the hearing within thirty days in the county in which the person named in the report resides unless the law enforcement agency filing the certified report of refusal pursuant to subsection D of this section requests at the time of its filing that the hearing be held in the county where the refusal occurred.

J. A timely request for a hearing stays the suspension until a hearing is held, except that the department shall not return any surrendered license or permit to the person but may issue temporary permits to drive that expire no later than when the department has made its final decision. If the person is a resident without a license or permit or has an expired license or permit, the department may allow the person to apply for a license or permit. If the department determines the person is otherwise entitled to the license or permit, the department shall issue and retain a license or permit subject to this section.

K. Hearings requested under this section shall be conducted in the same manner and under the same conditions as provided in section 28-1706. For the purposes of this section, the scope of the hearing shall include only the issues of whether:

1. A law enforcement officer had reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle in this state either:

(a) While under the influence of intoxicating liquor or drugs.

(b) If the person is under twenty-one years of age, with spirituous liquor in the person's body.

2. The person was placed under arrest.

3. The person refused to submit to the test.

4. The person was informed of the consequences of refusal.

L. If the department determines at the hearing to suspend the affected person's privilege to operate a motor vehicle, the suspension provided in this section is effective fifteen days after giving written notice of the suspension, except that the department may issue or extend a temporary license that expires on the effective date of the suspension. If the person is a resident without a license or permit or has an expired license or permit to operate a motor vehicle in this state, the department shall deny to the person the issuance of a license or permit for a period of twelve months after the order of suspension becomes effective.

M. If the suspension order is sustained after the hearing, a motion for rehearing is not required. Within thirty days after a suspension order is sustained, the affected person may file a petition in the superior court to review the final order of suspension or denial by the department in the same manner provided in section 28–1717. The court shall hear the review of the final order of suspension or denial on an expedited basis.

N. If the suspension or determination that there should be a denial of issuance is not sustained, the ruling is not admissible in and has no effect on any civil or criminal court proceeding.

O. If it has been determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this state has been suspended, the department shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license.

§ 28–2822. Preliminary breath tests; rules on approval of devices

A. A law enforcement officer who has reasonable suspicion to believe that a person has committed a violation of section 28–2881 may request that the person submit to a preliminary breath test or tests before an arrest.

B. In addition to a breath test or tests, the officer may require that the person submit to further testing pursuant to section 28–2821.

C. The director of the department of health services shall adopt rules prescribing the approval of quantitative preliminary breath testing devices.

§ 28–2823. Admissibility of breath test or other records

A. The results of a breath test administered for the purpose of determining a person's alcohol concentration are admissible as evidence in any trial, action or proceeding on establishing the following foundational requirements:

1. The test was performed using a quantitative breath testing device approved by the department of health services. A properly authenticated certification by the department of health services is sufficient to establish this requirement.

2. The operator who conducted the test possessed a valid permit issued by the department of health services to operate the device used to conduct the test.

3. Duplicate tests were administered and the test results were within 0.02 alcohol concentration of each other or an operator observed the person charged with the violation for twenty minutes immediately preceding the administration of the test.

4. The operator who conducted the test followed an operational checklist approved by the department of health services for the operation of the device used to conduct the test. The testimony of the operator is sufficient to establish this requirement.

5. The device used to conduct the test was in proper operating condition. Records of periodic maintenance that show that the device was in proper operating condition at a time before and after the test are admissible in any proceeding as prima facie evidence that the device was in proper operating condition at the time of the test. The records are public records.

B. Compliance with subsection A of this section is the only requirement for the admission in evidence of a breath test result.

C. Records that may be obtained or that are otherwise maintained pursuant to section 28–2827 are admissible as evidence in any trial, action or proceeding.

§ 28–2824. Breath test rules

The director of the department of health services shall adopt rules prescribing methods and procedures for the administration of breath tests to determine alcohol concentration. The rules shall include:

1. The approval of quantitative breath testing devices.

2. Procedures for ensuring the accuracy of results obtained from approved breath testing devices.

3. Qualifications for persons who conduct breath tests.

4. Qualifications for persons who instruct others in the operation of breath testing devices.

§ 28–2825. Breath test operator permits

A. The director of the department of health services shall issue permits to operators who have received approved instruction and who have demonstrated their ability to accurately operate an approved breath testing device.

B. The director of the department of health services may revoke the permit of a person who fails to operate a breath testing device according to the rules adopted by the director of the department of health services.

§ 28–2826. Blood test; rules; permits

A. The director of the department of health services shall adopt rules prescribing the approval of methods for the analysis of blood or other bodily substances to determine blood alcohol concentration.

B. The director of the department of health services shall issue a permit to an analyst who has demonstrated the ability to accurately analyze blood or other bodily substances for alcohol concentration.

C. The director of the department of health services may revoke the permit of an analyst who is not analyzing blood or other bodily substances pursuant to the rules adopted by the director of the department of health services.

§ 28–2827. Reproduction of records; admissibility; computer storage

A. The head of a law enforcement agency or the director of the department of health services may place on computer storage any records concerning a quantitative

breath testing device. Signatures that are found on the records do not have to be placed on computer storage.

B. A reproduction of any information that is placed on computer storage pursuant to subsection A is deemed to be an original of the record for all purposes and is admissible without further foundation in evidence if the custodian of the records certifies the following on each page:

Pursuant to section 28–2827, Arizona Revised Statutes, the below named individual being a duly designated custodian of (name of agency) public records certifies that this document is a true reproduction of the information contained in computer storage devices of the (name of agency).

by/s/ _____
Print full name

ARTICLE 3. DRIVING UNDER THE INFLUENCE

§ 28–2881. Driving under the influence; violations; classification; defenses; trial by jury; presumptions; admissible evidence; blood and breath tests

A. It is unlawful for a person to drive or be in actual physical control of a vehicle in this state under any of the following circumstances:

1. While under the influence of intoxicating liquor, any drug, a vapor releasing substance containing a toxic substance or any combination of liquor, drugs or vapor releasing substances if the person is impaired to the slightest degree.

2. If the person has an alcohol concentration of 0.10 or more within two hours of driving or being in actual physical control of the vehicle.

3. While there is any drug defined in section 13–3401 or its metabolite in the person's body.

4. If the vehicle is a commercial motor vehicle that requires a person to obtain a commercial driver license as defined in section 28–1501 and the person has an alcohol concentration of 0.04 or more.

B. It is not a defense to a charge of a violation of subsection A, paragraph 1 of this section that the person is or has been entitled to use the drug under the laws of this state.

C. It is an affirmative defense to a charge of a violation of subsection A, paragraph 2 of this section if the person did not have an alcohol concentration of 0.10 or more at the time of driving or of being in actual physical control of a vehicle. If a defendant produces some credible evidence that the defendant's alcohol concentration at the time of driving or being in actual physical control of a vehicle was below 0.10, the state must prove beyond a reasonable doubt that the defendant's alcohol concentration was 0.10 or more at the time of driving or being in actual physical control of a vehicle.

D. A person using a drug prescribed by a medical practitioner licensed pursuant to title 32, chapter 7, 11, 13 or 17 is not guilty of violating subsection A, paragraph 3 of this section.

E. In any prosecution for a violation of this section, the state shall allege, for the purpose of classification and sentencing pursuant to section 28–2882 or 28–2883, all prior convictions of violating this section occurring within the past thirty-six months, unless there is clearly an insufficient legal or factual basis to do so.

F. At the arraignment, the court shall inform the defendant that the defendant may request a trial by jury and that the request, if made, shall be granted.

G. The state shall not dismiss a charge of violating this section for either of the following:

1. In return for a plea of guilty or no contest to any other offense by the person charged with violating this section.

2. For the purpose of pursuing any other misdemeanor, petty offense or civil traffic violation, including those arising out of the same event or course of conduct, unless there is clearly an insufficient legal or factual basis to pursue the charge of violating this section.

H. In a trial, action or proceeding for a violation of this section or section 28–2883 other than a trial, action or proceeding involving driving or being in actual physical control of a commercial vehicle, the defendant's alcohol concentration within two hours of the time of driving or being in actual physical control as shown by analysis of the defendant's blood, breath or other bodily substance gives rise to the following presumptions:

1. If there was at that time 0.05 or less alcohol concentration in the defendant's blood, breath or other bodily substance, it may be presumed that the defendant was not under the influence of intoxicating liquor.

2. If there was at that time in excess of 0.05 but less than 0.10 alcohol concentration in the defendant's blood, breath or other bodily substance, that fact shall not give rise to a presumption that the defendant was or was not under the influence of intoxicating liquor, but that fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.

3. If there was at that time 0.10 or more alcohol concentration in the defendant's blood, breath or other bodily substance, it may be presumed that the defendant was under the influence of intoxicating liquor.

I. Subsection H of this section does not limit the introduction of any other competent evidence bearing on the question of whether or not the defendant was under the influence of intoxicating liquor.

J. A statement by the defendant that the defendant was driving a vehicle that was involved in an accident resulting in injury to or death of any person is admissible in any criminal proceeding without further proof of corpus delicti if it is otherwise admissible.

K. If blood is drawn under section 28–2821, only a physician, a registered nurse or another qualified person may withdraw blood for the purpose of determining the alcohol concentration or drug content in the blood. The qualifications of the individual withdrawing the blood and the method used to withdraw the blood are not foundational prerequisites for the admissibility of a blood alcohol content determination made pursuant to this subsection.

L. If a law enforcement officer administers a duplicate breath test and the person tested is given a reasonable opportunity to arrange for an additional test pursuant to subsection M of this section, a sample of the person's breath does not have to be collected or preserved.

M. The person tested shall be given a reasonable opportunity to arrange for any physician, registered nurse or other qualified person of the person's own choosing to administer a test or tests in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person does not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

N. If a person under arrest refuses to submit to a test or tests under section 28–2821, whether or not a sample was collected pursuant to subsection *O* of this section or a search warrant, evidence of refusal is admissible in any civil or criminal action or other proceeding. The issue of refusal is an issue of fact to be determined by the trier of fact in all cases.

O. Notwithstanding any other law, if a law enforcement officer has probable cause to believe that a person has violated this section and a sample of blood, urine

or other bodily substance is taken from that person for any reason, a portion of that sample sufficient for analysis shall be provided to a law enforcement officer if requested for law enforcement purposes.

P. A person who fails to comply with subsection *O* of this section is guilty of a class 1 misdemeanor.

Q. A person who collects blood, urine or any other bodily substance under this section or any hospital, laboratory or clinic employing or utilizing the services of the person does not incur any civil liability as a result of this activity if requested by a law enforcement officer to collect blood, urine or other bodily substances unless the person, while performing the activity, acts with gross negligence.

§ 28–2882. **Driving under the influence; violation; classification; sentences; fines; community service; repeat offender; sentence suspension; prior convictions; alcohol abuse screening; treatment; license suspension; supervised probation**

A. A person who is convicted of a violation of section 28–2881 is guilty of a class 1 misdemeanor.

B. Except as provided in subsection C of this section, a person who is convicted of a violation of section 28–2881:

1. Shall be sentenced to serve not less than ten consecutive days in jail and is not eligible for probation, suspension or execution of sentence or release on any other basis unless the entire sentence is served.

2. Shall pay a fine of not less than two hundred fifty dollars.

3. May be ordered by a court to perform not more than forty hours of community service.

C. Notwithstanding subsection B, paragraph 1 of this section, at the time of sentencing the judge may suspend all but twenty-four consecutive hours of the sentence if the person completes a court ordered alcohol or drug screening, counseling, education and treatment program. If the person fails to complete the court ordered alcohol or drug screening, counseling, education and treatment program and has not been placed on probation, the court shall issue an order to show cause to the defendant as to why the remaining jail sentence should not be served.

D. If a person within a period of sixty months is convicted of a second violation of section 28–2881 or is convicted of a violation of section 28–2881 and has previously been convicted of an act in another state that if committed in this state would be a violation of section 28–2881, the person:

1. Shall be sentenced to serve not less than ninety days in jail, thirty days of which shall be served consecutively, and is not eligible for probation, suspension or execution of sentence or release on any other basis unless the entire sentence has been served.

2. Shall pay a fine of not less than five hundred dollars.

3. Shall surrender the person's driver license to the court and:

(a) The clerk of the court shall invalidate or destroy the driver license and forward the abstract of conviction to the department.

(b) On receipt of the abstract of conviction, the department shall revoke the person's driving privilege.

4. May be ordered by a court to perform not more than forty hours of community service.

E. Notwithstanding subsection D of this section, at the time of sentencing, the judge may suspend all but thirty days of the sentence if the person completes a

court ordered alcohol or drug screening, counseling, education and treatment program. If the person fails to complete the court ordered alcohol or drug screening, counseling, education and treatment program and has not been placed on probation, the court shall issue an order to show cause as to why the remaining jail sentence should not be served.

F. In applying the sixty month provision of subsection D of this section, the dates of the commission of the offense shall be the determining factor, irrespective of the sequence in which the offenses were committed.

G. A second violation for which a conviction occurs as provided in this section shall not include a conviction for an offense arising out of the same series of acts.

H. The court shall allow the allegation of a prior conviction or any other pending charge of a violation of section 28–2881 filed twenty or more days before the date the case is actually tried.

I. The court may allow the allegation of a prior conviction or any other pending charge of a violation of section 28–2881 filed at any time before the date the case is actually tried if this state makes available to the defendant when the allegation is filed a copy of any information obtained concerning the prior conviction or other pending charge.

J. Any conviction may be used to enhance another conviction irrespective of the dates on which the offenses occurred within the sixty month provision.

K. In addition to any other penalties under this section, the judge shall order a person who is convicted of a violation of section 28–2881 to complete an alcohol abuse screening session by a screening or treatment facility approved by the division of behavioral health in the department of health services or a county probation department.

L. If the court or screening or treatment facility determines that the person has a problem with the use and abuse of alcohol or other drugs, the judge may order the person to obtain counseling, education and treatment under its supervision from an approved treatment facility.

M. The division of behavioral health shall adopt and enforce rules that establish standards to be met for a screening or treatment facility to be approved.

N. The court shall order a person who has sufficient financial ability to pay part or all of the reasonable costs of the screening session and any court ordered treatment.

O. If a person is referred to a screening or treatment facility, the facility shall report to the court whether the person has successfully completed the screening, counseling, education or treatment program.

P. If a person who is sentenced pursuant to subsection B of this section has served twenty-four consecutive hours in jail or if a person who is sentenced pursuant to subsection D of this section has served forty-eight consecutive hours in jail and if the court receives confirmation that the person is employed or is a student, the court, on pronouncement of any jail sentence under this section, may provide in the sentence that the defendant, if the defendant is employed or is a student and can continue the defendant's employment or studies, may continue the employment or studies for not more than twelve hours per day nor more than five days per week. The person shall spend the remaining day, days or parts of days in jail until the sentence is served and shall be allowed out of jail only long enough to complete the actual hours of employment or studies.

Q. Unless the license of a person sentenced under subsection B or D of this section has been or is suspended pursuant to section 28–2821 or 28–2885, the department on receipt of the abstract of conviction shall suspend the license of the affected person for not less than ninety consecutive days.

R. When the department receives notification that the person meets the criteria provided in section 28–2885, subsection F, the department shall suspend the driving privileges of the person for not less than thirty consecutive days and shall restrict the driving privileges of the person for not less than sixty consecutive additional days to travel between either:

1. The person's place of employment and residence and during specified periods of time while at employment.

2. The person's place of residence and the person's secondary or postsecondary school, according to the person's employment or educational schedule.

3. The person's place of residence and a treatment facility for scheduled appointments.

S. If a person is placed on probation for violating section 28–2881, the probation shall be supervised unless the court finds that supervised probation is not necessary or the court does not have supervisory probation services.

T. Any political subdivision processing or utilizing the services of a person ordered to perform community service pursuant to this section does not incur any civil liability to the person ordered to perform community service as a result of these activities unless the political subdivision or its agent or employee acts with gross negligence.

§ 28–2883. Aggravated driving or actual physical control while under the influence; surrender of licenses; violation; classification; definition

A. A person is guilty of aggravated driving or actual physical control while under the influence of intoxicating liquor or drugs if the person does either of the following:

1. Commits a violation of section 28–2881 or this section while the person's driver license or privilege to drive is suspended, cancelled, revoked or refused or while a restriction is placed on the person's driver license or privilege to drive as a result of violating section 28–2881 or under section 28–2885.

2. Within a period of sixty months commits a third or subsequent violation of section 28–2881 or this section or is convicted of a violation of section 28–2881 or this section and has previously been convicted of any combination of convictions of section 28–2881 or this section or acts that were committed in another state and that if committed in this state would be a violation of section 28–2881 or this section.

B. The dates of the commission of the offenses are the determining factor in applying the sixty month provision provided in subsection A, paragraph 2 of this section regardless of the sequence in which the offenses were committed. For purposes of this section, a third or subsequent violation for which a conviction occurs does not include a conviction for an offense arising out of the same series of acts.

C. The notice to a person of the suspension, cancellation, revocation or refusal of a driver license or privilege to drive is effective as provided in section 28–1718 or pursuant to the laws of the state issuing the license.

D. Notwithstanding section 41–1604.06, a person is not eligible for probation, pardon or suspension of sentence or release on any other basis until the person has served not less than four months in prison if the person is either:

1. Convicted under subsection A, paragraph 1 of this section.

2. Convicted under subsection A, paragraph 2 of this section and within a sixty month period has been convicted of two prior violations of section 28–2881 or this section, or both, or acts that were committed in another state that if committed in this state would be a violation of section 28–2881 or this section.

E. Notwithstanding section 41–1604.06, a person who is convicted under subsection A, paragraph 2 of this section and who within a sixty month period has been convicted of three or more prior violations of section 28–2881 or this section, or both,

or acts that were committed in another state and that if committed in this state would be a violation of section 28-2881 or this section is not eligible for probation, pardon, commutation or suspension of sentence or release on any other basis until the person has served not less than eight months in prison.

F. A person who is convicted of a violation of this section and who is placed on probation shall attend and complete alcohol or drug screening, counseling and education from an approved facility, and if ordered by the court, treatment from an approved facility. If the person fails to comply with this subsection, in addition to the provisions of section 13-901 the court may order that the person be incarcerated as a term of probation as follows:

1. For a person sentenced pursuant to subsection E of this section, for an individual period of not more than four months and a total period of not more than one year.

2. For a person sentenced pursuant to subsection F of this section, for an individual period of not more than eight months and a total period of not more than two years.

G. The time that a person spends in custody pursuant to subsection D, E or F of this section shall not be counted towards the sentence imposed if the person's probation is revoked and the person is sentenced to prison after revocation of probation.

H. The judge shall order the surrender of the person's driver license, and the clerk of the court shall invalidate or destroy the driver license and forward the abstract of conviction to the department. On receipt of the abstract of conviction, the department shall revoke the driving privilege of the person and shall not issue the person a new driver license within three years of the date of the conviction.

I. Aggravated driving or actual physical control while under the influence of intoxicating liquor or drugs is a class 4 felony.

J. For the purposes of this section, "suspension, cancellation, revocation or refusal" means any suspension, cancellation, revocation or refusal.

§ 28-2884. Aggravated driving or actual physical control while under the influence; forfeiture of vehicle

A. If a person is convicted of violating section 28-2883, the court, in addition to any other penalty imposed by law, shall order the vehicle owned and operated by the person at the time of the offense forfeited in the same manner as provided in title 13, chapter 39.

B. A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to a violation described in subsection A of this section.

C. Property that is subject to forfeiture and all interests in property that are forfeited under this section shall be disposed of and allocated in the same manner as provided in title 13, chapter 39, except that all monies that are obtained as a result of forfeiture under this section shall be deposited in the anti-driving under the influence fund established by section 28-2942.

§ 28-2885. Administrative license suspension for driving under the influence; report; hearing; summary review

A. A law enforcement officer shall forward to the department a certified report as prescribed in subsection B of this section, subject to the penalty for perjury prescribed by section 28-3761, if both of the following occur:

1. The officer arrests a person for a violation of section 4–244, paragraph 34, section 28–2881 or section 28–2883.

2. The person submits to a blood or breath alcohol test permitted by section 28–2821, the results of which indicate either:

(a) 0.10 or more alcohol concentration in the person's blood or breath.

(b) 0.04 or more alcohol concentration in the person's blood or breath if the person was driving or in actual physical control of a commercial motor vehicle.

B. The officer shall make the certified report required by subsection A of this section on forms supplied or approved by the department. The report shall state information that is relevant to the enforcement action, including:

1. Information that adequately identifies the arrested person.

2. A statement of the officer's grounds for belief that the person was driving or in actual physical control of a motor vehicle in violation of section 4–244, paragraph 34 or section 28–2881.

3. A statement that the person was arrested for a violation of section 4–244, paragraph 34, section 28–2881 or section 28–2883.

4. A report of the results of the chemical test that was administered.

C. The officer shall also serve an order of suspension on the person on behalf of the department. The order of suspension:

1. Is effective fifteen days after the date it is served.

2. Shall require the immediate surrender of any license or permit to drive that is issued by this state and that is in the possession or control of the person.

3. Shall contain information concerning the right to a summary review and hearing, including information concerning the hearing as required by section 28–2821, subsections G and H.

4. Shall be accompanied by printed forms ready to mail to the department that the person may fill out and sign to indicate the person's desire for a hearing.

5. Shall be entered on the department's records on receipt of the report by the officer and a copy of the order of suspension.

D. If the license or permit is not surrendered pursuant to subsection C of this section, the officer shall state the reason for the nonsurrender. If a valid license or permit is surrendered, the officer shall issue a temporary driving permit that is valid for fifteen days. The officer shall forward a copy of the completed order of suspension, a copy of any completed temporary permit and any driver license or permit taken into possession under this section to the department within five days after the issuance of the order of suspension along with the report.

E. The department shall suspend the affected person's license or permit to drive or right to apply for a license or permit or any nonresident operating privilege for not less than ninety consecutive days from that date.

F. Notwithstanding subsections A through E of this section, the department shall suspend the driving privileges of the person described in subsection A of this section for not less than thirty consecutive days and shall restrict the driving privileges of the person for not less than sixty consecutive additional days to travel between the person's place of employment and residence and during specified periods of time while at employment, to travel between the person's place of residence and the person's secondary or postsecondary school, according to the person's employment or educational schedule, or to travel between the person's place of residence and a treatment facility for scheduled appointments if the person:

1. Did not cause serious physical injury as defined in section 13–105 to another person during the course of conduct out of which the current action arose.

2. Has not been convicted of a violation of section 28–2881 or 28–2883 within sixty months of the date of commission of the acts out of which the current action arose. The dates of commission of the acts are the determining factor in applying the sixty month provision.

3. Has not had the person's privilege to drive suspended pursuant to this section or section 28–2821 within sixty months of the date of commission of the acts out of which the current action arose.

G. The department shall notify the person named in the report in writing sent by mail that fifteen days after the date of issuance of the notice the department will suspend the person's license or permit, driving privilege or nonresident driving privilege and that the department will provide an opportunity for a hearing and administrative review if the person requests a hearing or review in writing and the request is received by the department within fifteen days after the notice is sent if the department receives only the report of the results of the blood or breath alcohol test, the results of which indicate either:

1. 0.10 or more alcohol concentration in the person's blood or breath.

2. 0.04 or more alcohol concentration in the person's blood or breath if the person was driving or in actual physical control of a commercial motor vehicle.

H. A timely request for a hearing stays the suspension until a hearing is held, except that the department shall not return any surrendered license or permit to the person but may issue temporary permits to drive that expire no later than when the department has made its final decision. If the person is a resident without a license or permit or has an expired license or permit, the department may allow the person to apply for a license or permit. If the department determines the person is otherwise entitled to the license or permit, the department shall issue, but retain, the license or permit, subject to this section. All hearings requested under this section shall be conducted in the same manner and under the same conditions as provided in section 28–1706.

I. For the purposes of this section, the scope of the hearing shall include only the following issues:

1. Whether the officer had reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor.

2. Whether the person was placed under arrest for a violation of section 4–244, paragraph 34, section 28–2881 or section 28–2883.

3. Whether a test was taken, the results of which indicated the alcohol concentration in the person's blood or breath at the time the test was administered of either:

(a) 0.10 or more.

(b) 0.04 or more if the person was driving or in actual physical control of a commercial motor vehicle.

4. Whether the testing method used was valid and reliable.

5. Whether the test results were accurately evaluated.

J. The results of the blood or breath alcohol test shall be admitted on establishing the requirements in section 28–2823 or 28–2826.

K. If the department determines at the hearing to suspend the affected person's privilege to operate a motor vehicle, the suspension provided in this section is effective fifteen days after giving written notice of the suspension, except that the department may issue or extend a temporary license that expires on the effective date of the suspension. If the person is a resident without a license or permit or has an expired license or permit to operate a motor vehicle in this state, the department shall deny the issuance of a license or permit to the person for not less than ninety consecutive days.

L. A person may apply for a summary review of an order issued pursuant to this section instead of a hearing at any time before the effective date of the order. The person shall submit the application in writing to any department driver license examining office together with any written explanation as to why the department should not suspend the driving privilege. The agent of the department receiving the notice shall issue an additional driving permit to the person that expires twenty days from the date the request is received. The department shall review all reports submitted by the officer and any written explanation submitted by the person and shall determine if the order of suspension should be sustained or cancelled. The department shall not hold a hearing, and the review is not subject to title 41, chapter 6. The department shall notify the person of its decision before the temporary driving permit expires.

M. If the suspension or determination that there should be a denial of issuance is not sustained after a hearing or review, the ruling is not admissible in and does not have any effect on any civil or criminal court proceeding.

N. If it has been determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this state has been suspended, the department shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license.

§ 28-2886. Operating a motor vehicle, aircraft, watercraft or water skis under the influence; emergency response costs; definitions

A. A person who is under the influence of intoxicating liquor, any drug, a vapor releasing substance containing a toxic substance or any combination of liquor, drugs or vapor releasing substances, who causes an accident that results in an appropriate emergency response and who is convicted of a violation of any of the following sections is liable for the expenses of that emergency response:

1. Section 28-2881 or 28-2883.

2. Section 28-8279, section 28-8280 or section 28-8282, subsection C.

3. Section 5-342.

B. The expenses of an emergency response are a charge against the person liable for those expenses pursuant to subsection A of this section. The charge is a debt of that person and the public agency, for-profit entity or not-for-profit entity that incurred the expenses may collect the debt proportionally. The person's liability for the expenses of an emergency response shall not exceed one thousand dollars for a single accident. The liability imposed under this section is in addition to and not in limitation of any other liability that may be imposed.

C. Any testimony, admission or other statement made by a defendant in a proceeding brought pursuant to this section or any evidence derived from the testimony, admission or statement is not admissible in a criminal proceeding arising out of the same accident.

D. As used in this section:

1. "Expenses of an emergency response" means reasonable costs directly incurred by a public agency, for-profit entity or not-for-profit entity that makes an appropriate emergency response to an accident, including the costs of providing police, fire fighting, rescue and emergency medical services at the scene of an accident and the salaries of the persons who respond to the accident but excluding charges assessed by an ambulance service that is regulated pursuant to title 36, chapter 21.1, article 2.

2. "Public agency" means this state and any city, county, municipal corporation, district or other public authority that is located in whole or in part in this state and that provides police, fire fighting, medical or other emergency services.

ARTICLE 4. JUDICIAL AND ADMINISTRATIVE PROVISIONS

§ 28-2941. Driving under the influence; records

The court shall maintain and make accessible to the general public all records regarding the disposition of cases in which a person is charged with a violation of section 28-2881 or 28-2883. The court shall include in these records an explanation of its reasons for accepting any plea agreement or dismissing any charge of a violation of section 28-2881 or 28-2883.

§ 28-2942. Anti-driving under the influence fund

A. An anti-driving under the influence fund is established in the state treasury consisting of monies received pursuant to section 5-396.01, subsection C and section 28-2884. The governor's office of highway safety shall administer the fund.

B. Fifty per cent of the monies in the fund received pursuant to section 28-2884 shall be used for the enforcement and prosecution of any offense under sections 28-2881 and 28-2883. The remaining fifty per cent of the monies in the fund received pursuant to section 28-2884 shall be used for education and treatment programs on driving under the influence of alcohol or other drugs.

C. Fifty per cent of the monies in the fund received pursuant to section 5-396.01, subsection C shall be used for the enforcement and prosecution of any offense under sections 5-395 and 5-396. The remaining fifty per cent of the monies in the fund received pursuant to section 5-396.01, subsection C shall be used for education and treatment programs on boating or driving under the influence of alcohol or other drugs. The state department of corrections shall administer these programs.

D. On or before January 15, April 15, July 15 and October 15, the governor's office of highway safety shall file a full and complete public account of specific receipts and disbursements from the fund in the previous calendar quarter with the governor, the president of the senate and the speaker of the house of representatives.

§ 28-2943. Minimum security facility

A. A city, town or county may establish a minimum security facility for the confinement of persons convicted of a violation of section 28-2881.

B. A judge may order a person sentenced pursuant to section 28-2882 to serve the person's sentence in a minimum security facility if one has been established.

C. The state department of corrections may enter into an agreement with a county, city or town pursuant to title 11, chapter 7, article 3 for the incarceration of persons sentenced pursuant to section 28-2882.

CHAPTER 7

REGULATION OF VEHICLES AND VEHICLE EQUIPMENT

ARTICLE 1. GENERAL PROVISIONS

§ 28-3101. Definitions

In this chapter, unless the context otherwise requires:

1. "Explosives" means any chemical compound, mixture or device that is commonly used or intended for the purpose of producing an explosion and that is defined in 49 Code of Federal Regulations part 173.

2. "Flammable liquid" means any liquid that has a flash point of less than one hundred degrees Fahrenheit and that is defined in 49 Code of Federal Regulations part 173.

3. "Gross weight" means the weight of a vehicle without a load plus the weight of any load on the vehicle.

4. "Pneumatic tire" means a tire in which compressed air is designed to support the load.

5. "Pole trailer" means a vehicle that is all of the following:

(a) Without motive power.

(b) Designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle.

(c) Used ordinarily for transporting long or irregularly shaped loads such as poles, pipes or structural members capable generally of sustaining themselves as beams between the supporting connections.

6. "Police officer" means an officer authorized to direct or regulate traffic or make arrests for violations of traffic rules.

7. "Roadway" means that portion of a highway that is improved, designed or ordinarily used for vehicular travel, exclusive of the berm or shoulder. If a highway includes two or more separate roadways, roadway refers to any such roadway separately but not to all such roadways collectively.

8. "Solid tire" means a tire that both:

(a) Is made of rubber or other resilient material.

(b) Does not depend on compressed air for the support of the load.

9. "Stop", if required, means complete cessation from movement.

10. "Stop, stopping or standing", if prohibited, means any stopping or standing of an occupied or unoccupied vehicle except when necessary to avoid conflict with other traffic or in compliance with directions of a police officer or traffic control sign or signal.

11. "Traffic" means pedestrians, ridden or herded animals, vehicles and other conveyances either singly or together while using a highway for purposes of travel.

12. "Truck" means a motor vehicle that is designed, used or maintained primarily for the transportation of property.

§ 28-3102. Applicability of equipment requirements

A. A person shall not:

1. Drive or move and the owner shall not knowingly cause or permit to be driven or moved on a highway a vehicle or combination of vehicles that:

(a) Is in an unsafe condition that endangers a person.

(b) Does not contain those parts or is not at all times equipped with lamps and other equipment in proper condition and adjustment as required in this chapter.

(c) Is equipped in any manner in violation of this chapter.

2. Do an act forbidden or fail to perform an act required under this chapter.

B. This chapter does not prohibit the use of additional parts and accessories on a vehicle if the use is not inconsistent with this chapter.

C. The provisions of this chapter with respect to equipment on vehicles do not apply to implements of husbandry, trailers used solely in the operation of a farm for the transportation of the unprocessed fiber products on the farm or from the farm to a cotton gin, road machinery, road rollers or farm tractors except as made applicable by this chapter.

D. Notwithstanding subsection C of this section, a farm tractor equipped with an electric lighting system shall display at all times mentioned in section 28-3163 a red

tail lamp and either multiple beam or single beam head lamps meeting the requirements of sections 28–3166, 28–3181 and 28–3183.

§ 28–3103. Applicability of lighting laws

The sections of article 3 of this chapter, including sections 28–3169 through 28–3174, relating to clearance and marker lamps, reflectors and stoplights, apply as stated in those sections to vehicles of the type enumerated in the sections, namely passenger buses, trucks, truck tractors and certain trailers, semitrailers and pole trailers, respectively, when operated on a highway. These vehicles shall be equipped as required and all lamp equipment required shall be lighted at the times mentioned in section 28–3163, except that clearance and side marker lamps need not be lighted on a vehicle when operated within any municipality where there is sufficient light to render clearly discernible persons and vehicles on the highway at a distance of five hundred feet.

ARTICLE 2. VEHICLE EQUIPMENT SAFETY COMPACT

§ 28–3131. Definition of executive head

In this article, unless the context otherwise requires, "executive head", as used in the compact, means the governor.

§ 28–3132. Adoption of compact

The vehicle equipment safety compact is entered into and enacted into law in the form substantially as follows:

VEHICLE EQUIPMENT SAFETY COMPACT

ARTICLE I

FINDINGS AND PURPOSES

(a) The party states find that:

(1) Accidents and deaths on their streets and highways present a very serious human and economic problem with a major deleterious effect on the public welfare.

(2) There is a vital need for the development of greater interjurisdictional cooperation to achieve the necessary uniformity in the laws, rules, regulations and codes relating to vehicle equipment and to accomplish this by such means as will minimize the time between the development of demonstrably and scientifically sound safety features and their incorporation into vehicles.

(b) The purposes of this compact are to:

(1) Promote uniformity in regulation of and standards for equipment.

(2) Secure uniformity of law and administrative practice in vehicular regulation and related safety standards to permit incorporation of desirable equipment changes in vehicles in the interest of greater traffic safety.

(3) To provide means for the encouragement and utilization of research which will facilitate the achievement of the foregoing purposes, with due regard for the findings set forth in subdivision (a) of this article.

(c) It is the intent of this compact to emphasize performance requirements and not to determine the specific detail of engineering in the manufacture of vehicles or equipment except to the extent necessary for the meeting of such performance requirements.

ARTICLE II
DEFINITIONS

As used in this compact:

(a) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

(b) "State" means a state, territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

(c) "Equipment" means any part of a vehicle or any accessory for use thereon which affects the safety of operation of such vehicle or the safety of the occupants.

ARTICLE III
THE COMMISSION

(a) There is hereby created an agency of the party states to be known as the "vehicle equipment safety commission", hereinafter called the commission. The commission shall be composed of one commissioner from each party state who shall be appointed, serve and be subject to removal in accordance with the laws of the state which he represents. If authorized by the laws of his party state, a commissioner may provide for the discharge of his duties and the performance of his functions on the commission, either for the duration of his membership or for any lesser period of time, by an alternate. No such alternate shall be entitled to serve unless notification of his identity and appointment shall have been given to the commission in such form as the commission may require. Each commissioner, and each alternate, when serving in the place and stead of a commissioner, shall be entitled to be reimbursed by the commission for expenses actually incurred in attending commission meetings or while engaged in the business of the commission.

(b) The commissioners shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners, or their alternates, are present.

(c) The commission shall have a seal.

(d) The commission shall elect annually from among its members a chairman, a vice-chairman and a treasurer. The commission may appoint an executive director and fix his duties and compensation. Such executive director shall serve at the pleasure of the commission and together with the treasurer shall be bonded in such amount as the commission shall determine. The executive director also shall serve as secretary. If there is no executive director, the commission shall elect a secretary in addition to the other officers provided by this subdivision.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director with the approval of the commission, or the commission if there is no executive director, shall appoint, remove or discharge such personnel as may be necessary for the performance of the commission's functions and shall fix the duties and compensation of such personnel.

(f) The commission may establish and maintain independently or in conjunction with any one or more of the party states, a suitable retirement system for its full-time employees. Employees of the commission shall be eligible for social security coverage in respect of old age and survivor's insurance provided that the commission takes such steps as may be necessary pursuant to the laws of the United States, to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(g) The commission may borrow, accept or contract for the services of personnel from any party state, the United States or any subdivision or agency of the aforementioned governments or from any agency of two or more of the party states or their subdivisions.

(h) The commission may accept for any of its purposes and functions under this compact any and all donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States or any other governmental agency and may receive, utilize and dispose of the same.

(i) The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold and convey real and personal property and any interest therein.

(j) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states. The bylaws shall provide for appropriate notice to the commissioners of all commission meetings and hearings and the business to be transacted at such meetings or hearings. Such notice shall also be given to such agencies or officers of each party state as the laws of such party state may provide.

(k) The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year and embodying such recommendations as may have been issued by the commission. The commission may make such additional reports as it may deem desirable.

ARTICLE IV
RESEARCH AND TESTING

The commission shall have power to:

(a) Collect, correlate, analyze and evaluate information resulting or derivable from research and testing activities in equipment and related fields.

(b) Recommend and encourage the undertaking of research and testing in any aspect of equipment or related matters when, in its judgment, appropriate or sufficient research or testing has not been undertaken.

(c) Contract for such equipment research and testing as one or more governmental agencies may agree to have contracted for by the commission, provided that such governmental agency or agencies shall make available the monies necessary for such research and testing.

(d) Recommend to the party states changes in law or policy with emphasis on uniformity of laws and administrative rules, regulations or codes which would promote effective governmental action or coordination in the prevention of equipment-related highway accidents or the mitigation of equipment-related highway safety problems.

ARTICLE V
VEHICULAR EQUIPMENT

(a) In the interest of vehicular and public safety, the commission may study the need for or desirability of the establishment of or changes in performance requirements or restrictions for any item of equipment. As a result of such study, the commission may publish a report relating to any item or items of equipment, and the issuance of such a report shall be a condition precedent to any proceedings or other action provided or authorized by this article. No less than sixty days after the publication of a report containing the results of such study, the commission upon due notice shall hold a hearing or hearings at such place or places as it may determine.

(b) Following the hearing or hearings provided for in subdivision (a) of this article, and with due regard for standards recommended by appropriate professional and technical associations and agencies, the commission may issue rules, regulations or codes embodying performance requirements or restrictions for any item or items of equipment covered in the report which in the opinion of the commission will be fair and equitable and effectuate the purposes of this compact.

(c) Each party state obligates itself to give due consideration to any and all rules, regulations and codes issued by the commission and hereby declares its policy and intent to be the promotion of uniformity in the laws of the several party states relating to equipment.

(d) The commission shall send prompt notice of its action in issuing any rule, regulation or code pursuant to this article to the appropriate motor vehicle agency of each party state and such notice shall contain the complete text of the rule, regulation or code.

(e) If the constitution of a party state requires, or if its statutes provide, the approval of the legislature by appropriate resolution or act may be made a condition precedent to the taking effect in such party state of any rule, regulation or code. In such event, the commission of such party state shall submit any commission rule, regulation or code to the legislature as promptly as may be in lieu of administrative acceptance or rejection thereof by the party state.

(f) Except as otherwise specifically provided in or pursuant to subdivisions (e) and (g) of this article, the appropriate motor vehicle agency of a party state shall in accordance with its constitution or procedural laws adopt the rule, regulation or code within six months of the sending of the notice, and upon such adoption, the rule, regulation or code shall have the force and effect of law therein.

(g) The appropriate motor vehicle agency of a party state may decline to adopt a rule, regulation or code issued by the commission pursuant to this article if such agency specifically finds, after public hearing on due notice, that a variation from the commission's rule, regulation or code is necessary to the public safety and incorporates in such finding the reasons upon which it is based. Any such finding shall be subject to review by such procedure for review of administrative determinations as may be applicable pursuant to the laws of the party state. Upon request, the commission shall be furnished with a copy of the transcript of any hearings held pursuant to this subdivision.

ARTICLE VI
FINANCE

(a) The commission shall submit to the executive head or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations under any such budget shall be apportioned among the party states as follows: one-third in equal shares; and the remainder in proportion to the number of motor vehicles registered in each party state. In determining the number of such registrations, the commission may employ such source or sources of information as in its judgment present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning vehicular registrations.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with monies available to it

under article III, subdivision (h) of this compact, provided that the commission takes specific action setting aside such monies prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of monies available to it under article III, subdivision (h) hereof, the commission shall not incur any obligation prior to the allotment of monies by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its rules. However, all receipts and disbursements of monies handled by the commission shall be audited yearly by a qualified public accountant, and the report of the audit shall be included in and become part of the annual reports of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VII

CONFLICT OF INTEREST

(a) The commission shall adopt rules and regulations with respect to conflict of interest for the commissioners of the party states and their alternates, if any, and for the staff of the commission and contractors with the commission to the end that no member or employee or contractor shall have a pecuniary or other incompatible interest in the manufacture, sale or distribution of motor vehicles or vehicular equipment or in any facility or enterprise employed by the commission or on its behalf for testing, conduct of investigations or research. In addition to any penalty for violation of such rules and regulations as may be applicable under the laws of the violator's jurisdiction of residence, employment or business, any violation of a commission rule or regulation adopted pursuant to this article shall require the immediate discharge of any violating employee and the immediate vacating of membership, or relinquishing of status as a member on the commission by any commissioner or alternate. In the case of a contractor, any violation of any such rule or regulation shall make any contract of the violator with the commission subject to cancellation by the commission.

(b) Nothing contained in this article shall be deemed to prevent a contractor for the commission from using any facilities subject to his control in the performance of the contract even though such facilities are not devoted solely to work of or done on behalf of the commission, nor to prevent such a contractor from receiving remuneration or profit from the use of such facilities.

ARTICLE VIII

ADVISORY AND TECHNICAL COMMITTEES

The commission may establish such advisory and technical committees as it may deem necessary, membership on which may include private citizens and public officials, and may cooperate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities.

ARTICLE IX

ENTRY INTO FORCE AND WITHDRAWAL

(a) This compact shall enter into force when enacted into law by any six or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the executive head of the withdrawing state has given notice in writing of the withdrawal to the executive heads of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

ARTICLE X

CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

§ 28-3133. Director as member of commission

The commissioner of this state on the vehicle equipment safety commission is the director who shall serve during his continuance as director.

§ 28-3134. Commission action; legislative approval

Pursuant to article V, subdivision (e) of the vehicle equipment safety compact, a rule, regulation or code issued by the vehicle equipment safety commission in accordance with article V of the compact does not take effect until approved by the legislature.

§ 28-3135. Filing documents; notices to commission member

A. Documents required to be filed under article III, subdivision (j) of the compact shall be filed with the director.

B. Notices required by bylaws of the commission to be given pursuant to article III, subdivision (j) of the compact shall be given to the commissioner of this state.

§ 28-3136. Budget submission; records inspection

A. Pursuant to article VI, subdivision (a) of the compact, the vehicle equipment safety commission shall submit its budgets to the department.

B. Pursuant to article VI, subdivision (e) of the compact, the auditor general may inspect the accounts of the vehicle equipment safety commission.

§ 28-3137. Conflict of interest; penalty

A. Section 38-503 applies to acts prohibited under article VII of the compact adopted by this article and rules adopted by the commission pursuant to article VII of the compact.

B. A person who violates a provision of article VII of the compact or a rule adopted pursuant to article VII of the compact shall be punished as provided in section 38-447.

ARTICLE 3. LIGHTING

§ 28-3161. Department authority; lighting devices

A. The department may:

1. Approve or disapprove lighting devices, adopt rules and enforce rules and specifications for the approval of the lighting devices and the installation and aiming of the devices within the standards prescribed in this article.

2. Determine the procedure to be followed when a device is submitted for approval.

B. The department shall:

1. Approve or disapprove a lighting device that is of a type for which approval is required in this article within a reasonable time after the device is submitted.

2. On approving a lamp or device, issue to the applicant a certificate of approval together with any instructions determined by the department.

3. Publish lists of all lamps and devices that the department approves by name and type.

§ 28-3162. Suspension or revocation; certificate of approval on lighting devices

A. If the department has reason to believe that an approved device that is sold commercially does not comply with the requirements of this article, it may conduct a hearing on the question of compliance of the approved device after giving thirty days' notice to the person holding the certificate of approval for the device in this state. After the hearing, the department shall determine if the approved device meets the requirements of this article. If the device does not meet the requirements of this article, the department shall give notice to the person holding the certificate of approval for the device in this state.

B. If at the expiration of ninety days after notice the person holding the certificate of approval for the device has failed to satisfy the department that the approved device to be sold meets the requirements of this article, the department:

1. Shall suspend or revoke the approval until the device is resubmitted to and retested by an authorized testing agency and is found to meet the requirements of this article.

2. May require the person to replace all of the devices sold since the notification following the hearing with devices that comply with the requirements of this article.

3. At the time of the retest, may purchase in the open market and submit to a testing agency one or more sets of the approved devices, and if the device on the retest fails to meet the requirements of this article, may refuse to renew the certificate of approval of the device.

§ 28-3163. Lighted lamps required

A vehicle on a highway in this state at any time from sunset to sunrise and at any other time when there is not sufficient light to render clearly discernible persons and vehicles on the highway at a distance of five hundred feet ahead shall display lighted lamps and illuminating devices as required by this article for different classes of vehicles, subject to exceptions for parked vehicles as provided in this article.

§ 28–3164. **Visibility distance; mounted height of lamps**

A. If a requirement is provided in this article as to the distance from which certain lamps and devices shall render objects visible or within which the lamps or devices shall be visible, the provisions apply during the times stated in section 28–3163 with respect to a vehicle without a load when on a straight, level and unlighted highway under normal atmospheric conditions unless a different time or condition is expressly provided.

B. If a requirement is provided in this article for the mounted height of lamps or devices it means from the center of the lamp or device to the level ground on which the vehicle stands when the vehicle is without a load.

§ 28–3165. **Motor vehicle head lamps**

A. A motor vehicle other than a motorcycle or motor driven cycle shall be equipped with at least two head lamps with at least one on each side of the front of the motor vehicle. The head lamps shall comply with the requirements and limitations of this article.

B. A motorcycle and a motor driven cycle shall be equipped with at least one and not more than two head lamps that comply with the requirements and limitations of this article.

C. A head lamp on a motor vehicle, including a motorcycle and a motor driven cycle, shall be located at a height measured from the center of the head lamp of not more than fifty-four inches nor less than twenty-four inches to be measured as provided in section 28–3164, subsection B.

§ 28–3166. **Tail lamps**

A. A motor vehicle, trailer, semitrailer and pole trailer and any other vehicle that is being drawn at the end of a train of vehicles shall be equipped with at least one tail lamp mounted on the rear. When lighted as required by this article, the tail lamp shall emit a red light plainly visible from a distance of five hundred feet to the rear, except that in the case of a train of vehicles, only the tail lamp on the rearmost vehicle need actually be seen from the distance specified.

B. A tail lamp on a vehicle shall be located at a height of not more than sixty inches nor less than fifteen inches to be measured as provided in section 28–3164, subsection B.

C. Either a tail lamp or a separate lamp shall be constructed and placed in a manner that illuminates with a white light the rear license plate and renders it clearly legible from a distance of fifty feet to the rear. A tail lamp or tail lamps together with any separate lamp for illuminating the rear license plate shall be wired to provide that the tail lamp or lamps are lighted whenever the head lamps or auxiliary driving lamps are lighted.

§ 28–3167. **New motor vehicles; reflectors**

A. Except as provided in subsection B of this section, a new motor vehicle sold and operated on a highway, other than a truck tractor, shall carry on the rear, either as a part of the tail lamps or separately either:

1. Two red reflectors that comply with this section.

2. If it is a motorcycle or a motor driven cycle, at least one reflector that complies with this section.

B. A vehicle of the type provided in section 28–3169 shall be equipped with reflectors as required in that section.

C. A reflector shall be mounted on the vehicle at a height of not less than twenty inches nor more than sixty inches measured as provided in section 28–3164,

subsection B and shall be of a size, have characteristics and be mounted to be visible at night from all distances within three hundred feet to fifty feet from the vehicle when directly in front of lawful upper beams of head lamps, except that visibility from a greater distance is required of reflectors on certain types of vehicles.

§ 28-3168. Stop lamps

A person shall not sell a new motor vehicle, including a motorcycle or motor driven cycle, in this state and shall not drive a vehicle on the highways unless it is equipped with a stop lamp that meets the requirements of section 28-3179.

§ 28-3169. Additional lighting equipment required on certain vehicles

In addition to other equipment required in this article, the following vehicles shall be equipped with the following equipment under the conditions stated in section 28-3103:

1. On a bus or truck regardless of size, on the rear, two reflectors, one at each side, and one stoplight.

2. On a bus or truck eighty inches or more in overall width, in addition to the requirements in paragraph 1 of this section:

(a) On the front, two clearance lamps, one at each side.

(b) On the rear, two clearance lamps, one at each side.

(c) On each side, two side marker lamps, one at or near the front and one at or near the rear.

(d) On each side, two reflectors, one at or near the front and one at or near the rear.

3. On a truck tractor:

(a) On the front, two clearance lamps, one at each side.

(b) On the rear, one stoplight.

4. On a trailer or semitrailer with a gross weight of more than three thousand pounds:

(a) On the front, two clearance lamps, one at each side.

(b) On each side, two side marker lamps, one at or near the front and one at or near the rear.

(c) On each side, two reflectors, one at or near the front and one at or near the rear.

(d) On the rear, two clearance lamps, one at each side, and two reflectors, one at each side, and one stoplight.

5. On a pole trailer with a gross weight of more than three thousand pounds:

(a) On each side, one side marker lamp and one clearance lamp that may be in combination, to show to the front, side and rear.

(b) On the rear of the pole trailer or load, two reflectors, one at each side.

6. On a trailer, semitrailer or pole trailer with a gross weight of three thousand pounds or less:

(a) On the rear, two reflectors, one on each side.

(b) One stoplight on a trailer or semitrailer if it is loaded in such a manner or is of such dimensions as to obscure the stoplight on the towing vehicle.

§ 28-3170. School bus lighting equipment; standards and specifications

A. The director may adopt standards and specifications applicable to lighting equipment on and special warning devices to be carried by school buses consistent

with and supplemental to this article. The standards and specifications may designate and permit the use of alternately flashing warning signal lights on school buses for the purpose of indicating when children are boarding or alighting from a school bus. The standards and specifications shall correlate with and conform as reasonably practicable to the current specifications as approved by the society of automotive engineers.

B. A person shall not operate an alternately flashing warning signal light on any school bus except when the school bus is within one hundred feet of a stop or is stopped on a highway for the purpose of permitting school children to board or alight from it.

C. A school bus may be equipped with alternately flashing red strobe lamps on the octagonal signal manually operated by the school bus operator pursuant to section 28–3321.

§ 28–3171. Lamp colors

A. Front clearance lamps and those marker lamps and reflectors mounted on the front or on the side near the front of a vehicle shall display or reflect an amber color.

B. Rear clearance lamps and those marker lamps and reflectors mounted on the rear or on the sides near the rear of a vehicle shall display or reflect a red color.

C. All lighting devices and reflectors mounted on the rear of any vehicle shall display or reflect a red color, except that:

1. The stoplight or other signal device may be red, amber or yellow.

2. The light illuminating the license plate or the light emitted by a backup lamp shall be white.

§ 28–3172. Lamp mountings

A. Reflectors that are required by section 28–3169 shall be mounted at a height of not less than twenty-four inches and not more than sixty inches above the ground on which the vehicle stands, except that if the highest part of the permanent structure of the vehicle is less than twenty-four inches, the reflector at that point shall be mounted as high as that part of the permanent structure permits.

B. The rear reflectors on a pole trailer may be mounted on each side of the bolster or load.

C. A required red reflector on the rear of a vehicle may be incorporated with the tail lamp, but the reflector shall meet all of the other reflector requirements of this article.

D. Clearance lamps shall be mounted on the permanent structure of the vehicle in a manner that indicates its extreme width and as near the top of the vehicle as practicable. Clearance lamps and side marker lamps may be mounted in combination if illumination is given as required by this section with reference to both.

§ 28–3173. Lamp visibility

A. A reflector on a vehicle referred to in section 28–3169 shall be of a size, have characteristics and be maintained in order to be readily visible at nighttime from all distances within five hundred feet to fifty feet from the vehicle when directly in front of lawful upper beams of head lamps. Reflectors required to be mounted on the sides of the vehicle shall reflect the required color of light to the sides, and reflectors mounted on the rear shall reflect a red color to the rear.

B. Front and rear clearance lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at a distance of five hundred feet from the front and rear, respectively, of the vehicle.

C. Side marker lamps shall be capable of being seen and distinguished under normal atmospheric conditions at the times lights are required at a distance of five hundred feet from the side of the vehicle on which mounted.

§ 28-3174. Obstructed lights not required

If motor and other vehicles are operated in combination when lights are required, any lamp, except tail lamps, need not be lighted if the lamp would be obscured by another vehicle of the combination by reason of its location on a vehicle of the combination. This section does not affect the requirement that lighted clearance lamps be displayed on the front of the foremost vehicle required to have clearance lamps or that all lights required on the rear of the rearmost vehicle of any combination be lighted.

§ 28-3175. Lamp or flag on projecting load

A. If the load on a vehicle extends to the rear four feet or more beyond the bed or body of the vehicle, a red light or lantern plainly visible from a distance of at least five hundred feet to the sides and rear shall be displayed at the extreme rear end of the load, at the times specified in section 28-3163. The red light or lantern required by this section is in addition to the red rear light required on every vehicle.

B. At any other time, a red flag or cloth not less than twelve inches square shall be displayed at the extreme rear end of the load. The flag or cloth shall be displayed so that the entire area is visible to the driver of a vehicle approaching from the rear.

§ 28-3176. Lamps on parked vehicles

A. When a vehicle is lawfully parked on a street or highway during the hours between a half hour after sunset and a half hour before sunrise and if there is sufficient light to reveal a person or object within a distance of five hundred feet on the street or highway, lights need not be displayed on the parked vehicle.

B. When a vehicle is parked or stopped on a roadway or shoulder adjacent to the roadway, whether attended or unattended, during the hours between a half hour after sunset and a half hour before sunrise and if there is not sufficient light to reveal a person or object within a distance of five hundred feet on the highway, the parked or stopped vehicle shall be equipped with one or more lamps that exhibit a white or amber light on the roadway side visible from a distance of five hundred feet to the front of the vehicle and a red light visible from a distance of five hundred feet to the rear. This subsection does not apply to a motor driven cycle.

C. A lighted head lamp on a parked vehicle shall be depressed or dimmed.

§ 28-3177. Lamps on other vehicles and equipment

All vehicles, including animal-drawn vehicles and vehicles that are referred to in section 28-3102, subsection C and that are not specifically required by this article to be equipped with lamps, shall be equipped at the times specified in section 28-3163 with at least one lighted lamp or lantern exhibiting a white light visible from a distance of five hundred feet to the front of the vehicle and with a lamp or lantern exhibiting a red light visible from a distance of five hundred feet to the rear.

§ 28-3178. Spot and auxiliary lamps

A motor vehicle may be equipped with not more than any of the following:

1. One spot lamp that when lighted is aimed and used on approaching another vehicle only so that no part of the high intensity portion of the beam is directed to

the left of the prolongation of the extreme left side of the vehicle nor more than one hundred feet ahead of the vehicle.

2. Two fog lamps that are mounted on the front at a height of not less than twelve inches and not more than thirty inches above the level surface on which the vehicle stands and that are aimed so that when the vehicle is not loaded none of the high intensity portion of the light to the left of the center of the vehicle shall project, at a distance of twenty-five feet ahead, higher than a level of four inches below the level of the center of the lamp that is aimed.

3. Two auxiliary passing lamps that are mounted on the front at a height of not less than twenty-four inches and not more than forty-two inches above the level surface on which the vehicle stands and that meet the requirements and limitations provided in sections 28–3102 and 28–3103 and this article.

4. Two auxiliary driving lamps that are mounted on the front at a height of not less than sixteen inches nor more than forty-two inches above the level surface on which the vehicle stands and that meet the requirements and limitations provided in sections 28–3102 and 28–3103 and this article.

§ 28–3179. Signal lamps and devices

A. A motor vehicle may be equipped and if required under this article shall be equipped with the following:

1. A stop lamp on the rear that emits a red or yellow light, that is actuated on application of the service or foot brake and that may be incorporated with a tail lamp.

2. One or more lamps or a mechanical signal device that is capable of clearly indicating an intention to turn either to the right or to the left and and that is visible both from the front and rear.

B. A stop lamp shall be plainly visible and understandable from a distance of one hundred feet to the rear both during normal sunlight and at nighttime. A signal lamp or lamps indicating the intention to turn shall be visible and understandable during daytime and nighttime from a distance of one hundred feet both to the front and rear. If a vehicle is equipped with a stop lamp or other signal lamps, the lamp or lamps shall:

1. Be maintained at all times in good working condition.

2. Not project a glaring or dazzling light.

C. A mechanical signal device shall be self-illuminated when in use at the times provided in section 28–3163.

§ 28–3180. Additional lighting equipment

A motor vehicle may be equipped with not more than any of the following:

1. Two side cowl or fender lamps that emit an amber or white light without glare.

2. One running board courtesy lamp on each side of the motor vehicle that emits a white or amber light without glare.

3. Two backup lamps either separately or in combination with other lamps that are not lighted when the motor vehicle is in forward motion.

§ 28–3181. Multiple beam road lighting equipment arrangement

Except as otherwise provided in this article, the head lamps, the auxiliary driving lamp or the auxiliary passing lamp or combinations of the head lamps, driving lamp or passing lamp on a motor vehicle other than a motor driven cycle shall be arranged

so that selection may be made between distributions of light projected to different elevations, subject to the following requirements and limitations:

1. There shall be an uppermost distribution of light or composite beam so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least three hundred fifty feet ahead for all conditions of loading.

2. There shall be a lowermost distribution of light or composite beam so aimed and of sufficient intensity to reveal persons and vehicles at a distance of at least one hundred feet ahead, and under any condition of loading, none of the high intensity portion of the beam shall be directed to strike the eyes of an approaching driver.

3. A new motor vehicle, other than a motor driven cycle, that is registered in this state and that has multiple beam road lighting equipment shall be equipped with a beam indicator that is:

(a) Lighted when the uppermost distribution of light from the head lamps is in use and not otherwise lighted.

(b) Designed and located that when lighted it is readily visible without glare to the driver of the vehicle.

4. A person shall not operate a motor vehicle with a colored transparent or translucent substance or material installed, affixed or applied on or in front of the head lamps, the auxiliary driving lamp or the auxiliary passing lamp or combinations of the head lamps, driving lamp or passing lamp that would obstruct, reduce or interfere with the visibility or effectiveness of the head lamps or that would change the color of light emitted. This paragraph does not prohibit the placement of clear transparent material mounted in front of the head lamps, fog lamps or auxiliary driving lamps.

§ 28–3182. Multiple beam road lighting equipment usage

If a motor vehicle is operated on a roadway or shoulder adjacent to a roadway during the times provided in section 28–3163, the driver shall use a distribution of light or composite beam that is directed high enough and that has sufficient intensity to reveal persons and vehicles at a safe distance in advance of the vehicle, subject to the following requirements and limitations:

1. If a driver of a vehicle approaches an oncoming vehicle within five hundred feet, the driver shall use a distribution of light or composite beam aimed so that the glaring rays are not projected into the eyes of the oncoming driver. The lowermost distribution of light or composite beam provided in section 28–3181, paragraph 2 is deemed to avoid glare at all times, regardless of road contour and loading.

2. If the driver of a vehicle follows another vehicle within two hundred feet to the rear, except when engaged in the act of overtaking and passing, the driver shall use a distribution of light permissible under this article other than the uppermost distribution of light specified in section 28–3181, paragraph 1.

§ 28–3183. Single beam road lighting equipment

Head lamps that are arranged to provide a single distribution of light are permitted on motor vehicles manufactured and sold before January 1, 1951, in lieu of multiple beam road lighting equipment specified in this article, if the single distribution of light complies with the following requirements and limitations:

1. The head lamps are aimed so that when the vehicle is not loaded none of the high intensity portion of the light projects, at a distance of twenty-five feet ahead, higher than a level of five inches below the level of the center of the lamp that is aimed and in no case higher than forty-two inches above the level on which the vehicle stands at a distance of seventy-five feet ahead.

2. The intensity is sufficient to reveal persons and vehicles at a distance of at least two hundred feet.

§ 28–3184. Lighting equipment on motor driven cycles

The head lamp or head lamps on a motor driven cycle may be of the single beam or multiple beam type and shall comply with the following requirements and limitations as follows:

1. A head lamp or head lamps on a motor driven cycle shall be of sufficient intensity to reveal a person or a vehicle at a distance of not less than one hundred feet when the motor driven cycle is operated at a speed of less than twenty-five miles per hour and at a distance of not less than two hundred feet when the motor driven cycle is operated at a speed of twenty-five or more miles per hour, and the motor driven cycle is subject to the speed limitations in section 28–2119.

2. If the motor driven cycle is equipped with a multiple beam head lamp or head lamps:

(a) The upper beam shall meet the minimum requirements provided in paragraph 1 of this section and shall not exceed the limitations set forth in section 28–3181, paragraph 1.

(b) The lowermost beam shall meet the requirements applicable to a lowermost distribution of light as set forth in section 28–3181, paragraph 2.

3. If the motor driven cycle is equipped with a single beam lamp or lamps, the lamp or lamps shall be aimed so that when the vehicle is loaded none of the high intensity portion of light, at a distance of twenty-five feet ahead, projects higher than the level of the center of the lamp from which it comes.

§ 28–3185. Alternate road lighting equipment

A motor vehicle may be operated under the conditions specified in section 28–3163 when it is equipped with two lighted lamps that are on the front of the motor vehicle and that are capable of revealing persons and objects seventy-five feet ahead in lieu of lamps required in section 28–3181 or 28–3183, but the motor vehicle shall not be operated at a speed of more than twenty miles per hour.

§ 28–3186. Number of driving lamps required or permitted

A. At all times provided in section 28–3163, at least two lighted lamps shall be displayed, one on each side at the front of a motor vehicle other than a motorcycle or motor driven cycle, except when the vehicle is parked subject to the rules governing lights on parked vehicles.

B. If a motor vehicle equipped with head lamps as required by this article is also equipped with any auxiliary lamps, spot lamp or other lamp on the front of the motor vehicle projecting a beam of intensity greater than three hundred candlepower, not more than four of any such lamps on the front of a vehicle shall be lighted at any one time when on a highway.

§ 28–3187. High intensity lamp; restriction

A person shall direct a lighted lamp or illuminating device on a motor vehicle, other than a head lamp, spot lamp, auxiliary lamp or flashing front direction signal, that projects a beam of light of an intensity greater than three hundred candlepower so that no part of the beam strikes the level of the roadway on which the vehicle stands at a distance of more than seventy-five feet from the vehicle.

§ 28–3188. **Lamp colors; restriction; requirement**

A. A person shall not drive or move a vehicle or equipment on a highway with a lamp or device on the vehicle that is capable of displaying a red or red and blue light or lens visible from directly in front of the center of the vehicle.

B. Lights visible from the front of a vehicle shall be amber or white.

C. This section does not apply to an authorized emergency vehicle or a vehicle on which a red or red and blue light or lens visible from the front is expressly authorized or required by chapter 5 of this title.

§ 28–3189. **Flashing lights; restriction; exceptions**

A. Except as provided in subsection B or C of this section, flashing lights on motor vehicles are prohibited except either:

1. On authorized emergency vehicles, school buses or snow removal equipment.

2. As warning lights on disabled or parked vehicles.

3. On a vehicle as a means for indicating a right or left turn.

B. A vehicle may have lamps that are used to warn the operators of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking or passing. The vehicle may display these lamps as a warning in addition to any other warning signals required by this article. The vehicle shall have the lamps used to display the warning to the front mounted at the same level and as widely spaced laterally as practicable and shall display simultaneously flashing white or amber lights or any shade of color between white and amber. The vehicle shall have the lamps used to display the warning mounted to the rear at the same level and as widely spaced laterally as practicable and shall show simultaneously flashing amber or red lights or any shade of color between amber and red. These warning lights shall be visible from a distance of at least one thousand five hundred feet under normal atmospheric conditions at night.

C. A person may equip a motorcycle with a means of modulating the intensity of a head lamp beam between the higher and lower brightness at a rate of two hundred to two hundred eighty cycles per minute. A person shall not modulate the head lamp beam during the hours of darkness as prescribed in section 28–3163.

§ 28–3190. **Bicycle lamps**

A. A bicycle that is used at nighttime shall have:

1. A lamp on the front that emits a white light visible from a distance of at least five hundred feet to the front.

2. A red reflector on the rear of a type that is approved by the department and that is visible from all distances from fifty feet to three hundred feet to the rear when directly in front of lawful upper beams of head lamps on a motor vehicle.

B. A bicycle may have a lamp that emits a red light visible from a distance of five hundred feet to the rear in addition to the red reflector required by subsection A.

§ 28–3191. **Snow removal equipment lamps**

A. The director shall adopt standards and specifications applicable to head lamps, clearance lamps, identification and other lamps on snow removal equipment when operated on the highways of this state in lieu of the lamps otherwise required on motor vehicles by this article. The standards and specifications:

1. May permit the use of flashing lights for purposes of identification on snow removal equipment when in service on a highway.

2. Shall correlate with and, as far as possible, conform with those approved by the American association of state highway officials.

B. A person shall not operate snow removal equipment on a highway unless the lamps on the equipment comply with and are lighted when and as required by the standards and specifications adopted pursuant to this section.

§ 28-3192. Selling or using lamps

A. A person shall not have for sale, sell or offer for sale for use on or as a part of the equipment of a motor vehicle, trailer or semitrailer or shall not use on any such vehicle a reflector that is required by this article, head lamp, auxiliary driving lamp, rear lamp, signal lamp or parts of any of the foregoing that tend to change the original design or performance unless the lamps or reflectors are of a type that has been submitted to and approved by the department.

B. A person shall not have for sale, sell or offer for sale for use on or as a part of the equipment of a motor vehicle, trailer or semitrailer:

1. A lamp or device that is described in this section and that has been approved by the department unless the lamp or device bears the trademark or name under which it is approved so as to be legible when installed.

2. A lamp described in this section unless the lamp is mounted and adjusted to focus and aim pursuant to instructions of the department.

ARTICLE 4. VEHICLE BRAKES

§ 28-3221. Required brake equipment

The following brake equipment is required:

1. A motor vehicle, other than a motorcycle or motor driven cycle, if it is operated on a highway shall be equipped with brakes adequate to control the movement of and to stop and hold the vehicle, including two separate means of applying the brakes, each of which means is effective to apply the brakes to at least two wheels. If these two separate means of applying the brakes are connected in any way, they shall be constructed so that failure of any one part of the operating mechanism does not leave the motor vehicle without brakes on at least two wheels.

2. A motorcycle and every motor driven cycle when operated on a highway shall be equipped with at least one brake that may be operated by hand or foot.

3. A trailer or semitrailer with a gross weight of three thousand pounds or more when it is operated on a highway shall be equipped with brakes that are adequate to control the movement of and to stop and to hold the vehicle and that are designed to either be applied by the driver of the towing motor vehicle from its cab or be of a type that operates automatically when the service brakes of the towing vehicle are applied. The brakes shall be designed and connected so that in case of an accidental breakaway of the towed vehicle the brakes shall be automatically applied, except that brakes are not required on all wheels of a truck that is being towed as a semitrailer and that is being towed in a drive-away, tow-away operation, if the combination of vehicles is capable of complying with all state and federal brake performance requirements. Only the brakes on the vehicle being towed need to be operative as necessary to ensure compliance with the performance requirements.

4. A new motor vehicle, trailer or semitrailer, except a motorcycle or motor driven cycle, sold in this state and operated on the highways shall be equipped with service brakes on all wheels of the vehicle, except that:

(a) A semitrailer or trailer with a gross weight of less than three thousand pounds need not be equipped with brakes.

(b) A semitrailer or trailer with a gross weight of less than six thousand pounds may have brakes only on all wheels of one axle.

(c) Three axle truck tractors need only be equipped with brakes on all wheels of the two rear axles.

5. In any combination of motor drawn vehicles, means shall be provided for either or both of the following if capable of being used alternatively:

(a) Applying the rearmost trailer brakes of a trailer equipped with brakes in approximate synchronism with the brakes on the towing vehicle and developing the required braking effort on the rearmost wheels at the fastest rate.

(b) Applying braking effort first on the rearmost trailer equipped with brakes.

6. A motor vehicle and combination of vehicles manufactured or sold in this state after July 1, 1964, except motorcycles and motor driven cycles, shall be equipped with parking brakes that are:

(a) Adequate to hold the vehicle on any grade on which it is operated under all conditions of loading on a surface free from snow, ice or loose material.

(b) Capable of being applied in conformance with the requirements of subdivision (a) of this paragraph by the driver's muscular effort, by spring action or by equivalent means. The operation of the parking brakes may be assisted by the service brakes or other source of power, if failure of the service brake actuation system or other power assisting mechanism will not prevent the parking brakes from being applied in conformance with the foregoing requirements.

(c) Designed so that when the brakes are applied they shall remain applied with the required effectiveness despite exhaustion of any source of energy or leakage of any kind.

7. The same brake drums, brake shoes and lining assemblies, brake shoe anchors and mechanical brake shoe actuation mechanism normally associated with the wheel brake assemblies may be used for both the service brakes and the parking brakes. If the means of applying the parking brakes and the service brakes are connected in any way, they shall be constructed so that failure of any one part does not leave the vehicle without operative brakes.

8. The brake shoes operating within or on the drums on the vehicle wheels of a motor vehicle may be used for both service and hand operation.

§ 28-3222. Stopping and deceleration requirements

At all times, under all conditions of loading and on application of the service or foot brake, a motor vehicle or combination of motor drawn vehicles shall be capable of being stopped on a dry, smooth, level road free from loose material within the distances specified below or of being decelerated at a sustained rate corresponding to these distances:

	Feet to stop from 20 miles per hour	Deceleration in feet per second
Vehicles or combinations of vehicles having brakes on all wheels	30	14
Vehicles or combinations of vehicles not having brakes on all wheels	40	10.7

§ 28-3223. Brake maintenance

Brakes shall be maintained in good working order and shall be adjusted to operate as equally as practicable with respect to the wheels on opposite sides of the vehicle.

§ 28–3224. **Brake fluid standards; sale prohibited; definition**

A. The department shall adopt rules regulating the standards and specifications of brake fluid and prohibiting the sale of brake fluid that does not meet the standards and specifications set by the department. The rules shall:

1. Establish minimum standards and specifications for brake fluids that promote the public safety in the operation of motor vehicles in this state.

2. Require brake fluid to be distributed and serviced with due regard for the safety of the occupants of the vehicle and the public.

3. Require the label on each container of brake fluid to show compliance with the standards and specifications set by the department.

4. Prohibit the sale of brake fluid that does not meet the standards and specifications set by the department.

B. Notwithstanding subsection A, paragraph 1 of this section and in order to promote uniformity between the requirements of the several states and to avoid increased cost to the people of this state due to the necessity of complying with diverse requirements in the distribution and sale of brake fluids, the department may:

1. Adopt the standards and specifications of the society of automotive engineers for heavy-duty type brake fluid.

2. Amend or modify the specifications after a public hearing as the department finds is necessary for the protection of the public safety.

C. After adoption of the standards, specifications and rules provided for in subsections A and B of this section, the department shall publish them once in a newspaper of general circulation in this state. After six months from the date of the publication, in compliance with sections 41–1031 and 41–1032, a person shall not sell a brake fluid that does not meet the rules, standards and specifications adopted by the department.

D. For the purposes of this section, "brake fluid" means the liquid medium through which force is transmitted to the brakes in the brake system of a motor vehicle.

§ 28–3225. **Brakes on motor driven cycles**

A. The director may:

1. Require an inspection of the brake on a motor driven cycle.

2. Disapprove a brake that does not comply with the performance ability standard provided in section 28–3222 or that is not so designed or constructed to ensure reasonable and reliable performance in actual use.

B. The director may refuse to register or may suspend or revoke the registration of a vehicle referred to in this section if the director determines that the brake on the vehicle does not comply with this section.

C. A person shall not operate on a highway a vehicle referred to in this section if the director has disapproved the brake equipment on the vehicle or type of vehicle.

ARTICLE 5. HORNS, WARNING DEVICES AND NOISE LEVELS

§ 28–3251. **Horns and warning devices**

A. A motor vehicle when operated on a highway shall be equipped with a horn that is in good working order and that is capable of emitting sound audible under normal conditions from a distance of at least two hundred feet. Any horn or other warning device shall not emit an unreasonably loud or harsh sound or a whistle.

B. If reasonably necessary to ensure the safe operation of a motor vehicle, the driver shall give an audible warning with the driver's horn but shall not otherwise use the horn when on a highway.

C. A vehicle shall not be equipped with and a person shall not use on a vehicle a siren, whistle or bell, except as otherwise permitted in this section.

D. A vehicle may but is not required to be equipped with a theft alarm signal device that is arranged so that it cannot be used by the driver as an ordinary warning signal.

E. An authorized emergency vehicle may be equipped with a siren, whistle or bell that is capable of emitting sound audible under normal conditions from a distance of at least five hundred feet and that is of a type approved by the department. The siren shall not be used except when the vehicle is operated in response to an emergency call or in the immediate pursuit of an actual or suspected violator of the law or when necessary to serve a civil traffic complaint, in which latter events the driver of the vehicle shall sound the siren when reasonably necessary to warn pedestrians and other drivers of the approach of the emergency vehicle.

§ 28-3252. **Flares; warning devices; requirements**

A. Except as provided in subsection B, a person shall not operate a motor truck, passenger bus or truck tractor on a highway outside the corporate limits of a city or town from a half hour after sunset to a half hour before sunrise unless the following equipment is carried in the vehicle:

1. At least three flares or three red electric lanterns that comply with the following:

(a) Each flare or lantern is capable of being seen and distinguished at a distance of five hundred feet under normal atmospheric conditions at nighttime.

(b) Each flare or liquid burning pot torch is capable of burning for at least twelve hours in five miles per hour wind velocity and capable of burning in any air velocity from zero to forty miles per hour.

(c) Each flare is substantially constructed to withstand reasonable shocks without leaking.

(d) Each flare is carried in the vehicle in a metal rack or box.

(e) Each red electric lantern is capable of operating continuously for at least twelve hours and is substantially constructed to withstand reasonable shock without breakage.

2. At least three red burning fusees, unless red electric lanterns are carried, that are:

(a) Made in accordance with specifications of the bureau of explosives, 30 Vesey St., New York City and so marked.

(b) Capable of burning at least fifteen minutes.

3. At least two red cloth flags that are at least twelve inches square with standards to support the flags.

B. At the time and under the conditions stated in subsection A, a person shall not operate a motor vehicle used in the transportation of flammable liquids in bulk or transporting compressed flammable gases, unless three red electric lanterns meeting the requirements stated in subsection A are carried in the vehicle. A flare, fusee or signal produced by a flame shall not be carried in a vehicle described in this subsection.

C. A person is in compliance with this section if the person operates a motor vehicle described in this section and carries in the vehicle three portable reflector units on standards of a type approved by the department. The department shall not

approve a portable reflector unit unless it is designed and constructed to meet the requirements of 49 Code of Federal Regulations section 571.125.

§ 28-3253. **Display of warning devices; disabled vehicle**

A. If a motor truck, passenger bus, truck tractor, trailer, semitrailer or pole trailer is disabled on the traveled portion of a highway or the shoulder of a highway outside of a city or town at a time when lighted lamps are required on vehicles, the driver of the vehicle shall display the following warning devices on the highway during the time the vehicle is disabled on the highway except as provided in subsection B of this section:

1. A lighted fusee immediately placed on the roadway at the traffic side of the motor vehicle unless electric lanterns are displayed.

2. Within the burning period of the fusee and as promptly as possible, three lighted flares or pot torches or three electric lanterns placed on the roadway as follows:

(a) One at a distance of approximately one hundred feet in advance of the vehicle and one at a distance of approximately one hundred feet to the rear of the vehicle, each in the center of the lane of traffic occupied by the disabled vehicle.

(b) One at the traffic side of the vehicle approximately ten feet rearward or forward of the vehicle.

B. If a vehicle that is used in the transportation of flammable liquids in bulk or that is transporting compressed flammable gases is disabled on a highway at a time or place provided in subsection A of this section, the driver of the vehicle shall display on the roadway the following lighted warning devices:

1. One red electric lantern immediately placed on the roadway at the traffic side of the vehicle.

2. Two other red electric lanterns placed to the front and rear of the vehicle in the same manner prescribed for flares in subsection A of this section.

C. If a vehicle of a type provided in subsection B of this section is disabled, the use of flares, fusees or any signal produced by flame as warning signals is prohibited.

D. If a vehicle referred to in this section is disabled on the traveled portion of a highway or the shoulder of a highway outside of a city or town at a time when the display of fusees, flares or electric lanterns is not required, the driver of the vehicle shall display two red flags on the roadway in the lane of traffic occupied by the disabled vehicle, one at a distance of approximately one hundred feet in advance of the vehicle and one at a distance of approximately one hundred feet to the rear of the vehicle.

E. A person is in compliance with this section if three portable reflector units on standards approved by the department are both:

1. Displayed at the times and under the conditions provided in this section either during the daytime or at nighttime.

2. Placed on the roadway in the locations as described with reference to the placing of electric lanterns and lighted flares.

F. The flares, fusees, lanterns and flags required in this section shall conform with the requirements of section 28-3252 applicable to the flares, fusees, lanterns and flags.

§ 28–3254. Mufflers; noise and air pollution prevention; emission control devices; civil penalty

A. A motor vehicle shall be equipped at all times with a muffler that is in good working order and that is in constant operation to prevent excessive or unusual noise.

B. A person shall not use a muffler cutout, bypass or similar device on a motor vehicle on a highway.

C. The engine and power mechanism of a motor vehicle shall be equipped and adjusted to prevent the escape of excessive fumes or smoke.

D. Beginning with motor vehicles and motor vehicle engines of the 1968 model year, motor vehicles and motor vehicle engines shall be equipped with emissions control devices that meet the standards established by the director of environmental quality.

E. A person who violates this section is subject to a civil penalty of at least one hundred dollars.

§ 28–3255. Motorcycles; noise level equipment; unauthorized equipment

A. A person shall not operate or as an owner permit the operation of a motorcycle in this state that is not equipped with the manufacturer's original muffler or other original noise reduction equipment or with a replacement muffler or replacement noise reduction equipment capable of reducing the noise levels below the maximum operating noise levels established by the department pursuant to section 28–3256.

B. A person shall not use a muffler cutout, bypass or similar device on a motorcycle operated in this state.

§ 28–3256. Motorcycle noise level rules

A. The department shall establish by rule maximum operating noise levels for motorcycles operated in this state.

B. The rules shall:

1. Provide for varying maximum operational noise levels for motorcycles, categorized by year of manufacture and speed of operation of the motorcycle.

2. Be based on noise reduction levels achieved by reasonable and prudent operation of a motorcycle and proper maintenance of the noise reduction equipment.

§ 28–3257. Exemption for racing motorcycles; definition

A. Sections 28–3255 and 28–3256 do not apply to a racing motorcycle operated in a racing event or in a facility used for a racing event.

B. For the purposes of this section, "racing motorcycle" means either:

1. A motorcycle intended by the manufacturer to be operated at a facility used for a racing event.

2. A motorcycle that has been modified by the owner to be operated at a facility used for a racing event.

§ 28–3258. Bicycle siren or whistle

A person shall not operate a bicycle that is equipped with a siren or whistle.

ARTICLE 6. MIRRORS AND WINDSHIELDS

§ 28-3291. Mirrors

A motor vehicle that is constructed or loaded in a manner that obstructs the driver's view to the rear of the vehicle from the driver's position shall be equipped with a mirror located in a manner to reflect to the driver a view of the highway for a distance of at least two hundred feet to the rear of the vehicle.

§ 28-3292. Windshield wipers required; golf cart exception

A. The windshield on a motor vehicle shall be equipped with a device for cleaning rain, snow or other moisture from the windshield. The device shall be constructed in a manner to be controlled or operated by the driver of the vehicle.

B. A windshield wiper on a motor vehicle shall be maintained in good working order.

C. This section does not apply to a golf cart.

§ 28-3293. Windshields required

A. A passenger vehicle, except a motorcycle and a golf cart, and a motor truck or truck tractor, except fire trucks, fire engines or other fire apparatus, whether publicly or privately owned, shall be equipped with an adequate windshield.

B. This section does not apply to an implement of husbandry or to an antique, classic or horseless carriage automobile if it was not originally equipped with a windshield.

§ 28-3294. Safety glass required; applicability; approval list; denial or suspension of registration; definition

A. A person shall not sell and the department shall not register a new motor vehicle as specified in this section unless the vehicle is equipped with safety glass of a type approved by the director wherever glass is used in doors, windows and windshields.

B. This section applies to passenger motor vehicles, other than golf carts, including passenger buses and school buses. For trucks, including truck tractors, the requirements of this section for safety glass apply to all glass used in doors, windows and windshields in the drivers' compartments of the vehicles.

C. The director shall compile and publish a list of types of glass by name that are approved by the director and that meet the requirements of this section.

D. The director shall not register a new motor vehicle unless it is equipped with an approved type of safety glass. The director shall suspend the registration of any motor vehicle that is subject to this section and that the director finds is not equipped with an approved type of safety glass until it is made to conform to the requirements of this section.

E. A person shall not replace glass or glazing materials used in partitions, doors, windows, windshields or wind deflectors in a motor vehicle with a material other than safety glass of a type approved by the director.

F. For the purposes of this section, "safety glass" means either:

1. A product composed of glass that is manufactured, fabricated or treated in a manner that substantially prevents shattering and flying of the glass when struck or broken.

2. Other or similar products as approved by the director.

§ 28-3295. Materials on windows or windshield; requirements; violation; exception; definitions

A. Except as otherwise provided in this section:

1. A person shall not operate a motor vehicle with an object or material placed, displayed, installed, affixed or applied on the windshield or side or rear windows or with an object or material placed, displayed, installed, affixed or applied in or on the motor vehicle in a manner that obstructs or reduces a driver's clear view through the windshield or side or rear windows.

2. A person shall not place, install, affix or apply a transparent material on the windshield or side or rear windows of a motor vehicle if the material alters the color or reduces the light transmittance of the windshield or side or rear windows.

B. This section does not apply to:

1. Front side wing vents and windows that have a substance or material in conjunction with glazing material that has a light transmission of thirty-three per cent plus or minus three per cent and a luminous reflectance of thirty-five per cent plus or minus three per cent.

2. Front side wing vents and windows that have a substance or material not attached in conjunction with glazing material that is used by a vehicle operator on a moving vehicle during daylight hours as provided in section 28-3163.

3. Rearview mirrors.

4. Adjustable nontransparent sun visors that are mounted forward of the side windows and that are not attached to the glass.

5. Signs, stickers or other materials that are either:

(a) Displayed in a seven inch square in the lower corner of the windshield farthest removed from the driver.

(b) Displayed in a five inch square in the lower corner of the windshield nearest the driver.

6. Side windows that are to the rear of the driver and rear windows that have a substance or material in conjunction with glazing material that has a luminous reflectance of thirty-five per cent plus or minus three per cent or less.

7. Direction, destination or termination signs on a passenger common carrier motor vehicle, if the signs do not interfere with the driver's clear view of approaching traffic.

8. Rear window wiper motors.

9. A rear trunk lid handle or hinges.

10. The rear window or windows if the motor vehicle is equipped with outside mirrors on both left-hand and right-hand sides of the vehicle that are located in a manner to reflect to the driver a view of the highway through each mirror for a distance of at least two hundred feet to the rear of the motor vehicle.

11. Transparent material that is installed, affixed or applied to the topmost portion of the windshield if:

(a) The bottom edge of the material is at least twenty-nine inches above the undepressed driver's seat when measured from a point five inches in front of the bottom of the backrest with the driver's seat in its rearmost and lowermost position with the vehicle on a level surface.

(b) The material is not red or amber in color.

C. Each manufacturer shall certify to the director that the product or material the manufacturer manufactures or assembles complies with the reflectivity and transmittance requirements of this section.

D. This section does not permit or prohibit the use and placement of federal, state or local certificates on any window as are required or prohibited by applicable laws.

E. A person who sells or installs objects or materials under this section shall set forth in a conspicuous manner that the installation of the object or material to the side driver or passenger window may be illegal in some states.

F. On application from a person required for medical reasons to be shielded from the direct rays of the sun that is supported by written attestation of this fact from a physician licensed pursuant to title 32, chapter 13 or 17, the department may issue an exemption from this section for a motor vehicle belonging to the person or in which the person is a habitual passenger. A person may operate a vehicle or alter the color or reduce the light transmitted through the side or rear windows of a vehicle pursuant to an exemption issued by the director.

G. In this section, unless the context otherwise requires:

1. "Light transmission" means the ratio of the amount of total light, expressed in percentages, that is allowed to pass through the product or material including the glazing to the amount of total light falling on the product or material and the glazing.

2. "Luminous reflectance" means the ratio of the amount of total light, expressed in percentages, that is reflected outward by the product or material to the amount of total light falling on the product or material.

3. "Manufacturer" means either:

(a) A person who engages in the manufacturing or assembling of sun screening products or materials designed to be used in conjunction with vehicle glazing materials.

(b) A person who fabricates, laminates or tempers the glazing material incorporating the capacity to reflect or to reduce the transmittance of light during the manufacturing process.

ARTICLE 7. SCHOOL BUSES

§ 28–3321. School bus signs

A. A bus used for the transportation of school children shall have on the front and rear of the bus a plainly visible sign containing the words "school bus" in letters not less than eight inches in height.

B. If a school bus is operated on a highway for a purpose other than the actual transportation of children either to or from school, all markings indicating "school bus" shall be covered or concealed.

C. A bus used for the transportation of school children shall have a signal with the word "stop" printed on both sides in white letters not less than five inches high on a red background. The signal shall be an eighteen inch reflectorized octagon. The operator of the school bus shall:

1. Manually operate the signal in a manner so that the signal is clearly visible from both front and rear when extended from the left of the body of the bus.

2. Display the signal and alternately flashing lights if passengers are being received or discharged while the bus is stopped on the roadway.

§ 28–3322. School bus rules

A. The department of administration in consultation with the department of public safety and with the school bus advisory council established by section 28–1533 shall adopt rules as necessary to improve the safety and welfare of school bus passengers by minimizing the probability of accidents involving school buses and

school bus passengers and by minimizing the risk of serious bodily injury to school bus passengers in the event of an accident.

B. The rules may include:

1. Minimum standards for the design and equipment of school buses.

2. Minimum standards for the periodic inspection and maintenance of school buses.

3. Procedures for the operation of school buses.

4. Other criteria as deemed by the department of administration, the department of public safety and the school bus advisory council to be necessary and appropriate to ensure the safe operation of school buses.

C. The rules shall provide, if applicable, minimum standards equal to or more restrictive than those adopted by the United States department of transportation in accordance with 23 United States Code and rules adopted pursuant to 23 United States Code.

D. Notwithstanding a rule adopted by the department of administration with respect to exterior color of a school bus, in order to reduce the interior temperature of a school bus, the exterior top of a school bus may be painted white, but the white area shall not extend beyond the center clearance lights, front and rear, and shall not extend below a line five inches above the top of the side windows.

E. An officer or employee of any school district who violates any of the rules or who fails to include the obligation to comply with the rules in any contract executed by the officer or employee on behalf of a school district is guilty of misconduct and is subject to removal from office or employment. Any person who operates a school bus under contract with a school district and who fails to comply with any of the rules is in breach of contract, and the school district shall cancel the contract after notice and a hearing by the responsible officers of the school district.

F. The department of public safety shall enforce the rules adopted pursuant to this section.

ARTICLE 8. TIRE EQUIPMENT

§ 28-3341. Tire equipment restrictions

A. A solid rubber tire on a vehicle shall have rubber on its entire traction surface at least one inch thick above the edge of the flange of the entire periphery.

B. A tire on a vehicle that is moved on a highway shall not have on its periphery any block, stud, flange, cleat, spike or other protuberance of any material other than rubber that projects beyond the tread of the traction surface of the tire, except that it is permissible to use:

1. Farm machinery with tires having protuberances that will not injure the highway.

2. Tire chains of reasonable proportions on a vehicle when required for safety because of snow, ice or other conditions tending to cause a vehicle to skid.

3. From October 1 to May 1 pneumatic tires containing metal type studs of tungsten carbide or other suitable material that are inserted or constructed in a manner so that the number of studs or the percentage of metal in contact with the roadway does not exceed three per cent of the total tire area in contact with the roadway under any conditions.

§ 28-3342. Special permits; movable tracks

The director and local authorities in their respective jurisdictions may issue special permits authorizing the operation on a highway of traction engines or

tractors having movable tracks with transverse corrugations on the periphery of the movable tracks or farm tractors or other farm machinery, the operation of which on a highway would otherwise be prohibited under this chapter.

§ 28–3343. **Rear fender splash guards**

A. A person shall not operate a truck, trailer, semitrailer or bus on a highway unless the vehicle is equipped with rear fender splash guards that comply with the specifications provided in this section.

B. The splash guards:

1. Shall be attached in a manner that prevents the splashing of mud or water on the windshield of other motor vehicles.

2. Shall extend to a length of not more than eight inches from the ground.

3. Shall be wide enough to cover the full tread or treads of the tires being protected.

4. Shall be installed close enough to the tread surface of the tire or wheel to control the side throw of the bulk of the thrown road surface material.

5. May be constructed of a flexible rubberized material.

6. Shall be attached in a manner that, regardless of movement either in the splash guards or the vehicle, the splash guards retain their general parallel relationship to the tread surface of the tire or wheel under all ordinary operating conditions.

C. This section does not apply to:

1. A vehicle commonly known as a pickup truck with a three-quarter ton or less manufacturer's rating, except that this section applies if the pickup truck has been modified from the original bumper height design to raise the center of gravity of the pickup truck.

2. A truck tractor or converter dolly when used in combination with another vehicle.

ARTICLE 9. MISCELLANEOUS EQUIPMENT

§ 28–3361. **Motorcycles; motor driven cycles; equipment; exception; prohibition**

A. An operator or passenger of a motorcycle or motor driven cycle who is under eighteen years of age shall wear at all times a protective helmet on the operator's or passenger's head in an appropriate manner that is safely secured while operating or riding on the motorcycle or motor driven cycle. An operator of a motorcycle or motor driven cycle shall wear at all times protective glasses, goggles or a transparent face shield of a type approved by the director unless the motorcycle or the motor driven cycle is equipped with a protective windshield. This subsection does not apply to electrically powered three wheeled vehicles or three wheeled vehicles on which the operator and passenger ride within an enclosed cab.

B. A motorcycle and motor driven cycle shall be equipped with a rearview mirror, seat and footrests for the operator. A motorcycle or motor driven cycle operated with a passenger shall be equipped with seats, footrests and handrails for the passenger.

C. Handlebars rising more than fifteen inches above the level of the driver's seat or saddle on a motorcycle or motor driven cycle are prohibited.

§ 28–3362. **Television prohibition**

A person shall not drive a motor vehicle equipped with a television viewer or screen or any other means of visually receiving a television broadcast that is either:

1. Located in the motor vehicle at any point forward of the back of the driver's seat.

2. Visible, directly or indirectly, to the driver while operating the motor vehicle.

§ 28-3363. Fuel tank caps

A person shall not operate a motor vehicle on a highway unless the filling spout for the fuel tank is properly closed by means of a cap or cover composed of a noncombustible material that meets or exceeds applicable federal safety standards.

ARTICLE 10. VEHICLE INSPECTION

§ 28-3381. Vehicle equipment; safety requirement

A person shall not drive or move on a highway a motor vehicle, tow truck, trailer, semitrailer or pole trailer or any combination of a motor vehicle, tow truck, trailer, semitrailer or pole trailer unless:

1. The equipment on the vehicle is in good working order and adjustment as required in this chapter.

2. The vehicle is in a safe mechanical condition that does not endanger the driver or other occupant or a person on the highway.

§ 28-3382. Vehicle and equipment inspection; notice of repair or adjustment

A. If at any time there is reasonable cause to believe that a vehicle is unsafe or is not equipped as required by law or that a vehicle's equipment is not in proper adjustment or repair, the superintendent of the highway patrol, members of the highway patrol, other officers and employees of the department of public safety as the director may designate and any peace officer may require the driver of the vehicle to stop and submit the vehicle to an appropriate inspection and a test with reference to the vehicle.

B. If the vehicle is in an unsafe condition or any required part or equipment is not present or is not in proper repair and adjustment, the officer shall give a written notice to the driver. The officer's department shall retain the original of the notice. The notice shall state:

1. That the vehicle is required to be placed in safe condition and that the vehicle's equipment is required to be properly repaired and adjusted.

2. The particulars with reference to the requirements provided in paragraph 1.

3. That a certificate of correction or adjustment of illegal or faulty equipment is required within five days.

C. The director of the department of public safety shall prescribe the form of the notice required by this section.

§ 28-3383. Compliance with inspection laws; operation prohibited

A. A person driving a vehicle shall not refuse to submit the vehicle to an inspection and test if required to do so by an officer authorized by section 28-3382.

B. On receiving a notice as provided in section 28-3382, the owner or driver of the vehicle shall comply with the notice and shall obtain the certification of adjustment provided on the notice within five days. When the certification is completed, the notice shall be forwarded to the issuing department. In lieu of compliance with this subsection the vehicle shall not be operated, except as provided in subsection C of this section.

C. A person shall not operate a vehicle after receiving a notice pursuant to section 28-3382 until the vehicle and its equipment have been placed in proper repair

and adjustment and otherwise have been made to conform to the requirements of this chapter, unless it is necessary to return the vehicle to the residence or place of business of the owner or driver that is not more than a distance of twenty miles or to a garage.

D. If repair or adjustment of a vehicle or its equipment is found necessary on inspection, the owner of the vehicle:

1. May obtain the repair or adjustment at any place the owner chooses.

2. Shall not operate the vehicle on a highway until the certification of adjustment is obtained.

§ 28–3384. **School bus inspection; rules**

A. At least annually:

1. Each school bus registered in this state shall be inspected by the department of public safety.

2. An official certificate of inspection and approval shall be obtained from the department of public safety for each school bus registered in this state.

B. The inspections shall be made and the certificates shall be obtained as prescribed by law and by rules adopted by the director in conjunction with the state board of education as provided in section 28–3322.

C. Inspection of a school bus shall be made when the bus is initially registered in this state. The superintendent of the school district shall have all school buses that are registered by the district inspected pursuant to this section. If a school bus is privately owned, the owner of the school bus shall have the bus inspected pursuant to this section.

D. The department of public safety shall enforce this section.

ARTICLE 11. VEHICLE SIZE, WEIGHT AND LOAD

§ 28–3401. **Violation; scope and effect**

A. A person shall not drive or move and the owner of a vehicle shall not knowingly cause or permit to be driven or moved on a highway a vehicle or vehicles of a size or weight exceeding the limitations stated in this article or otherwise in violation of this article.

B. The maximum size and weight of vehicles specified in this article are lawful throughout this state. A local authority shall not alter the limitations stated in this article unless authorized by this article.

C. The size, weight and load provisions of this article do not apply to either:

1. Fire apparatus.

2. Urban public transit transportation system vehicles.

3. Implements of husbandry, including farm tractors, that are temporarily moved on a highway.

4. Vehicles operated under the terms of a special permit issued pursuant to this article.

§ 28–3402. **Reasonable access; definitions**

A. The department shall provide reasonable access to vehicles of legal size to and from terminals and service facilities within one road mile of the national network on highways within its jurisdiction.

B. The local authority shall provide reasonable access to vehicles of legal size to and from terminals and service facilities within one road mile of the national network

on highways within its jurisdiction. The local authority shall provide the director with a list of routes or maps designating the highways on which reasonable access is denied by December 1, 1992. The local authority shall update the list annually beginning December 31, 1993. The department shall consolidate and publish the list annually.

C. The department and the local authority may deny reasonable access within one road mile to or from the national network by a vehicle of legal size on highways within their jurisdiction as follows:

1. Reasonable access may be denied if access would result in a significant and clearly evident safety problem in relation to a vehicle of legal size.

2. For vehicles that are at least one hundred two inches wide, reasonable access may be denied on specific routes with lanes that are ten feet wide or less.

3. Reasonable access may be denied if denial is related to the specific configuration and resultant safety factor of the individual route, including structural hazards.

4. In denying reasonable access, the department or local authority shall not grant exceptions for categories, types or groups of routes.

D. A person shall submit a written request for reasonable access to the department if it concerns highways under its jurisdiction or to the local authority if it concerns highways under its jurisdiction. If a written request for reasonable access is not acted on within ninety days of receipt by the appropriate jurisdiction, reasonable access is approved. If a written request for reasonable access is denied by the department or the local authority, the person may appeal to the jurisdiction that denied access, and the jurisdiction shall issue a decision within ninety days. If the appeal is denied by the local jurisdiction, the person may request a review by the director of the denial of access.

E. The department shall design a uniform symbol that is an exception sign to convey information that access is denied. The department shall use the sign to indicate any point of exit from the national network that does not have a connecting state or local authority access route to terminals or service facilities.

F. The department or a local authority shall not require a person to obtain a permit for a vehicle of legal size or to pay a fee to gain reasonable access pursuant to this section.

G. For purposes of this section:

1. "National network" means the system of highways that is a part of any segment of the national system of interstate and defense highways or any other qualifying federal aid highway or state highway designated by the director as authorized by the surface transportation assistance act of 1982 (P.L. 97–424; 96 Stat. 2097) and designated pursuant to section 28–3403.

2. "Reasonable access" means providing the most reasonable and practical route available, including allowance for return of the vehicle to the national network on a route other than the route traveled to the terminal or service facility if it is feasible and more practical to follow the alternate route, unless allowing access would result in a significant and clearly evident safety problem.

3. "Service facility" means a facility that provides food, fuel, lodging, repairs or emergency medical care.

4. "Terminal" means a location where either:

(a) Freight originates, terminates or is handled in the transportation process.

(b) Commercial motor carriers maintain operating facilities.

5. "Vehicle of legal size" means a vehicle of a size that meets the limitations prescribed in section 28–3403, subsection C and sections 28–3404 and 28–3405.

§ 28–3403. Vehicle width; exceptions

A. Except as otherwise provided in this section and section 28–2026, the total outside width of a vehicle or the load on the vehicle shall not exceed eight feet.

B. If pneumatic tires, in substitution for the same type or other type of tires, are placed on a vehicle in operation on July 1, 1950:

1. The maximum width from the outside of one wheel and tire to the outside of the opposite wheel and tire shall not exceed eight feet six inches.

2. The outside width of the body of the vehicle or the load on the vehicle shall not exceed eight feet.

C. A person may operate a vehicle with a total width of the vehicle or the load on the vehicle of not more than one hundred two inches, exclusive of safety equipment, on:

1. Any segment of the national system of interstate and defense highways.

2. Any other qualifying federal aid highway.

3. Any state highway, as designated by the director.

4. Streets that are designated by a local authority as follows:

(a) The local authority may designate the streets by signage of the allowable streets or by maintenance of a map or list of allowable streets as approved by a resolution of the local authority.

(b) In designating the streets, the local authority shall consider any reasonable restriction including such safety restrictions as structural hazards, street width and any other safety factors identified by the local authority as a hazard to the motoring public.

5. A highway that reasonably accesses interstate system highways, federal aid highways or state highways from terminals and facilities that provide food, fuel, repairs and lodging or from emergency medical facilities.

§ 28–3404. Vehicle height; exceptions; special permits

A. A vehicle unladen or with a load shall not exceed a height of thirteen feet six inches above the level surface on which the vehicle stands without a permit issued under section 28–3412 or this section.

B. The department with respect to highways under its jurisdiction and a local authority with respect to highways under its jurisdiction shall also designate a system of highways that a vehicle unladen or with a load not exceeding fourteen feet above the level surface on which a vehicle stands may operate without a permit prescribed in subsection C of this section. In designating the streets, the local authority shall consider any reasonable restriction including such safety restrictions as structural hazards, street width and any other safety factors identified by the local authority as a hazard to the motoring public.

C. Notwithstanding section 28–3412, the department with respect to highways under its jurisdiction and a local authority with respect to highways under its jurisdiction, on application and good cause shown, may issue:

1. A permit pursuant to this chapter that is valid for one year and that authorizes the applicant to operate or move a motor vehicle or combination of vehicles on designated routes in this state if the laden height does not exceed fourteen feet. A fee of forty-five dollars is required for each motor vehicle covered by a permit issued pursuant to this paragraph. Except as expressly provided in this paragraph, the special permit is governed by sections 28–3412, 28–3413 and 28–3414.

2. A special single trip permit in writing that authorizes the applicant to operate or move a motor vehicle on designated routes in this state if the laden height of the vehicle does not exceed fourteen feet. A fee of fifteen dollars is required for each

motor vehicle covered by a permit issued pursuant to this paragraph. Except as expressly provided in this paragraph, the single trip special permit is governed by sections 28-3412, 28-3413 and 28-3414.

§ 28-3405. Vehicle length; exceptions; permits; rules

A. A vehicle, including any load on the vehicle, shall not exceed a length of forty feet extreme overall dimension, including front and rear bumpers. This subsection does not apply to any of the following:

1. A semitrailer when used in combination with a truck tractor.

2. A truck that is equipped with a conveyor bed, that is used solely as a fiber and forage module mover and that does not exceed forty-eight feet in length.

3. An articulated bus or articulated trolley coach that does not exceed a length of sixty feet.

4. A bus that is not articulated and that does not exceed a length of forty-five feet.

5. A recreational vehicle if used in combination with two units and if the combination does not exceed sixty-five feet in length. For purposes of this paragraph, "recreational vehicle" means a motor vehicle that is designed and customarily used for private pleasure use, including vehicles commonly called motor homes, pickup trucks with campers and pickup trucks with a fifth wheel trailing device.

B. A vehicle transporter may draw only one semitrailer. A combination of vehicles, excluding a vehicle transporter and the semitrailer it draws, that is coupled together shall not consist of more than two units, except that a truck or truck tractor and semitrailer may draw either one trailer or a forklift.

C. The following restrictions apply:

1. The length of a semitrailer operating in a truck tractor-semitrailer combination or a truck tractor-semitrailer-forklift combination shall not exceed fifty-seven feet six inches.

2. The length of a semitrailer or trailer operating in a truck tractor-semitrailer-trailer combination shall not exceed twenty-eight feet six inches.

3. The length of a trailer operating in a truck-trailer combination shall not exceed twenty-eight feet six inches.

4. If the length of a semitrailer is more than fifty-three feet, the overall length of a truck tractor-semitrailer combination shall not exceed sixty-five feet on all highways, except for the national intercity truck route network designated by the United States secretary of transportation as required by the surface transportation assistance act of 1982 or on a system of highways that is designated by a local authority. In designating the streets, the local authority shall consider any reasonable restriction including such safety restrictions as structural hazards and street width and any other safety factors identified by the local authority that are deemed a hazard to the motoring public.

5. A vehicle transporter and the semitrailer it draws shall not exceed a length of seventy-five feet.

D. Subsection B of this section does not apply to damaged, disabled or abandoned vehicles or combinations of vehicles while being towed by a tow truck in compliance with section 28-3417.

E. Notwithstanding subsection B of this section, extensions of not more than eighteen inches in length on each end of a vehicle or combination of vehicles used to transport manufactured vehicles or fiber and forage shall not be included in measuring the length of the vehicle or combination of vehicles when loaded.

F. Pursuant to a permit issued pursuant to section 28–3412, a truck or a truck tractor and semitrailer may draw not more than two trailers or semitrailers. The department shall adopt rules governing the movement and safety of a combination of vehicles under this subsection and authorizing the issuance in advance of prepaid permits. The rules shall include the adoption of minimum speeds on grades, lighting, signing, identification and braking requirements and any other rules the department deems necessary. The permit issued pursuant to this subsection is limited to the following highways:

1. An interstate highway that connects with two states if both states allow two trailers or semitrailers and if the interstate highway does not exceed forty miles between the connecting states.

2. Portions of an alternate state route that are located within four miles of and extend to the border of this state and an adjacent state that allows two trailers or semitrailers.

3. A state route that extends at least ten miles through an Indian reservation, that does not cross the Colorado river and that is located within twenty miles of and extends to the border of this state and an adjacent state that allows two trailers or semitrailers.

G. Notwithstanding subsections B and C of this section:

1. A motor vehicle may draw one single axle tow dolly on which a motor vehicle may be transported. A person shall secure the raised end of any motor vehicle being transported pursuant to this paragraph to the tow dolly by two separate chains, cables or equivalent devices adequate to prevent shifting or separation of the drawn vehicle and the tow dolly. As used in this paragraph, "single axle tow dolly" means a vehicle drawn by a motor vehicle and designed and used exclusively to transport another motor vehicle by which the front or rear wheels of the drawn motor vehicle are mounted on the tow dolly while the other wheels of the drawn motor vehicle remain in contact with the ground.

2. A truck or a truck tractor may draw a trailer or semitrailer that does not exceed a length of fifty-seven feet only on an interstate highway or on a highway that is within ten miles of an interstate highway if the trailer or semitrailer is manufactured in this state and is traveling with or without a load from its place of manufacture to be delivered for use outside this state.

3. A recreational vehicle may pull two units if all of the following conditions are met:

(a) The middle unit is equipped with a fifth wheel and brakes and has a weight equal to or greater than the rear unit.

(b) If the rear unit has a gross weight of three thousand pounds or more, it is equipped with brakes.

(c) The total combined gross weight of the towed units does not exceed the manufacturer's stated gross vehicle weight of the towing unit.

§ 28–3406. Projecting loads on passenger vehicles

A passenger type vehicle shall not be operated on a highway with a load carried on the vehicle if the load extends beyond the line of the fenders on the left side of the vehicle or extends more than six inches beyond the line of the fenders on the right side of the vehicle.

§ 28–3407. Maximum load extensions; length limitations for pole trailers

A. Notwithstanding the provisions of section 28–3405 that limit the length of vehicles and loads:

1. The load on a vehicle operated alone or the load on the front vehicle of a combination of vehicles shall not extend more than three feet beyond the foremost part of the vehicle.

2. The load on a vehicle operated alone or the load on the rear vehicle of a combination of vehicles shall not extend more than six feet beyond the rear of the bed or body of the vehicle.

B. The extensions beyond the front and rear of the vehicle as provided in this section are not included in determining the length of the vehicle for the purposes of section 28-3405.

C. The limitations as to length of vehicles and loads prescribed in section 28-3405 and subsection A of this section do not apply to a load on a pole trailer when transporting poles or pipes or structural material that cannot be dismembered, except that any pole, pipe or other material exceeding eighty feet in length shall not be transported unless a permit has been obtained as authorized in section 28-3412.

§ 28-3408. Vehicle loads; restrictions

A. A person shall not drive or move a vehicle on a highway unless the vehicle is constructed or loaded in a manner to prevent any of its load from dropping, sifting, leaking or otherwise escaping from the vehicle, except that either:

1. Sand may be dropped for the purpose of securing traction.

2. Water or another substance may be sprinkled on a roadway in cleaning or maintaining the roadway.

B. A person shall not operate a vehicle on a highway with a load unless the load and any covering on the load are securely fastened in a manner to prevent the covering or load from becoming loose, detached or in any manner a hazard to other users of the highway.

§ 28-3409. Single axle load limit; exception; definition

A. The gross weight imposed on the highway by the wheels of any one axle of a vehicle shall not exceed twenty thousand pounds, except that the director may issue a special permit pursuant to section 28-3412 for the purpose of moving road machinery that exceeds the maximum weight specified in this section from job to job within this state and from job to place of servicing and return within this state.

B. This section shall not be construed to limit in any manner the power of the director and a local authority to issue a special permit pursuant to section 28-3412.

C. For the purposes of this article, the gross weight imposed on the highway by the wheels of any one axle equals the total load transmitted to the road by all wheels whose centers are included between two parallel transverse vertical planes forty inches apart, extending across the full width of the vehicle.

§ 28-3410. Vehicles and loads; gross weight restrictions; exception

A. A person may operate a vehicle on all highways subject to the following maximum gross weights:

1. Twenty thousand pounds, including enforcement tolerances, on any one axle.

2. Thirty-four thousand pounds, including enforcement tolerances, on a tandem axle.

3. Eighty thousand pounds on a vehicle combination of five axles or more.

4. On a group of two or more consecutive axles, including any steering or castering axles, an overall gross weight, including enforcement tolerances, produced by application of the following formula in which W equals overall gross weight on any group of two or more consecutive axles to the nearest five hundred pounds, L

equals distance in feet between the extreme of any group of two or more consecutive axles to the nearest foot and N equals number of axles in any group under consideration, except that two consecutive sets of tandem axles may carry a gross load of thirty-four thousand pounds each if the overall distance between the first and last axles of the consecutive sets of tandem axles is thirty-six feet or more if the overall gross weight does not exceed eighty thousand pounds, including all enforcement tolerances:

$$W = 500 ((LN/N - 1) + 12N + 36)$$

B. This section does not apply to a vehicle and load that cannot be easily dismantled or divided and that have been issued a special permit pursuant to section 28–3412.

C. It is not a defense in a prosecution for a violation of this section that a vehicle or vehicle combination is registered for a declared gross weight in excess of the amount allowed under this section. The department shall not make an allowance or refund for fees paid for the weight in excess of the amount allowed under this section.

D. A single vehicle or a single vehicle of a combination of vehicles shall not be equipped with more than three axles, including the front steering axle, unless the additional axles are steering axles or castering axles. The limitation on the number of axles provided in this subsection does not apply to a vehicle operated with a permit issued pursuant to section 28–3412.

E. A vehicle or combination of vehicles equipped with one or more variable load axles shall have the pressure control preset and located outside of the cab so that the operator of the vehicle cannot vary the weight carried on the variable load axle or axles during transport of a load. The actuating control that raises or lowers the axle or axles may be located inside the cab for safety purposes. This actuating control must completely raise or completely lower the axle or axles when activated.

§ 28–3411. Weighing of vehicles and loads; violation; classification; fine

A. A police or peace officer having reason to believe that the weight of a vehicle and load does not conform to this article may require the driver to:

1. Stop and submit to a weighing of the vehicle and load by means of either portable or stationary scales.

2. Drive the vehicle to the nearest public scales, if the scales are within two miles.

B. If on weighing a vehicle and load pursuant to subsection A of this section an officer determines that the weight does not conform to this article, the officer may require the driver to stop the vehicle in a suitable place and remain standing until the portion of the load is removed as necessary to reduce the gross weight of the vehicle to the limit permitted under this article. The owner or operator shall care for the material unloaded at the risk of the owner or operator.

C. A driver of a vehicle is guilty of a class 3 misdemeanor who either:

1. Knowingly fails or refuses to stop and submit the vehicle and load to a weighing.

2. Knowingly fails or refuses when directed by an officer on a weighing of the vehicle to stop the vehicle and otherwise comply with subsections A and B of this section.

D. A peace officer as defined in section 41–1701 or any other peace officer designated by the director may require the weighing of a commercial vehicle by means of portable scales at any time. Failure to submit to weighing as required by

this subsection is punishable by a fine, the minimum of which is the minimum fine for over six thousand pounds overweight as prescribed for a first offense in section 28-3722.

§ 28-3412. **Excess size and weight special permits**

A. Subject to section 28-3413, subsection E, on application in writing and for good cause, the director with respect to highways under the jurisdiction of the department and a local authority with respect to highways under its jurisdiction may issue a special permit in writing authorizing the applicant to operate or move a vehicle or combination of vehicles of a size or weight of vehicle or load exceeding the maximum specified in this article or otherwise not in conformity with this chapter on any highway under the jurisdiction of the party granting the permit and for the maintenance of which the party is responsible.

B. A special permit may be issued for the movement of overdimensional and overweight loads that is subject to department rules for overdimensional and overweight loads. The director shall adopt rules for overdimensional and overweight loads. The director may establish fees to cover all or part of the cost of review and analysis of requests for overdimensional and overweight load permits. The department shall collect the fees, in addition to the special permit fee provided by this section.

C. Subject to this section, the director or local authority may issue the following special permits that are valid for one year and that may be limited by the director or local authority:

1. A special permit authorizing the applicant to transport a load by means of a truck or truck tractor, a semitrailer and one full trailer combination, if all of the following conditions are met:

(a) The combination does not exceed one hundred eleven thousand pounds of gross vehicle weight.

(b) The axle weight limitations are subject to sections 28-3409 and 28-3410.

(c) The vehicle combination is traveling within twenty miles of the borders of this state and an adjacent state that allows such combinations of length and gross vehicle weight.

2. Except on the national intercity truck route network as designated by the United States secretary of transportation as required by the surface transportation assistance act of 1982, a special permit authorizing the applicant to transport a load by means of a truck or truck tractor, a semitrailer and not more than two trailers if all of the following conditions are met:

(a) The overall length of the vehicle combination does not exceed ninety-two feet.

(b) The axle weight limitations conform to sections 28-3409 and 28-3410.

(c) The overall gross weight of the vehicle combination does not exceed one hundred twenty-one thousand pounds for nine axles or one hundred twenty-three thousand five hundred pounds for ten axles.

(d) The vehicle combination is traveling on either:

(i) Portions of an alternate state route that is located within four miles of and extends to the border of this state and an adjacent state that allows vehicle combinations of a truck or a truck tractor, a semitrailer and two trailers or semitrailers.

(ii) A state route that extends at least ten miles through an Indian reservation, does not cross the Colorado river and is located within twenty miles of and extends to the border of this state and an adjacent state that allows two trailers or semitrailers.

3. On application in writing by an owner of a watercraft as defined in section 5–301 and on good cause shown, a special excess width permit for a fee of forty-five dollars for each watercraft covered by the permit that:

(a) Authorizes the owner to move a vehicle loaded with the watercraft on a highway under the jurisdiction of the issuer if all of the following conditions exist:

(i) The total outside width of the vehicle and watercraft does not exceed ten feet.

(ii) The vehicle loaded with the watercraft is otherwise in conformity with the limitations prescribed by this chapter.

(iii) The watercraft is properly registered with the Arizona game and fish department.

(b) Contains the watercraft registration number.

D. The director may issue a special excess width permit for the operation of a vehicle with a reducible load only if both:

1. The load exceeds the width limitation prescribed in this section.

2. The load does not exceed ten feet in width.

§ 28–3413. Issuance of special permits; rules

A. The application for a special permit prescribed in section 28–3412 shall specifically describe the vehicle or vehicles and load to be operated or moved and the particular highways for which the permit to operate is requested.

B. If the special permit is issued, the director or local authority may:

1. Establish seasonal or other time limitations within which the vehicles described may be operated on the highways indicated or otherwise limit or prescribe conditions of operation of the vehicle or vehicles, when necessary to assure against undue damage to the road foundations, surfaces or structures.

2. Require an undertaking or other security as deemed necessary to compensate for an injury to a roadway or road structure.

C. The special permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any police officer or authorized agent of an authority granting the permit. A person shall not violate any of the terms or conditions of the special permit.

D. The director shall adopt rules for movement of equipment without a special permit for the purpose of repair or for local operation.

E. A permit shall not be issued pursuant to this section for moving a mobile home unless the applicant provides evidence of payment of all applicable ad valorem taxes or a clearance from the assessor of the county in which the mobile home is located. The clearance is valid for not more than thirty days, and the assessor shall issue the clearance if the assessor determines that all fees and ad valorem taxes applicable to the mobile home pursuant to title 42, chapter 3, article 3 have been paid as of the date of application. This subsection does not limit the discretion of the director or local authority to deny an application for a permit for moving a mobile home for reasons other than nonpayment of ad valorem taxes.

§ 28–3414. Special permit fees

A. Except as otherwise provided by law, the following fees are required:

1. Fifteen dollars for each special permit issued pursuant to section 28–3412 for excess size, except that a thirty dollar fee is required for each thirty day permit and a three hundred sixty dollar fee is required for each annual permit.

2. Seventy-five dollars for each permit and each thirty day permit issued pursuant to section 28-3412 for excess weight, except that a six hundred dollar fee is required for each annual permit.

3. For a permit requested for a motor vehicle or combination of vehicles that is in excess of both the size and weight permitted by this chapter, the amount of fees applicable for an excess weight permit.

4. Three hundred sixty dollars for each permit issued pursuant to section 28-3412, subsection C.

B. A fee is not required for a permit issued pursuant to this section for the movement of vehicles or combinations of vehicles owned by the United States government, this state or a county, city or town.

C. If a special permit is required by the director and by one or more authorities to move a vehicle or combination of vehicles, the applicant for the permit or permits shall pay a permit fee only to the director and is not required to pay a permit fee to a local authority.

D. If a special permit is required by more than one local authority to move a vehicle or combination of vehicles and if the permit is not required by the director, the applicant shall pay a permit fee only to the local authority that has jurisdiction of the streets and highways where the movements of the vehicle or combination of vehicles originate.

§ 28-3415. Restriction on highway usage

A. By ordinance or resolution, a local authority with respect to highways under its jurisdiction may prohibit the operation of a vehicle on the highway or may impose restrictions as to the weight of a vehicle to be operated on the highway for a total period of not more than ninety days in any one calendar year if the highway by reason of deterioration, rain, snow or other climatic conditions will be seriously damaged or destroyed unless the use of vehicles on the highway is prohibited or the permissible weights of the vehicles are reduced.

B. A local authority enacting an ordinance or resolution pursuant to subsection A of this section shall erect or cause signs to be erected and maintained designating the provisions of the ordinance or resolution at each end of that portion of a highway affected by the ordinance. The ordinance or resolution is not effective until the signs are erected and maintained.

C. A local authority with respect to highways under its jurisdiction may prohibit by ordinance or resolution the operation of trucks or other commercial vehicles or may impose limitations as to the weight of vehicles on designated highways. The local authority shall place appropriate signs on the highway to designate the prohibitions and limitations.

D. The director has authority as granted by this section to local authorities to determine by resolution and to impose restrictions as to the weight of vehicles operated on a highway under the jurisdiction of the director. The restrictions are effective when signs giving notice of the restrictions are erected on the highway or portion of the highway affected by the resolution.

§ 28-3416. Liability; highway or structure damage

A. A person driving a vehicle, object or contrivance on a highway or highway structure is liable for all damage that the highway or structure may sustain as a result of an illegal operation or driving or moving of the vehicle, object or contrivance or as a result of operating, driving or moving a vehicle, object or contrivance weighing or measuring in excess of the maximum weight or height in this article even if authorized by a special permit issued as provided in section 28-3404 or 28-3412.

B. If the driver is not the owner of the vehicle, object or contrivance but is operating, driving or moving the vehicle, object or contrivance with the express or implied permission of the owner, the owner and driver are jointly and severally liable for any damage.

C. The authorities in control of the highway or highway structure may recover the damage in a civil action.

§ 28–3417. **Vehicle towing; rules; contractual agreement for towing services; weight exemption**

A. If a vehicle is towing another vehicle, the drawbar or other connection shall be of sufficient strength to pull all weight towed by the vehicle and the drawbar or other connection shall not exceed fifteen feet from one vehicle to the other, except the connection between any two vehicles transporting poles, pipe, machinery or other objects of a structural nature that cannot readily be dismembered.

B. If a vehicle is towing another vehicle and the connection consists of a chain, rope or cable, a white flag or cloth at least twelve inches square shall be displayed on the connection.

C. The director of the department of public safety shall adopt and enforce rules that are not inconsistent with this chapter to govern the design and operation of all tow trucks.

D. A person may not operate a tow truck for the purpose of towing vehicles without first registering with the director of the department of public safety and obtaining a permit pursuant to the rules governing tow trucks adopted by the department of public safety.

E. The director of the department of public safety or a county, city or town may enter into a contractual agreement with a towing firm or firms for towing or storage services, or both. The contractual agreement shall comply with this section and all rules adopted under this section. Contracts shall be awarded on the basis of competitive bidding. The director of the department of public safety or a county, city or town shall reserve the right to reject all bids. If only one bid is received, the director of the department of public safety or a county, city or town may reject the bid and negotiate a contract without bidding if the negotiated contract is at a price lower than the bid price under the terms and conditions specified in the call for bids.

F. The total weight of a tow truck and the towed vehicle is exempt from the maximum total gross weight load allowed under section 28–3410 if a damaged, disabled or abandoned vehicle or vehicle combination is towed.

§ 28–3418. **Motor vehicle towing advisory council**

A. The motor vehicle towing advisory council is established consisting of the following thirteen members:

1. The director of the department of public safety or the director's designee.

2. The director of the department of transportation or the director's designee.

3. Three members of the public who do not have a financial interest in any towing business and who are appointed by the governor.

4. Six members who are registered with the department of public safety to operate a towing and storage business in this state and who are appointed by the governor. Under this paragraph, the governor shall not appoint more than two persons from the same towing and storage organization or association to serve as members concurrently or more than two persons from any one county to serve as members concurrently. The members representing the towing and storage businesses shall be appointed as follows:

(a) Two members who represent the interest and concerns of towing businesses that operate at least one but not more than five articles of towing equipment.

(b) Two members who represent the interest and concerns of towing businesses that operate at least six but not more than twelve articles of towing equipment.

(c) Two members who represent the interest and concerns of towing businesses that operate more than twelve articles of towing equipment.

5. One member who represents a law enforcement agency of an incorporated city or town, who has experience in dealing with towing and storage services and who is appointed by the governor. This member shall represent a law enforcement agency of an incorporated city or town that is not located in the same county that is represented by the member appointed pursuant to paragraph 6 of this subsection.

6. One member who represents a law enforcement agency of a county, who has experience in dealing with towing and storage services and who is appointed by the governor.

B. The members appointed pursuant to subsection A, paragraphs 3 through 6 shall serve staggered terms of three years unless a member vacates the position. Appointment to fill a vacancy resulting other than from expiration of a term is for the unexpired term only.

C. The advisory council shall:

1. Meet at least four times in each calendar year.

2. Select from its members a person to serve as chairman.

3. Advise and assist the department of public safety concerning matters related to rules governing the design and operation of all tow trucks in this state.

4. Advise and assist the department of public safety in resolving complaints from consumers and tow truck operators. The department of public safety shall provide quarterly to the advisory council information related to the complaints including the number, nature and disposition of the complaints.

5. Establish a mailing list that includes any person who expresses interest in the advisory council's activities. The advisory council shall provide the list to the department of public safety, and the department of public safety shall send notice by first class mail to each person on the list at least fifteen days before the date on which a meeting of the advisory council is scheduled to be held.

6. Submit a report with its findings and recommendations on or before December 1 of each year to the governor, the president of the senate and the speaker of the house of representatives.

D. The department of public safety shall provide staff to support the towing advisory council.

E. Members of the advisory council are not eligible to receive compensation or reimbursement for expenses.

ARTICLE 12. ENVELOPE PERMITS

§ 28-3461. Definitions

In this article, unless the context otherwise requires:

1. "Envelope" means the outermost dimensions of a load or vehicle to include width, height and length and the weight of the vehicle or its load.

2. "Envelope permit" means a permit issued by the department authorizing a person to transport property on the highways of this state pursuant to all applicable statutes and local ordinances and the terms listed on the permit.

3. "Power unit" means a vehicle that propels itself or tows a trailer or combination of vehicles on the highways of this state.

§ 28–3462. Application

A. A person shall not operate, move or leave standing on a highway of this state a vehicle that is carrying or transporting cargo required to have a permit for excess size or weight or that is otherwise not in conformity with this chapter unless the department issued an envelope permit or the person obtained a permit pursuant to section 28–3412.

B. A person shall submit an application for an envelope permit to the director in writing on a form prescribed and furnished by the director. The application shall be verified and shall state:

1. The principal place of business of the applicant.

2. The established place of business or the place of business at or from which the business is to be conducted.

3. The vehicle identification number of and the make of the vehicle that the applicant lists as an authorized vehicle on the envelope permit.

4. Other information the director requires.

C. The director shall deny an application for an envelope permit if the applicant knowingly makes a misrepresentation, misstatement or material omission of information on the application. A person who is denied an envelope permit pursuant to this subsection is not eligible to reapply for an envelope permit for a period of up to twenty-four months from the date of the denial.

§ 28–3463. Fees

A. The department shall collect the following fees:

1. One hundred fifty dollars for each thirty day oversize only envelope permit.

2. Five hundred dollars for a thirty day oversize and overweight envelope permit.

3. Seven hundred fifty dollars for an annual oversize only envelope permit.

4. One thousand five hundred dollars for an annual oversize and overweight envelope permit.

5. Fifty dollars for each power unit that is added and that exceeds the original number of units on the envelope permit as issued.

6. Twenty-five dollars for reissuing an envelope permit to reflect a change in the envelope permit holder's name, address or substitute power units.

B. The director shall transmit twenty-five per cent of the fees collected pursuant to this section to the state treasurer for deposit in the special registration fund established by section 28–707. The director shall use monies deposited in the special registration fund pursuant to this section to carry out the duties imposed by this article.

§ 28–3464. Issuing envelope permits; restrictions; requirements

A. On approval of the application, the director may issue an envelope permit. The envelope permit for a nonspecific and nonreducible vehicle or cargo shall not authorize a vehicle or a vehicle transporting cargo on a highway to exceed two hundred fifty thousand pounds gross weight, fourteen feet in width, sixteen feet in height and one hundred twenty feet in length.

B. A vehicle for which an envelope permit is issued shall have at least four axles. Except for excess gross weight, excess width or length authorized by the envelope permit, a vehicle and cargo shall meet the requirements of statutes, rules and ordinances governing the movement of vehicles on highways and rules of local authorities.

C. A person who operates a vehicle on a highway transporting cargo for which an envelope permit has been issued and is required shall have a legible envelope permit in the person's immediate possession. An envelope permit shall provide for the listing of any number of power units on the permit. The envelope permit is valid only if the power unit towing or transporting the cargo is listed on the permit. The operator shall display the envelope permit on demand of a peace officer.

D. An envelope permit may be duplicated and modified to include the listing of additional power units at the time of initial application or later. A photocopy or facsimile of the envelope permit is not valid.

E. The director shall not issue an envelope permit for a vehicle or vehicle combination that transports cargo commonly known as a mobile or modular home.

§ 28-3465. Third party permit issuance

The director, in consultation with the envelope permit advisory council established by section 28-3470, may authorize third parties to issue permits pursuant to article 11 of this chapter and this article pursuant to rules.

§ 28-3466. Administration

A. The director shall regulate all persons required by this article to have envelope permits.

B. The director may:

1. Investigate and require the assistance of the department of public safety or county or local law enforcement agencies in its investigation.

2. Conduct hearings.

3. Compel the attendance of witnesses at the hearings.

§ 28-3467. Revocation or suspension of envelope permits and privileges

A. The director may suspend or revoke an envelope permit if the director determines that the person:

1. Made a material misrepresentation or misstatement in the application for an envelope permit.

2. Violated or is violating either:

(a) A law of this state governing the movement of vehicles on the highways.

(b) A rule adopted by the director or a local authority.

3. Does not have an established place of business or principal place of business.

4. Failed or is failing to maintain records that are required to be maintained.

B. On determining that grounds for suspension or revocation of an envelope permit exist, the director shall give notice to the person in writing of the suspension or revocation. The notice shall require the person to appear before the director at a specified time and place to show cause why the envelope permit should not be suspended or revoked. The director shall set the time and place for the hearing. The licensee may appear and be heard at the hearing and may have other persons present and testify at the hearing. The order of suspension or revocation is final if a response is not received from the permittee within fifteen days of the date the notice for hearing was mailed.

C. If the envelope permit of a person is suspended for a violation of this article, the suspension is not effective for more than two years. If the envelope permit is revoked for a violation of this article, the person may apply for a new envelope permit after two years. The director shall make a written order that suspends or revokes or declines to suspend or revoke the envelope permit.

D. If the director determines that a person failed to obtain an envelope permit or a permit under section 28-3412, the director may suspend the privilege of obtaining subsequent permits for two years from the date of the suspension. A person whose permit privileges are suspended may request a hearing within fifteen days to show cause why the envelope permit privileges should not be reinstated. At the time and place fixed by the director, the person shall appear and be heard and may have other persons present and testify at the hearing.

E. Decisions of the director are subject to judicial review pursuant to title 12, chapter 7, article 6.

§ 28-3468. **Liability**

A user of an envelope permit accepts full responsibility and liability for use of the envelope permit and holds the state harmless for an act or the omission of an act while operating a vehicle or transporting cargo for which an envelope permit has been issued and is required.

§ 28-3469. **Records; inspection**

A. A permit holder shall maintain in this state for at least three years records and other data for all vehicles operated and cargo transported under an envelope permit.

B. The director may prescribe uniform forms for the keeping of records and other data.

C. During usual business hours or at any other time if needed to protect public safety, the permit holder shall allow department employees or state or local peace officers to inspect the permit holder's records and other data.

§ 28-3470. **Envelope permit advisory council**

A. An envelope permit advisory council is established consisting of the following seven members who are appointed by the governor:

1. One member representing the department of public safety.

2. One member representing the department of transportation.

3. Three members representing motor carriers.

4. One member from a municipal law enforcement agency of a city with a population of more than one hundred thousand persons according to the most recent United States decennial census.

5. One member representing the governor's office of highway safety.

B. The members shall serve staggered terms of three years.

C. The envelope permit advisory council shall:

1. Meet at least annually.

2. Select from its members a person to serve as chairman.

3. Advise and assist the department of transportation in developing the rules adopted to administer this article.

4. Advise and consult with the department of transportation and state and local law enforcement agencies concerning matters related to the envelope permit.

5. Establish a mailing list that includes any party expressing an interest in the council's activities. The council shall provide the list to the department of transportation, and the department of transportation shall send notice by regular mail to each person on the list at least fifteen days before the date on which each meeting of the council is to be held.

D. Members of the envelope permit advisory council are not eligible to receive compensation or reimbursement for expenses.

E. The envelope permit advisory council is subject to title 38, chapter 3, article 3.1.

§ 28-3471. Violation; classification

A person who operates, moves or leaves standing on a highway a vehicle or a vehicle carrying or transporting cargo in violation of an envelope permit is guilty of a class 1 misdemeanor.

ARTICLE 13. MULTISTATE HIGHWAY TRANSPORTATION AGREEMENT

§ 28-3491. Adoption of agreement

The multistate highway transportation agreement is entered into and enacted into law as follows:

Multistate Highway Transportation Agreement

Pursuant to and in conformity with the laws of their respective jurisdictions, the participating jurisdictions, acting by and through their officials lawfully authorized to execute this agreement, mutually agree as follows:

ARTICLE I
FINDINGS AND PURPOSES

Section 1. Findings.

The participating jurisdictions find that:

(a) The expanding regional economy depends on expanding transportation capacity.

(b) Highway transportation is the major mode for movement of people and goods in the western states.

(c) Uniform application in the west of more adequate vehicle size and weight standards will result in a reduction of pollution, congestion, fuel consumption and related transportation costs which are necessary to permit increased productivity.

(d) A number of western states, already having adopted substantially the 1964 bureau of public roads recommended vehicle size and weight standards, still find current federal limits more restrictive.

(e) The 1974 revision of federal law found in 23 United States code section 127 did not contain any substantial improvements for vehicle size and weight standards in the western states and deprives states of interstate matching monies if vehicle weights and widths are increased, even though the interstate system is nearly ninety-two per cent complete.

(f) The participating jurisdictions are most capable of developing vehicle size and weight standards most appropriate for the regional economy and transportation requirements, consistent with and in recognition of principles of highway safety.

Section 2. Purposes.

The purposes of this agreement are to:

(a) Adhere to the principle that each participating jurisdiction should have the freedom to develop vehicle size and weight standards that it determines most appropriate to its economy and highway system.

(b) Establish a system authorizing the operation of vehicles traveling between two or more participating jurisdictions at more adequate size and weight standards.

(c) Promote uniformity among participating jurisdictions in vehicle size and weight standards on the basis of the objectives set forth in this agreement.

(d) Secure uniformity as far as possible of administrative procedures in the enforcement of recommended vehicle size and weight standards.

(e) Provide means for the encouragement and utilization of research which will facilitate the achievement of the purposes of this section, with due regard for the findings set forth in section 1 of this article.

ARTICLE II
DEFINITIONS

Section 1. As used in this agreement:

(a) "Designated representative" means a person authorized to represent the jurisdiction.

(b) "Jurisdiction" means a state of the United States or the District of Columbia.

(c) "Vehicle" means any vehicle as defined by statute to be subject to size and weight standards which operates in two or more participating jurisdictions.

ARTICLE III
GENERAL PROVISIONS

Section 1. Qualifications for membership.

Participation in this agreement is open to jurisdictions which subscribe to the findings, purposes and objectives of this agreement and will seek legislation necessary to accomplish these objectives.

Section 2. Cooperation.

The participating jurisdictions, working through their designated representatives, shall cooperate and assist each other in achieving the desired goals of this agreement pursuant to appropriate statutory authority.

Section 3. Effect of headings.

Article and section headings contained in this agreement are not deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any article or section of this agreement.

Section 4. Vehicle laws and regulations.

This agreement does not authorize the operation of a vehicle in any participating jurisdiction contrary to the laws or regulations of the jurisdiction.

Section 5. Interpretation.

The final decision regarding interpretation of questions at issue relating to this agreement shall be reached by unanimous joint action of the participating jurisdictions, acting through the designated representatives. Results of all such actions shall be placed in writing.

Section 6. Amendment.

The participating jurisdictions may amend this agreement by unanimous joint action, acting through the officials of the jurisdictions authorized to enter into this agreement, subject to the requirements of article III, section 4. Any amendment shall be placed in writing and become a part of this agreement but shall not become effective as part of this agreement until adopted by the legislature.

Section 7. Restrictions, conditions or limitations.

Any jurisdiction entering this agreement shall provide each other participating jurisdiction with a list of any restriction, condition or limitation on the general terms of this agreement, if any.

Section 8. Additional jurisdictions.

Additional jurisdictions may become members of this agreement by signing and accepting the terms of the agreement.

ARTICLE IV

COOPERATING COMMITTEE

Section 1. Pursuant to article III, section 2, the designated representatives of the participating jurisdictions constitute a committee which may:

(a) Collect, correlate, analyze and evaluate information resulting or derivable from research and testing activities in relation to vehicle size and weight related matters.

(b) Recommend and encourage the undertaking of research and testing in any aspect of vehicle size and weight or related matter if, in their collective judgment, appropriate or sufficient research or testing has not been undertaken.

(c) Recommend changes in law or policy with emphasis on compatibility of laws and uniformity of administrative rules or regulations which would promote effective governmental action or coordination in the field of vehicle size and weight related matters.

Section 2. Each participating jurisdiction is entitled to one vote only. No action of the committee is binding unless a majority of the total number of votes cast by participating jurisdictions is in favor of the action.

Section 3. The committee shall meet at least once annually and shall elect, from among its members, a chairman, a vice-chairman and a secretary.

Section 4. The committee shall submit annually to the legislature of each participating jurisdiction, no later than November 1, a report setting forth the work of the committee during the preceding year and including recommendations developed by the committee. The committee may submit such additional reports as it deems appropriate or desirable. Copies of all such reports shall be made available to the transportation committee of the western conference, council of state governments, and to the western association of state highway and transportation officials.

ARTICLE V

OBJECTIVES OF THE PARTICIPATING JURISDICTIONS

Section 1. Objectives.

The participating jurisdictions declare that:

(a) It is the objective of the participating jurisdictions to obtain more efficient and more economical transportation by motor vehicles between and among the participating jurisdictions by encouraging the adoption of standards that will, as minimums, allow the operation on all state highways, except those determined through engineering evaluation to be inadequate, with a single axle weight of twenty thousand pounds, a tandem axle weight of thirty-four thousand pounds, and a gross vehicle or combination weight of that resulting from application of the formula:

$$W = 500 ((LN/N - 1) + 12N + 36)$$

Where W = maximum weight in pounds carried on any group of two or computed to the nearest five hundred pounds.

L = distance in feet between the extremes of any group of two or more consecutive axles.

N = number of axles in the group under consideration.

(b) It is the objective of the participating jurisdictions that if the operation of a vehicle or combination of vehicles according to the provisions of subsection (a) of this

section would result in withholding or forfeiture of federal aid monies pursuant to 23 United States code section 127, the operation of such vehicle or combination of vehicles at axle and gross weights within the limits set forth in subsection (a) of this section will be authorized under special permit authority by each participating jurisdiction which could legally issue such permits prior to July 1, 1956, provided all regulations and procedures related to such issuance in effect as of July 1, 1956 are adhered to.

(c) The objectives of subsections (a) and (b) of this section relate to vehicles or combinations of vehicles in regular operation, and the authority of any participating jurisdiction to issue special permits for the movement of any vehicle or combinations of vehicles having dimensions or weights in excess of the maximum statutory limits in each participating jurisdiction is not affected.

(d) It is the objective of the participating jurisdictions to facilitate and expedite the operation of any vehicle or combination of vehicles between and among the participating jurisdictions under the provisions of subsection (a) or (b) of this section and to that end the participating jurisdictions agree, through their designated representatives, to meet and cooperate in the consideration of vehicle size and weight related matters including the development of: uniform enforcement procedures; additional vehicle size and weight standards; operational standards; agreements or compacts to facilitate regional application and administration of vehicle size and weight standards; uniform permit procedures; uniform application forms; rules and regulations for the operation of vehicles, including equipment requirements, driver qualifications and operating practices and such other matters as may be pertinent.

(e) In recognition of the limited prospects of federal revision of 23 United States code section 127 and in order to protect participating jurisdictions against any possibility of withholding or forfeiture of federal aid highway monies, it is the objective of the participating jurisdictions to secure congressional approval of this agreement, specifically of the vehicle size and weight standards set forth in subsection (a) of this section.

(f) In recognition of desire for a degree of national uniformity of size and weight regulations, it is the objective to encourage development of broad, uniform size and weight standards on a national basis and that procedures adopted under this agreement be compatible with national standards.

ARTICLE VI
ENTRY INTO FORCE AND WITHDRAWAL

Section 1. This agreement enters into force when enacted into law by any two or more jurisdictions. Thereafter, this agreement becomes effective as to any other jurisdiction upon its enactment, except as otherwise provided in article III, section 8.

Section 2. Any participating jurisdiction may withdraw from this agreement by cancelling the agreement, but no such withdrawal takes effect until thirty days after the designated representative of the withdrawing jurisdiction gives notice in writing of the withdrawal to all other participating jurisdictions.

ARTICLE VII
CONSTRUCTION AND SEVERABILITY

Section 1. This agreement shall be liberally construed so as to effectuate its purposes.

Section 2. The provisions of this agreement are severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any participating jurisdiction or the applicability to any government, agency, person or circumstance is held invalid, the validity of the remainder of this

agreement is not affected. If this agreement is held contrary to the constitution of any participating jurisdiction, the agreement remains in full force as to the jurisdictions affected as to all severable matters.

ARTICLE VIII

FILING OF DOCUMENTS

Section 1. A copy of this agreement, its amendments, and rules or regulations promulgated under the agreement and interpretations of the agreement shall be filed in the highway department in each participating jurisdiction and made available for review by interested parties.

ARTICLE IX

EXISTING STATUTES NOT REPEALED

Section 1. All existing statutes prescribing weight and size standards and all existing statutes relating to special permits continue to be effective until amended or repealed by law.

ARTICLE X

STATE GOVERNMENT DEPARTMENTS AUTHORIZED TO COOPERATE WITH COOPERATING COMMITTEE

Section 1. If appropriations are made available the departments, agencies and officers of the government of this state may cooperate with and assist the cooperating committee within the scope contemplated by article IV, section 1, subsections (a) and (b). The departments, agencies and officers of the government of this state are authorized to cooperate with the cooperating committee.

§ 28-3492. Designated representative; advisory members

A. The designated representative as used in the multistate highway transportation agreement is the director who serves during his continuance as the director.

B. A member of the senate of this state appointed by the president of the senate and a member of the house of representatives of this state appointed by the speaker of the house of representatives are also designated representatives, but with respect to functions of the designated representative under the multistate highway transportation agreement, the legislative members are advisory members.

§ 28-3493. Compensation of designated representative

The designated representative is not entitled to additional compensation because of the designated representative's service as designated representative. The designated representative is entitled to reimbursement for travel and other necessary expenses incurred in the performance of the designated representative's official duties as provided by statute for state officers.

CHAPTER 8

PENALTIES AND PROCEDURES FOR VEHICLE VIOLATIONS

ARTICLE 1. DEFINITIONS

§ 28-3701. Definitions

In this chapter, unless the context otherwise requires:

1. "Gross weight" means the weight of a vehicle without a load plus the weight of any load on the vehicle.

2. "License" means any license, temporary instruction permit or temporary license issued under the laws of this state or any other state pertaining to the licensing of persons to operate motor vehicles.

3. "Police officer" means an officer authorized to direct or regulate traffic or make arrests for violations of traffic rules.

4. "Stop", if required, means complete cessation from movement.

5. "Stop, stopping or standing", if prohibited, means any stopping or standing of an occupied or unoccupied vehicle, except when necessary to avoid conflict with other traffic or in compliance with directions of a police officer or traffic control sign or signal.

6. "Traffic" means pedestrians, ridden or herded animals, vehicles and other conveyances either singly or together while using a highway for purposes of travel.

ARTICLE 2. PENALTIES AND VIOLATIONS

§ 28-3721. Violation; civil penalty

A person who violates a provision of chapter 5, 6 or 7 of this title or this chapter is subject to a civil penalty unless the statute defining the offense provides for a criminal classification.

§ 28-3722. Weight violations; classification; civil penalty; procedures; evidence

A. Notwithstanding subsection B or C of this section, a conviction for a violation of section 28-3409 or 28-3410 or chapter 15, article 2 of this title:

1. In which the excess weight is two thousand five hundred one pounds or more is a class 1 misdemeanor.

2. In which the excess weight is one to one thousand pounds is a class 3 misdemeanor, and the maximum fine is one dollar.

B. Except as otherwise provided by law, a person who violates section 28-3409 or 28-3410 or chapter 15, article 2 of this title is:

1. Subject to a civil penalty.

2. Guilty of a class 2 misdemeanor for a second violation of any of these sections within six months of the preceding judgment.

3. Guilty of a class 1 misdemeanor for a second conviction for a violation of any of these sections within one year.

C. In addition to any term of imprisonment that a court may impose for a second or subsequent violation, a court shall fine a person the amount set forth in the following table:

If the excess weight is:	The minimum fine or civil penalty is:		
	Penalty	Class 2	Class 1
1,001 to 1,250 pounds	$ 50.00	$ 75.00	$ 100.00
1,251 to 1,500	100.00	150.00	200.00
1,501 to 2,000	150.00	225.00	300.00
2,001 to 2,500	200.00	300.00	400.00
2,501 to 3,000			500.00
3,001 to 3,500			600.00
3,501 to 4,000			700.00
4,001 to 4,500			800.00
4,501 to 4,750			900.00
4,751 and over			1000.00

D. An unregistered vehicle that is operated on a highway is deemed to have a gross weight of one pound for purposes of the fine imposed by this section.

E. If an officer finds that a person has violated only the axle weight limitation and not the total weight limitation, the officer shall request the driver to reload the vehicle to comply with the axle weight limitation and notwithstanding section 28-3721 or this section:

1. If the driver does not comply with the request of the officer to reload, the driver is subject to a civil penalty or a criminal penalty.

2. If the driver complies with the axle weight limitation after reloading and the excess axle weight was two thousand five hundred pounds or less:

(a) The officer shall not cite the driver.

(b) The driver is not subject to a civil penalty or a criminal penalty for a violation of the axle weight limitation.

3. If the driver reloads but does not comply with the axle weight limitation or if the excess axle weight is more than two thousand five hundred pounds, the driver is subject to a civil penalty or a criminal penalty for a violation of the axle weight limitation.

F. If a person is arrested for violating section 28-3409 or 28-3410 or chapter 15, article 2 of this title, the arresting officer may take the person immediately before a magistrate within the county in which the offense charged is alleged to have been committed who has jurisdiction of the offense. If the person is taken before a justice of the peace, the person shall be taken before the nearest or most accessible justice of the peace with reference to the place where the arrest is made.

G. The officer or court collecting or receiving a civil penalty, fee, fine or forfeiture for a violation of section 28-3409 or 28-3410 or chapter 15, article 2 of this title shall transmit it to the state treasurer. The state treasurer shall deposit the amount in the Arizona highway user revenue fund. If a civil penalty, fee or fine is collected, ten dollars of the civil penalty, fee or fine is deductible as reimbursement of costs from the amount collected, unless the fee or fine is less than ten dollars. The collecting official shall deposit the deducted monies with the city, town or county treasury of the city, town or county prosecuting or processing the violation.

H. A weight certificate or any other document that evidences the receipt of goods for shipment, that is issued by a person engaged in the business of transporting or forwarding goods and that states the gross weight of the vehicle with load that is in excess of the prescribed maximum weight limitation permitted by section 28-3409 or 28-3410 or chapter 15, article 2 of this title is prima facie evidence that the weight of a vehicle and load is unlawful.

I. If the commodity being carried is sold by weight, a weight certificate or any other document that evidences the receipt of goods for shipment, that is issued by a person engaged in the business of transporting or forwarding goods and that states the gross weight of the vehicle with load that is not in excess of the prescribed maximum weight limitation permitted by section 28-3410 or chapter 15, article 2 of this title is prima facie evidence that the gross weight of a vehicle and load is lawful. The presumption that the weight of the vehicle and load is lawful may be rebutted by the weight of the vehicle and load as shown by means of the department's stationary scale or a public weighmaster scale.

§ 28-3723. Injuring or preventing operation of vehicle; classification; emergency exception

A. A person is guilty of a class 3 misdemeanor who:

1. Knowingly breaks, injures, tampers with or removes any part of a vehicle for any purpose against the will or without the consent of the owner of the vehicle.

2. In any other manner knowingly and maliciously interferes with or prevents the running or operation of the vehicle.

3. Without consent of the owner or person in charge of a vehicle, climbs into or on a vehicle with intent to commit any crime, malicious mischief or injury to the vehicle.

4. While a vehicle is stopped and unattended, knowingly either:

(a) Manipulates any levers, starting crank or other starting device, brakes or other mechanism of the vehicle.

(b) Sets the vehicle in motion.

B. Subsection A does not apply if any of the conduct described in subsection A is committed either:

1. In an emergency in furtherance of public safety or convenience.

2. By or under the direction of an officer in the performance of the officer's duty.

§ 28–3724. Transporting hazardous material; violation; classification

A person who violates any provision of chapter 5, 6 or 7 of this title or this chapter while operating a motor vehicle transporting a hazardous material, substance or waste that requires placarding as prescribed by department rule is guilty of a class 2 misdemeanor unless the violation is classified by law as a class 1 misdemeanor or a felony.

§ 28–3725. Offense by person owning or controlling vehicle; classification

It is a class 2 misdemeanor for the owner, or any other person, employing or otherwise directing the driver of a vehicle to require or to knowingly permit the operation of the vehicle on a highway in any manner contrary to law.

ARTICLE 3. PROCEDURES IN CRIMINAL CASES

§ 28–3751. Parties to a crime

A. A person who commits, attempts to commit, conspires to commit or aids or abets in the commission of an act declared in chapter 5, 6 or 7 of this title or this chapter to be a crime, whether individually, in connection with one or more other persons or as a principal, agent or accessory, is guilty of the offense.

B. A person who falsely, fraudulently, forcibly or wilfully induces, causes, coerces, requires, permits or directs another person to violate any provision of chapter 5, 6 or 7 of this title or this chapter is guilty of the offense.

§ 28–3752. Jurisdiction of municipal and justice courts

A. Each municipal court established by or within an incorporated city or town has and every justice court has concurrent jurisdiction over all civil and criminal violations of chapters 5, 6 and 7 of this title and this chapter that are committed within their respective boundaries by persons eighteen years of age or older.

B. municipal courts and justice courts have concurrent jurisdiction over civil traffic violations committed within their respective boundaries by persons under eighteen years of age if the presiding judge of the superior court in the county declined jurisdiction pursuant to section 8–202.

§ 28–3753. **Hearing officers; civil traffic violations**

A. Subject to funding by the governing body and within their jurisdictions, justice courts may appoint hearing officers to preside over civil traffic violation cases. The appointments are subject to the concurrence of the presiding judge of the superior court in the county in which the justice court is located.

B. A city or town may appoint hearing officers to preside over civil traffic violation cases in a manner provided by ordinance of the city or town.

C. Hearing officers may hear and dispose of civil traffic violation cases under the supervision of the court. The judgment of the hearing officer constitutes the judgment of the court that may be appealed to the superior court pursuant to title 22, chapter 2, article 4.

§ 28–3754. **Disposition of fees, fines, forfeitures and civil penalties**

A. All fees, fines, forfeitures and civil penalties imposed and collected by the municipal courts in the exercise of their concurrent jurisdiction shall be retained by and inure to the benefit of the city or town in which the municipal court is located.

B. All fees, fines, forfeitures and civil penalties imposed and collected by the justice court shall be retained by and inure to the benefit of the county in which the court is located.

§ 28–3755. **Traffic violation charge; juveniles**

A. A court shall not dispose of a moving traffic violation charge arising from the issuance of a traffic citation to a juvenile under eighteen years of age unless a parent or guardian of the juvenile appears in court with the juvenile at the time of the disposition of the charge.

B. If unusual circumstances prevent the appearance of the parent or guardian, the court may waive the appearance and shall send written notice to the parent or guardian, if known, advising the parent or guardian of the charge and its disposition.

§ 28–3756. **Applicability of procedures; arrest without warrant**

A. Section 28–3725 and sections 28–3751 through 28–3754 govern all police officers in making arrests without a warrant for violations of chapters 5, 6 and 7 of this title and this chapter. The procedure prescribed in this article is not exclusive of any other method prescribed by law for the arrest and prosecution of a person for an offense of like grade.

B. For a criminal offense alleged to have been committed in violation of this title and for which an officer is not authorized to arrest without a warrant, the officer may present the alleged violation before a magistrate in the same manner as any other misdemeanor and may proceed either under a warrant of arrest or a summons and notice to appear.

§ 28–3757. **Traffic complaint form**

A. Each traffic enforcement agency in this state shall use a uniform traffic ticket and complaint form for traffic complaints pursuant to the rules of procedure in traffic cases adopted by the supreme court of Arizona that are issued in books meeting the requirements of this article.

B. Each traffic complaint shall contain the following notice:

1. If you fail to appear as directed in this complaint on a criminal charge, a warrant will be issued for your arrest and your license will be suspended.

2. If you fail to appear as directed in this complaint on a civil traffic violation:

(a) A default judgment will be entered against you.

(b) A civil penalty will be imposed.

(c) Your license or nonresident operating privilege will be suspended until the civil penalty is paid.

C. The chief administrative officer of each traffic enforcement agency:

1. Is responsible for the issuance of the books.

2. Shall maintain a record of every book and each complaint contained in the book issued to individual members of the traffic enforcement agency.

3. Shall require and retain a receipt for each issued book.

§ 28-3758. Traffic complaints; disposition; records

A. On issuing a traffic complaint to an alleged violator of any provision of the motor vehicle laws of this state or of any traffic ordinance of any city or town, each traffic enforcement officer shall deposit the original or a copy of the traffic citation with a court having jurisdiction over the alleged offense or with its traffic violations bureau.

B. On the deposit of the original or a copy of the traffic complaint with a court having jurisdiction over the alleged offense or with its traffic violations bureau, the original or copy of the traffic complaint may be disposed of only by trial in the court or other official action by a judge of the court or a hearing officer, including forfeiture of the bail or by the deposit of sufficient bail with or payment of a fine or civil penalty to the traffic violations bureau by the person to whom the traffic complaint was issued.

C. It is unlawful and official misconduct for any traffic enforcement officer or other officer or public employee to dispose of a traffic complaint or copies of a traffic complaint or of the record of the issuance of the complaint or copies in a manner other than as required by this article.

D. The chief administrative officer of each traffic enforcement agency shall require the return to the chief administrative officer of:

1. A copy of each traffic complaint issued by an officer under the chief administrative officer's supervision to an alleged violator of any traffic law or ordinance.

2. All copies of each traffic complaint that is spoiled or on which any entry has been made and not issued to an alleged violator.

§ 28-3759. Illegal cancellation of traffic citation; classification; audit

A. A person who cancels any traffic citation, in any manner other than as provided in this article or the nonresident violator compact adopted by chapter 4, article 10 of this title, is guilty of a class 3 misdemeanor.

B. The appropriate fiscal officer of the governmental agency to which the traffic enforcement agency is responsible shall audit monthly the records of traffic citations required in this article. Audit procedures shall be sufficient to assure proper accountability for traffic citation records.

§ 28-3760. Traffic case records; abstract of record; reports

A. Each magistrate, judge or hearing officer of a court shall:

1. Keep or cause to be kept a record of each traffic complaint or other legal form of traffic charge deposited with or presented to the court or its traffic violations bureau.

2. Keep a record of each official action by the court or its traffic violations bureau in reference to each traffic complaint or other legal form of traffic charge deposited with or presented to the court or its traffic violations bureau, including but not limited to a record of:

(a) Each conviction, forfeiture of bail or deposit, judgment of acquittal or civil adjudication.

(b) The amount of the civil penalty, fine or forfeiture resulting from each traffic complaint deposited with or presented to the court or traffic violations bureau.

B. Within ten days after the conviction, judgment or forfeiture of bail or deposit of a person on a charge of violating chapter 5, 6 or 7 of this title or this chapter or any other law regulating the operation of vehicles on highways, each magistrate of the court or clerk of the court of record in which the conviction or judgment was had or bail or deposit was forfeited shall prepare and immediately forward to the department an abstract of the record of the court covering the case in which the person either:

1. Was convicted.

2. Was adjudicated to have committed a civil traffic violation.

3. Forfeited bail or deposit.

C. The person required to prepare the abstract shall certify that it is true and correct.

D. A report is not required for a conviction or civil adjudication involving the illegal parking or standing of a vehicle.

E. The abstract shall be made on a form furnished or in a manner prescribed by the department and shall include:

1. The name and address of the party charged.

2. The number, if any, of the license of the party charged.

3. The registration number of the vehicle involved.

4. The nature of the offense or civil traffic violation.

5. The date of the hearing, the plea, the judgment or whether bail or deposit was forfeited.

6. The amount of the fine, civil penalty or forfeiture.

F. Each court of record shall also forward a like report to the department on the conviction of a person of manslaughter or any other felony in the commission of which a vehicle was used.

G. The department shall keep all abstracts received under this section for inspection as required by law.

H. Each judge, referee, hearing officer, probation officer or other person responsible for the disposition of cases involving traffic offenses or civil violations committed by persons under eighteen years of age shall:

1. Keep a full record of each case in which the person is charged with a violation of chapter 5, 6 or 7 of this title or this chapter or any other law regulating the operation of vehicles on highways.

2. Report the offense or civil violation to the department at its office in Phoenix not more than thirty days after the date on which it was committed, except that a report is not required for parking violations or if it is found that the offense or civil violation was not committed.

I. The report required by subsection H shall:

1. Be made on a form furnished or in a manner prescribed by the department.

2. Contain:

(a) All necessary information as to the identity of the offender.

(b) The citing or arresting agency.

(c) The date and nature of the offense or civil violation.

(d) The date of the hearing, the plea, the judgment or whether bail or deposit was forfeited.

(e) The amount of the fine, civil penalty or forfeiture.

J. Failure, refusal or neglect of a judicial officer to comply with this section is misconduct in office and grounds for removal from office.

§ 28–3761. Certification of uniform traffic complaint forms; false certification

A. Uniform traffic complaint forms need not be sworn to if they contain a form of certification by the issuing officer in substance as follows: "I hereby certify that I have reasonable grounds to believe and do believe that the person named herein committed the offense or civil violation described herein contrary to law."

B. A false certification under the provisions of subsection A is perjury.

ARTICLE 4. PROCEDURES FOR CIVIL TRAFFIC VIOLATIONS

§ 28–3791. Traffic violations; civil matters; service

A. A violation of a statute relating to traffic movement and control, including a statute governing parking or standing requirements, shall be treated as a civil matter as provided in chapter 5, 6 or 7 of this title or this chapter, unless the statute provides for a different classification as a criminal offense.

B. This article does not require that either the initial notification or a subsequent summons and complaint for a parking or standing violation be issued or served as required by this article.

C. If it is necessary to issue a summons and complaint because there is not a satisfactory response to the initial notice of a parking or standing violation, the summons and complaint may be sent by regular mail to the address provided to the department by the individual made responsible for the alleged violation by the applicable statute or ordinance. Service of the summons and complaint is complete on mailing.

§ 28–3792. Commencement of action

A. A civil traffic violation case is commenced by issuance of a uniform traffic complaint as provided in this article.

B. A civil traffic violation case shall be commenced either:

1. Within thirty days of the alleged violation.

2. Within ninety days if the alleged violation is under investigation in conjunction with a traffic accident.

§ 28–3793. Service of uniform traffic complaint

A. A traffic complaint may be served by delivering a copy of the uniform traffic complaint citation to the person charged with the violation or by any means authorized by the rules of civil procedure. At the discretion of the issuing authority, a complaint for a violation issued after an investigation in conjunction with a traffic accident may be sent by certified mail, return receipt requested, delivered to addressee only to the address provided by the person charged with the violation. Service of the complaint is complete on filing the receipt in the court having jurisdiction of the violation.

B. The original complaint shall be filed in a court having jurisdiction of the violation within ten court days of the time the complaint was issued. A peace officer or duly authorized agent of a traffic enforcement agency may issue the traffic complaint.

§ 28–3794. **Authority to detain persons**

A peace officer or duly authorized agent of a traffic enforcement agency may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of this title and to serve a copy of the traffic complaint for an alleged civil or criminal violation of this title.

§ 28–3795. **Failure to stop or provide driver license or evidence of identity; violation; classification**

A. The operator of a motor vehicle who knowingly fails or refuses to bring the operator's motor vehicle to a stop after being given a visual or audible signal or instruction by a peace officer or duly authorized agent of a traffic enforcement agency is guilty of a class 2 misdemeanor.

B. After stopping as required by subsection A of this section, the operator of a motor vehicle who fails or refuses to exhibit the operator's driver license as required by section 28–1610 or a driver who is not licensed and who fails or refuses to provide evidence of the driver's identity on request is guilty of a class 2 misdemeanor.

C. A person other than the driver of a motor vehicle who fails or refuses to provide evidence of the person's identity to a peace officer or a duly authorized agent of a traffic enforcement agency on request, when such officer or agent has reasonable cause to believe the person has committed a violation of this title, is guilty of a class 2 misdemeanor.

D. A peace officer or duly authorized agent of a traffic enforcement agency may give the signal or instruction required by subsection A of this section by hand, emergency light, voice, whistle or siren.

§ 28–3796. **Traffic complaint; proceedings**

A. A person served with a civil traffic complaint shall:

1. Appear at the time and place stated in the complaint, or may appear before the time, if so authorized by the court, and on the directions contained in the complaint.

2. Admit or deny the allegations of the complaint.

B. Allegations not denied at the time of appearance are deemed admitted. A fee shall not be charged for the appearance.

C. If the allegations are admitted, the court shall enter judgment for the state and shall impose a civil penalty. The person may admit the allegations with an explanation, and then the court shall enter judgment for the state and impose a civil penalty. In determining the civil penalty, the court shall consider the explanation submitted.

D. If the person denies the allegations of the complaint the court shall set the matter for a hearing. The hearing is informal and without a jury. At the hearing, the state is required to prove the violation charged by a preponderance of the evidence. Technical rules of evidence do not apply, except for statutory provisions relating to privileged communications. If the person elects to be represented by counsel the person shall notify the court at least ten days before the hearing date. Hearings may be recorded. If the court finds in favor of the person, the court shall enter an order dismissing the allegation. If the court finds in favor of the state, the court shall enter judgment for the state and shall impose a civil penalty.

E. If a resident of this state served with a civil traffic complaint alleging a violation of this title or if a nonresident served with a civil traffic complaint requiring suspension or revocation of a driver license under the laws of this state fails to appear at or before the time directed to appear or at the time set for a hearing by the court, the allegations in the complaint are deemed admitted, and the court shall

enter judgment for this state, impose a civil penalty and report the judgment to the department.

F. A nonresident may satisfy the complaint served under subsection A by complying with the nonresident violator compact adopted by chapter 4, article 10 of this title, if applicable.

G. If a nonresident who is served with a civil traffic complaint that does not require a suspension or revocation of the nonresident's driver license pursuant to the laws of this state fails to appear at or before the time directed to appear or at the time set for a hearing by the court, the court shall report the nonappearance to the department pursuant to the provisions of the nonresident violator compact adopted by chapter 4, article 10 of this title.

§ 28–3797. **Witnesses; nonapplicability of rules of civil procedure**

A. The state and the person charged with a civil traffic violation may subpoena witnesses as provided by section 13–4072. Witnesses are not entitled to fees for appearing in connection with a civil violation proceeding.

B. Except as otherwise provided in chapter 5, 6 or 7 of this title or this chapter, the rules of civil procedure do not apply.

§ 28–3798. **Maximum civil penalty**

Except as otherwise provided, a civil penalty imposed pursuant to this article shall not exceed two hundred fifty dollars. In addition, the court shall levy penalty assessments pursuant to sections 12–116.01 and 12–116.02.

§ 28–3799. **Admission; evidence of negligence**

An admission of the allegation of a civil traffic complaint or a judgment on the complaint is not evidence of negligence in a civil or criminal proceeding that is not authorized by chapter 5, 6 or 7 of this title or this chapter.

§ 28–3800. **Appeal**

A. A party may appeal the judgment of the court. The appeal may be to the superior court in the same manner as provided by rules adopted by the supreme court.

B. The posting of an appeal bond stays enforcement of the judgment.

C. Commissioners of the superior court may hear and determine appeals.

§ 28–3801. **Failure to pay civil penalty; suspension of privilege to drive; collection procedure**

A. A person shall pay all civil penalties within thirty days from entry of judgment, except that if payment within thirty days will place an undue economic burden on a person, the court may extend the time for payment or may provide for installment payments. If the civil penalty is not paid or an installment payment is not made when due, the court may declare the entire civil penalty due and, if so, the court shall notify the department and the department shall promptly suspend the driver license or permit of the driver or the privilege of a nonresident to drive a motor vehicle in this state, until the civil penalty is paid.

B. Notwithstanding subsection A of this section, if a civil penalty is paid on entry of judgment, the court may reduce the civil penalty by up to five per cent of the penalty imposed.

C. With the approval of the supreme court, the presiding judge of any court may periodically conduct a program aimed at reducing the amount of outstanding fines,

penalties and surcharges. Notwithstanding any other law except a fine ordered as a result of a violation of section 28-2881, the program may include authorizing up to a fifty per cent reduction in the total amount of a court ordered fine, penalty or surcharge that is due and that is delinquent for at least twelve months followed by an increased enforcement effort for a fine, penalty or surcharge that is not paid. The supreme court shall adopt rules of procedure for the programs.

D. If penalties are reduced pursuant to subsection C of this section, associated surcharges and assessments shall be reduced in proportion to the reduction. This subsection does not apply to section 12-116.

ARTICLE 5. TRAFFIC TICKET ENFORCEMENT ASSISTANCE PROGRAM

§ 28-3831. Traffic ticket enforcement assistance program; establishment

A. The department shall establish procedures to:

1. Assist the courts and political subdivisions of this state to collect delinquent fines, penalties and sanctions imposed for civil and criminal traffic violations, including all surcharges.

2. Assist in the enforcement of criminal traffic failure to appear offenses.

B. The program established by this article shall not include collection of delinquent parking tickets.

§ 28-3832. Refusal to renew registration; fees

A. On proper notification by a court or political subdivision pursuant to section 28-3833, the department shall refuse to renew the registration of a vehicle if either:

1. The registered owner of a vehicle is delinquent in paying a fine, penalty or sanction for a civil or criminal traffic violation and the combined amount of the delinquency exceeds two hundred dollars.

2. The registered owner fails to appear in a criminal traffic case.

B. The court or political subdivision shall make at least two attempts to collect the monies owed by an individual or organization before notifying the department to refuse to renew the vehicle registration of the registered owner.

C. The department may charge a court or political subdivision that chooses to participate in this program a fee that is payable to the department by the court or political subdivision to cover the costs of processing the documents to notify the registered owner that the owner's vehicle registration will not be renewed. The department shall transmit these fees to the state treasurer for deposit in the special registration fund established by section 28-707.

D. The fees charged by the department to the courts or political subdivisions of this state for processing the documents to notify the registered owner that it is not renewing a person's vehicle registration shall be paid at the same time as the registered owner's outstanding fine, penalty or sanction or as part of the penalty for the failure to appear offense for which the vehicle registration was not renewed.

E. This article does not prohibit the department from imposing and collecting additional fees authorized by law.

§ 28-3833. Contracts

A. A court or political subdivision of this state may contract with the department to:

1. Provide electronic data access of department records to facilitate documentation of unpaid fines, penalties or sanctions for civil and criminal traffic violations and for failure to appear in criminal traffic cases.

2. Refuse to renew a motor vehicle registration until the court or political subdivision notifies the department on forms prescribed by the director that either:

(a) The unpaid monies due on the violation for which a vehicle registration was not renewed have been paid.

(b) The unpaid monies are no longer delinquent.

(c) The registered owner appeared in court for the criminal traffic offense for which the vehicle registration was not renewed.

(d) A waiver was issued under section 28–3835.

3. Collect the unpaid monies on behalf of the court or political subdivision under terms and conditions prescribed by the contract.

B. A court that is not authorized by law to contract directly with the department shall seek the approval of the appropriate funding authority before entering into a contract with the department.

C. The director shall implement the electronic access authorized by this section only if the director determines the system proposed by the court or political subdivision is fully compatible with the existing and anticipated systems of the department.

D. An agreement may be executed pursuant to this section only if all of the following conditions are met:

1. The planning, implementation and operation of the system are at no expense to the department.

2. The court or political subdivision both:

(a) Ensures that its system is compatible with state systems and those of participating courts or political subdivisions.

(b) Agrees that it will bear all current and future expenses necessary to ensure compatibility of its system with the state system.

3. The court or political subdivision assumes all financial, technical and legal risks associated with electronic access of department records through its system.

E. The department, court or political subdivision may contract with nongovernmental agencies or private sector businesses to perform any of the acts authorized by this section, except that the department shall mail the notice to the registered owner that the owner's vehicle registration will not be renewed.

§ 28–3834. Registration allowed

A. The department shall allow registration of the vehicle if it receives the form prescribed by the director pursuant to section 28–3833 from the court or political subdivision that requested the department not to register the motor vehicle.

B. The department shall not refuse to register a vehicle under this article if there is a transfer of ownership of the vehicle involved to a bona fide purchaser. For purposes of this subsection, "bona fide purchaser" means a purchaser who buys a vehicle in good faith and without knowledge that the seller's right to renew the vehicle registration has been refused pursuant to this article.

§ 28–3835. Waiver; economic hardship

On proper application, the court may waive its right pursuant to this article to request the department to refuse to renew the vehicle registration of a registered

owner who is delinquent in paying a fine, penalty or sanction for a civil or criminal traffic violation, if both:

1. Nonrenewal of the vehicle registration would pose an economic hardship on the registered owner or the registered owner's immediate family.

2. The failure to pay is not due to an intentional refusal to obey the order of the court or an intentional refusal to make a good faith effort to obtain the monies required for the payment.

§ 28–3836. Rules

A. The supreme court shall adopt rules or procedures necessary for the courts to carry out this article including the time periods during which criminal and civil traffic offenders shall pay all fines, penalties or sanctions before a court or political subdivision may request the department to refuse to renew the registration of the offender's vehicle.

B. In adopting rules or procedures prescribing the time periods during which criminal and civil traffic offenders shall pay all fines, penalties or sanctions, the supreme court shall consider the economic circumstances of offenders.

CHAPTER 9

VEHICLE INSURANCE AND FINANCIAL RESPONSIBILITY

ARTICLE 1. GENERAL PROVISIONS

§ 28–4001. Definitions

In this chapter, unless the context otherwise requires:

1. "Judgment" means a judgment that has become final by expiration without appeal of the time within which an appeal might have been perfected or by final affirmation on appeal and that is rendered by a court of competent jurisdiction of any state or of the United States on a cause of action either:

(a) Arising out of the ownership, maintenance or use of a motor vehicle for damages, including damages for care and loss of services, because of either bodily injury to or death of a person or injury to or destruction of property, including the loss of use of the property.

(b) On an agreement of settlement for damages prescribed in subdivision (a) of this paragraph.

2. "License" means a license, temporary instruction permit or temporary license issued under the laws of this state pertaining to the licensing of persons to operate motor vehicles.

3. "Motor vehicle liability policy" means an owner's or an operator's policy of liability insurance that is both:

(a) Certified as provided in section 28–4077 or 28–4078 as proof of financial responsibility.

(b) Issued by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named as the insured, except as otherwise provided in section 28–4078.

4. "Nonresident operating privilege" means the privilege conferred on a nonresident by the laws of this state pertaining to the nonresident's operation of a motor vehicle or the use of a motor vehicle owned by the nonresident in this state.

5. "Operator" means a person who is in actual physical control of a motor vehicle, whether or not the person has a license.

6. "Proof of financial responsibility" means proof of ability to respond in damages for liability on account of accidents occurring after the effective date of the proof and arising out of the ownership, maintenance or use of a motor vehicle in the following amounts:

(a) Fifteen thousand dollars because of bodily injury to or death of one person in any one accident.

(b) Subject to the limit for one person, thirty thousand dollars because of bodily injury to or death of two or more persons in any one accident.

(c) Ten thousand dollars because of injury to or destruction of property of others in any one accident.

7. "Registration" means the registration certificate or certificates and license plates issued under the laws of this state pertaining to the registration of motor vehicles.

8. "State" means a state, territory or possession of the United States, the District of Columbia or a province of the Dominion of Canada.

§ 28–4002. Director; duties

The director shall:

1. Administer and enforce this chapter.

2. Print for distribution to the public rules adopted to administer this chapter and furnish the rules to a person on application and payment of the cost as prescribed by the director.

§ 28–4003. Exceptions

This chapter does not apply to a motor vehicle that is either:

1. Owned by the United States, this state or a political subdivision of this state.

2. Except for section 28–4085, subject to the requirements of a provision of law requiring insurance or other security on certain types of vehicles.

§ 28–4004. Transfer of registration

This chapter does not:

1. Prevent the owner of a motor vehicle whose registration has been suspended under this chapter from effecting a bona fide sale of the motor vehicle to another person whose rights or privileges are not suspended under this chapter.

2. Prevent the transferee from registering the motor vehicle.

3. Affect the rights of a conditional vendor, chattel mortgagee or lessor of a motor vehicle registered in the name of another as owner who becomes subject to this chapter.

§ 28–4005. Past application

This chapter does not apply to any accident or judgment arising from an accident or to a violation of the motor vehicle laws of this state occurring before January 1, 1952.

§ 28–4006. Legal processes

This chapter does not prevent the plaintiff in an action at law from relying for relief on the other processes provided by law.

§ 28–4007. **Self-insurers**

A. A person in whose name more than twenty-five motor vehicles are registered may qualify as a self-insurer by obtaining a certificate of self-insurance issued by the director as provided in this section.

B. On the person's application, the director may issue a certificate of self-insurance if the director is satisfied that the person is able and will continue to be able to pay judgments obtained against the person.

C. On not less than five days' notice and after a hearing, the director may cancel a certificate of self-insurance on reasonable grounds. Failure to pay a judgment within thirty days after the judgment becomes final is a reasonable ground for the cancellation of a certificate of self-insurance.

§ 28–4008. **Assigned risk plans**

A. After consultation with insurance companies authorized to issue motor vehicle liability policies in this state, the director of the department of insurance shall approve a reasonable plan for the equitable apportionment among the companies of applicants for policies and for motor vehicle liability policies who are in good faith entitled to but are unable to procure the policies through ordinary methods.

B. After a plan has been approved, all insurance companies authorized to issue motor vehicle liability policies in this state shall subscribe to and participate in the plan.

C. An applicant for a policy under this section, a person insured under an assigned risk plan and an insurance company affected may appeal to the director of the department of insurance from any ruling or decision of the manager or committee designated to operate the plan. Within ten days after notice of an order or act of the director of the department of insurance, a person aggrieved under this section by the order or act may file a petition in the superior court in the county in which the director of the department of insurance is domiciled against the director of the department of insurance for a review of the order or act. The court shall summarily hear the petition and may make any appropriate order or decree.

ARTICLE 2. MOTOR CARRIER FINANCIAL RESPONSIBILITY

§ 28–4031. **Definitions**

In this article, unless the context otherwise requires:

1. "Declared gross weight" has the meaning prescribed in section 28–5431. If a declaration has not been made, declared gross weight means gross weight.

2. "Gross weight" has the meaning prescribed in section 28–5431.

3. "Motor vehicle" means a self-propelled motor driven vehicle or vehicle combination used on a highway.

4. "Person" means an owner or operator of a motor vehicle or vehicle combination subject to the financial responsibility requirements of this article.

5. "Public highway" means any way or place of whatever nature and of any kind that is used or open to the use by the public as a matter of right for the purpose of vehicular travel, including a highway under construction.

6. "Vehicle combination" has the meaning prescribed in section 28–5431.

§ 28–4032. **Persons subject to requirements**

A. Notwithstanding any other law:

1. A person who operates in the furtherance of a commercial enterprise in this state a motor vehicle or vehicle combination that has a declared gross weight of

more than twenty thousand pounds shall comply with the financial responsibility requirements of this article.

2. A person who operates a motor vehicle or vehicle combination for the purpose of transporting hazardous materials, hazardous substances or hazardous wastes as defined by the department shall comply with the financial responsibility requirements of this article unless either:

(a) The transportation of hazardous materials, hazardous substances or hazardous wastes is incidental to the principal purpose of the vehicular travel at the time the transportation occurs.

(b) The transportation of hazardous materials, hazardous substances or hazardous wastes is not in the furtherance of a commercial enterprise.

(c) The transportation of an amount of hazardous material listed in 49 Code of Federal Regulations section 172.504(a), table two is less than one thousand pounds or not more than one hundred ten gallons for a combustible liquid.

B. A person who operates a passenger carrying motor vehicle, bus or van used to transport passengers for hire, other than a car pool operator, shall comply with the financial responsibility requirements of this article. For the purposes of this subsection, "car pool operator" means a natural person when engaged either regularly or occasionally in carrying one or more other persons by motor vehicle on a highway, with or without compensation if the carriage of the other person or persons is both:

1. Not for profit. A car pool operator is conclusively presumed not to be carrying persons for profit if either:

(a) The operator receives compensation of not more than twenty cents per mile for total vehicle miles traveled, except that the proportionate share of the car pool operator shall be included in the amount.

(b) The operator carries one or more of the operator's passengers in consideration of the operator being carried in like situations by the passenger or passengers. The receipt of compensation of more than twenty cents per mile for total vehicle miles traveled does not preclude a car pool operator from showing that this compensation does not result in a profit to the operator or that the operator did not intend that a profit result.

2. Incidental to another purpose of the car pool operator. Except in unusual circumstances, the carriage is incidental to another purpose of the operator if the operator is not making the trip solely for the purpose of carrying a passenger. A car pool operator is conclusively presumed not to be transporting passengers for hire.

§ 28-4033. Financial responsibility requirements

A. A person subject to the requirements of this article shall maintain motor vehicle combined single limit liability insurance as follows:

1. For the transportation of nonhazardous property:

(a) For a vehicle with a gross vehicle weight of more than twenty-six thousand pounds, minimum coverage in the amount of seven hundred fifty thousand dollars.

(b) For a vehicle with a gross vehicle weight of twenty thousand one pounds to twenty-six thousand pounds, minimum coverage in the amount of three hundred thousand dollars.

2. For the transportation of passengers:

(a) In a vehicle with a seating capacity of sixteen passengers or more, minimum coverage in the amount of five million dollars and uninsured motorist coverage in the amount of at least three hundred thousand dollars.

(b) In a vehicle with a seating capacity of less than sixteen passengers, minimum coverage in the amount of seven hundred fifty thousand dollars and uninsured motorist coverage in the amount of at least three hundred thousand dollars.

(c) In a motor vehicle that provides taxicab service, has a seating capacity of less than seven passengers and is not operated on a regular route, minimum coverage in the amount of three hundred thousand dollars and uninsured motorist coverage in the amount of at least three hundred thousand dollars.

3. For the transportation of hazardous materials, hazardous substances or hazardous wastes:

(a) Minimum coverage in the amount of five million dollars for the transportation of:

(i) Hazardous substances, as defined in 49 Code of Federal Regulations part 171, transported in a cargo tank, portable tank or hopper-type vehicle with capacities in excess of three thousand five hundred water gallons.

(ii) Any quantity of class A or B explosives.

(iii) Any quantity of poison gas (poison A).

(iv) Liquefied compressed gas or compressed gas transported in a cargo tank, portable tank or hopper-type vehicle with capacities in excess of three thousand five hundred water gallons.

(v) The quantity of radioactive materials that requires specialized handling and transportation controls as indicated in 49 Code of Federal Regulations part 173.

(b) Minimum coverage in the amount of one million dollars for the transportation of the following:

(i) Any quantity of oil listed in 49 Code of Federal Regulations part 172.

(ii) Any quantity of hazardous wastes, hazardous materials or hazardous substances as defined and listed in 49 Code of Federal Regulations part 171 and in 49 Code of Federal Regulations part 172 but not included in paragraph 3, subdivision (a).

B. If a motor vehicle is leased or rented, the lessor shall ensure that the lessee is covered under the lessor's liability insurance as provided by this section or the lessor shall require that the lessee meet the financial responsibility requirements of this section.

C. If a lessee uses the motor vehicle for a purpose that is required under this section to have a higher amount of financial responsibility than was required of the lessor or renter, the lessee shall maintain the higher financial responsibility requirements of this section.

D. The uninsured motorist coverage required by this section is not required until June 1, 1987 and may be provided by a self-insurance program authorized under section 28–4007. A person who is under contract with this state or a political subdivision of this state, who operates a motor vehicle owned by this state or a political subdivision of this state and who is included in the self-insurance program of this state or a political subdivision of this state is exempt from the uninsured motorist requirements of this section.

§ 28–4034. Maintenance, certification and verification of financial requirements

A. A person who operates a motor vehicle in this state and who is subject to the financial responsibility requirements of this article shall maintain at all times the amounts prescribed in section 28–4033 that obligates the person to pay compensation for injuries to persons and for loss or damage to property by reason of the ownership, maintenance or use of a motor vehicle or vehicle combination owned or operated by the person.

B. The department may require a person who is subject to the financial responsibility requirements of this article to certify the existence of financial responsibility in the form and at the times the department deems necessary. The department may forward the certification to the named insurer to determine if the certification is correct. Civil liability does not accrue to the insurer or any of its employees for reports made to the department if the reports are made in good faith based on the most recent information available to the insurer.

C. The department may require a person obtaining registration pursuant to chapter 3, article 10 of this title to certify, in the manner and form the director deems necessary, compliance with the financial responsibility requirements of this article. The department may refuse to issue the registration if the person does not comply with the certification requirements or if the department determines that the person is not in compliance with the financial responsibility requirements of this article.

§ 28–4035. Self-insurance

A. The department may allow a person to fully or partially self-insure a motor vehicle or vehicle combination as required by this article if both:

1. The person provides financial data the department requires.

2. The department determines that the financial data demonstrates that the person is sufficiently stable and solvent to fully or partially self-insure.

B. The department shall grant the authority to self-insure subject to reasonable provisions for the filing of periodic financial statements demonstrating no substantial deterioration of financial stability.

§ 28–4036. Violation; classification

A person who is subject to the financial responsibility requirements of this article and who operates or causes to be operated a vehicle in this state without meeting the financial responsibility requirements of this article is guilty of:

1. A class 3 misdemeanor.

2. A class 1 misdemeanor if the vehicle is involved in an accident in this state.

§ 28–4037. Foreign vehicles; exception

A. Before a vehicle owner or lessor operates a vehicle in this state that is subject to sections 28–1021 through 28–1024 and that has primary registration and license plates issued by a foreign country or jurisdiction of a foreign country with which this state does not have motor vehicle registration reciprocity or an agreement for proportional registration, the owner or lessor shall submit to the department proof of financial responsibility for the future pursuant to section 28–4034 that is issued by an insurer authorized to do business in this state.

B. The department may refuse to issue the registration for a vehicle or may cancel the registration of a vehicle owned or operated by a person who does not comply with this section.

C. This section does not apply to a vehicle carrying agricultural products within twenty-five miles of the border of this state and a foreign country.

ARTICLE 3. PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE

§ 28–4071. Nonpayment of judgments; report

A. If a person fails to satisfy a judgment within sixty days, the clerk of the court, or the judge of a court that has no clerk, in which the judgment is rendered shall

forward a certified copy of the judgment to the director immediately after the expiration of the sixty days.

B. If the defendant who is named in a certified copy of a judgment reported to the director is a nonresident, the director shall transmit a certified copy of the judgment to the official in charge of the issuance of licenses and registration certificates of the state of which the defendant is a resident.

§ 28–4072. Nonpayment of judgments; suspension; exceptions

A. On receipt of a certified copy of a judgment, the director shall suspend the license and registration and nonresident operating privilege of a person against whom the judgment was rendered, except as otherwise provided in this section and section 28–4075.

B. If the judgment creditor consents in writing on a form prescribed by the director that the judgment debtor be allowed the license and registration or the nonresident operating privilege and if the judgment debtor furnishes proof of financial responsibility, the director may allow the privileges for six months from the date of the consent and thereafter until the consent is revoked in writing, notwithstanding default in the payment of the judgment or of any installments prescribed in section 28–4075.

C. A person whose license, registration or nonresident operating privilege has been or may be suspended or subject to suspension under this article may be relieved from the effect of the judgment as prescribed in this article by filing with the director all of the following:

1. An affidavit stating that at the time of the accident on which the judgment was rendered the affiant was insured, that the insurer is liable to pay the judgment and the reason, if known, why the insurance company has not paid the judgment.

2. The original or a certified copy of the policy of insurance, if available.

3. Other documents required by the director to show that the loss, injury or damage for which the judgment was rendered was covered by the policy of insurance.

D. If the director is satisfied from the papers filed pursuant to subsection C of this section that the insurer was authorized to issue the policy of insurance at the time and place of issuing the policy and that the insurer is liable to pay the judgment, at least to the extent and for the amounts required in this chapter, the director:

1. Shall not suspend the license, registration or nonresident operating privilege.

2. If the license, registration or nonresident operating privilege is already suspended, shall reinstate the license, registration or nonresident operating privilege.

§ 28–4073. Suspension length; reinstatement; designated fund

A. The license, registration and nonresident operating privilege shall remain suspended and the director shall not renew or issue a license or registration in the name of the person, including a person not previously licensed, until each judgment is satisfied in full or to the extent provided by this article or unless the judgment creditor failed to renew the judgment as provided in title 12, chapter 9, article 6 or the judgment is otherwise legally unenforceable and the person gives proof of financial responsibility subject to the exemptions stated in sections 28–4072 and 28–4075.

B. On receipt of an affidavit executed by a judgment debtor stating that a diligent search to locate the judgment creditor has been made and reciting with particularity the steps taken and that the judgment creditor or the successor in

interest could not be found for the purpose of receiving payment of the judgment and on payment of the amount of the judgment to the department in a fund designated for that purpose, the director may reinstate the license, registration and nonresident operating privilege of the judgment debtor. The director shall hold the monies in trust for the purpose of satisfying the judgment. Monies deposited in the fund revert to the state general fund five years from the date of the deposit if not claimed by the judgment creditor.

C. Notwithstanding section 28–4088, a person whose license, registration or nonresident operating privilege is reinstated shall maintain proof of financial responsibility for two years after the judgment is satisfied.

§ 28–4074. Payments; satisfaction of judgments

A. For the purpose of this chapter only, a judgment referred to in this article is deemed satisfied on compliance with one of the following:

1. When fifteen thousand dollars is credited on a judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident.

2. When, subject to the limit of fifteen thousand dollars because of bodily injury or death of one person, thirty thousand dollars is credited on a judgment or judgments rendered in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident.

3. When ten thousand dollars is credited on a judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident.

B. Payments made in settlements of claims because of bodily injury, death or property damage arising from a motor vehicle accident shall be credited in reduction of the amounts provided for in this section.

§ 28–4075. Installment payment of judgments; default

A. On due notice to the judgment creditor, a judgment debtor may apply to the court in which the judgment was rendered for the privilege of paying the judgment in installments, and the court may order and fix the amounts and times of payment of the installments without prejudice to any other legal remedy that the judgment creditor may have.

B. The director shall not suspend a license, registration or nonresident operating privilege and shall restore a license, registration or nonresident operating privilege suspended after nonpayment of a judgment if the judgment debtor gives proof of financial responsibility and obtains an order permitting the payment of the judgment in installments and while the payment of an installment is not in default.

C. If the judgment debtor fails to pay an installment as specified by the order, on notice of the default the director shall suspend the license, registration or nonresident operating privilege of the judgment debtor until the judgment is satisfied as provided in this chapter.

§ 28–4076. Alternate methods of proof

If required by this chapter, a person may give proof of financial responsibility by filing one of the following:

1. A certificate of insurance pursuant to section 28–4077 or 28–4078.

2. A bond pursuant to section 28–4083.

3. Certificates of deposit or cash pursuant to section 28–4084.

§ 28–4077. **Certificate of insurance**

A. A person may give proof of financial responsibility by filing with the director the written certificate of an insurance carrier duly authorized to do business in this state certifying that there is in effect a motor vehicle liability policy for the benefit of the person required to furnish proof of financial responsibility. The certificate shall:

1. Be in a form and shall contain the information prescribed by the director.

2. Designate by explicit description or by appropriate reference all motor vehicles covered by the certificate, unless the policy is issued to a person who is not the owner of a motor vehicle.

B. A motor vehicle shall not be or shall not continue to be registered in the name of a person required to file proof of financial responsibility unless the motor vehicle is designated in the certificate.

§ 28–4078. **Certificate by nonresident**

A. A nonresident owner of a motor vehicle that is not registered in this state may give proof of financial responsibility by filing with the director a written certificate of an insurance carrier authorized to transact business in the state in which the motor vehicle described in the certificate is registered, or if the nonresident does not own a motor vehicle, in the state in which the insured resides, if the certificate otherwise conforms with this chapter. The director shall accept the certificate on the condition that the insurance carrier complies with the following provisions with respect to the policies certified:

1. The insurance carrier shall execute a power of attorney authorizing the director to accept service on its behalf of notice or process in an action arising out of a motor vehicle accident in this state.

2. The insurance carrier shall agree in writing that the policies shall be deemed to conform with the laws of this state relating to the terms of motor vehicle liability policies issued in this state.

B. If an insurance carrier that is not authorized to transact business in this state and that is qualified to furnish proof of financial responsibility defaults in any such undertaking or agreement, the director shall not accept a certificate of the carrier as proof whether filed or tendered as proof, as long as the default continues.

§ 28–4079. **Motor vehicle liability policy requirements**

A. An owner's motor vehicle liability policy shall comply with the following:

1. The policy shall designate by explicit description or by appropriate reference all motor vehicles for which coverage is granted. If coverage is provided for a fleet of seven or more motor vehicles, the maximum payable for any one accident is the limit of liability stated in the policy. There is no accumulation of coverage for each separate vehicle covered.

2. The policy shall insure the person named in the policy as the insured and any other person, as insured, using the motor vehicle or motor vehicles with the express or implied permission of the named insured against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of the motor vehicle or motor vehicles within the United States or the Dominion of Canada, subject to limits exclusive of interest and costs, for each motor vehicle as follows:

(a) Fifteen thousand dollars because of bodily injury to or death of one person in any one accident.

(b) Subject to the limit for one person, thirty thousand dollars because of bodily injury to or death of two or more persons in any one accident.

(c) Ten thousand dollars because of injury to or destruction of property of others in any one accident.

3. By agreement in writing between a named insured and the insurer the policy may exclude as insured a person or persons designated by name when operating a motor vehicle.

B. An operator's motor vehicle liability policy shall insure the person named as insured in the policy against loss from the liability imposed on the person by law for damages arising out of the use by the person of a motor vehicle not owned by the person, within the same territorial limits and subject to the same limits of liability provided in subsection A of this section for an owner's motor vehicle liability policy.

C. A motor vehicle liability policy:

1. Shall state the name and address of the named insured, the coverage afforded by the policy, the premium charged for the policy, the complete vehicle identification number of all vehicles covered by the policy, the policy period and the limits of liability.

2. Shall contain an agreement or be endorsed that insurance is provided under the policy in accordance with the coverage defined in this chapter for bodily injury and death or property damage, or both.

3. Is subject to all of the provisions of this chapter.

4. Is not required to insure liability either:

(a) Under any workers' compensation law.

(b) On account of bodily injury to or death of an employee of the insured while engaged in the employment, other than domestic, of the insured or while engaged in the operation, maintenance or repair of the motor vehicle.

(c) For damage to property owned by, rented to, in charge of or transported by the insured.

(d) For damage to property or bodily injury caused intentionally by or at the direction of the insured.

5. Is subject to the following provisions that are not required to be in the policy:

(a) The liability of the insurance carrier with respect to the insurance required by this chapter becomes absolute when injury or damage covered by the motor vehicle liability policy occurs. The policy may not be cancelled or annulled as to that liability by an agreement between the insurance carrier and the insured after the occurrence of the injury or damage, and a statement made by the insured or someone on the insured's behalf and a violation of the policy shall not defeat or void the policy.

(b) The satisfaction by the insured of a judgment for the injury or damage is not a condition precedent to the right or duty of the insurance carrier to make payment on account of the injury or damage.

(c) The insurance carrier may settle any claim covered by the policy, and if the settlement is made in good faith, the amount of the claim is deductible from the limits of liability specified in subsection A, paragraph 2 of this section.

(d) The policy, the written application for the policy, if any, and any rider or endorsement that does not conflict with this chapter constitute the entire contract between the parties.

6. May provide that the insured shall reimburse the insurance carrier for any payment the insurance carrier would not have been obligated to make under the terms of the policy except for this chapter.

7. May provide for the prorating of the insurance under the policy with other valid and collectible insurance.

D. A policy that grants the coverage required for a motor vehicle liability policy may also grant lawful coverage in excess of or in addition to the coverage specified for a motor vehicle liability policy, and the excess or additional coverage is not

subject to this chapter. With respect to a policy that grants the excess or additional coverage, the term "motor vehicle liability policy" applies only to that part of the coverage that is required by this section.

E. The requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers that together meet the requirements.

F. A binder issued pending the issuance of a motor vehicle liability policy fulfills the requirements for the policy.

§ 28–4080. Motor vehicle liability policy; primary and excess coverage

A. If two or more policies affording valid and collectible motor vehicle liability insurance apply to the same motor vehicle that is involved in an occurrence out of which a liability loss arises and one of the policies affords coverage to a named insured engaged in the business of selling, repairing, servicing, delivering, testing, road testing, parking or storing motor vehicles, both of the following are conclusively presumed:

1. If at the time of loss the motor vehicle is being operated by a person engaged in one of the businesses or by the person's employee or agent, the insurance afforded by the policy issued to the person engaged in the business is primary and the insurance afforded by any other policy is excess.

2. If at the time of loss the motor vehicle is being operated by a person other than a person described in this subsection, the insurance afforded by the policy issued to a person engaged in a business described in this subsection is excess over all other insurance available to the operator as a named insured or otherwise.

B. Except as provided in subsection A, if two or more policies affording valid and collectible liability insurance apply to the same motor vehicle that is involved in an occurrence out of which a liability loss arises, it is conclusively presumed that the insurance afforded by that policy in which the motor vehicle is described or rated as an owned automobile is primary and the insurance afforded by any other policy or policies is excess.

C. The presumptions stated in subsection A may be modified or amended only by a written agreement signed by all insurers who have issued a policy or policies applicable to a loss described in subsection A and all named insureds under these policies.

§ 28–4081. Notice; cancellation or termination of policy

If an insurance carrier has certified a motor vehicle liability policy under section 28–4077 or 28–4078, the insurance carrier shall not cancel or terminate the certified insurance until at least ten days after the insurance carrier files a notice of cancellation or termination of the insurance with the director, except that a policy subsequently procured and certified terminates, on the effective date of its certification, the insurance previously certified with respect to a motor vehicle designated in both certificates.

§ 28–4082. Applicability to other policies

A. This chapter does not apply to or affect policies of motor vehicle insurance against liability that are required by any other law of this state, and if these policies contain an agreement or are endorsed to conform with the requirements of this chapter, they may be certified as proof of financial responsibility under this chapter.

B. This chapter does not apply to or affect policies insuring only the insured named in the policy against liability resulting from the maintenance or use by persons in the insured's employ or on the insured's behalf of motor vehicles not owned by the insured.

§ 28–4083. **Bond as proof**

A. Proof of financial responsibility may be evidenced by the bond of a surety company duly authorized to transact business in this state or a bond with at least two individual sureties that each own real estate in this state and that together have equities equal in value to at least twice the amount of the bond, if the real estate is scheduled in the bond approved by a judge of a court of record and if the bond is conditioned for payment of the amounts specified in section 28–4001. The bond shall be filed with the director and is not subject to cancellation except after ten days' written notice to the director.

B. After the director files in the office of the proper clerk or court of the county or city where the real estate is located that the bond has been filed, the bond is a lien in favor of the state on the scheduled real estate.

C. The lien exists in favor of a holder of a final judgment against the person who has filed the bond for damages, including damages for care and loss of services, because of bodily injury to or death of a person or for damages because of injury to or destruction of property, including the loss of use of the property, resulting from the ownership, maintenance, use or operation of a motor vehicle after the bond is filed.

D. If a judgment rendered against the principal on the bond is not satisfied within sixty days after it is final, the judgment creditor, for the judgment creditor's own use and benefit and at the judgment creditor's sole expense, may bring an action or actions in the name of the state against the company or persons executing the bond, including an action or proceeding to foreclose any lien that may exist on the real estate of a person who has executed the bond.

§ 28–4084. **Monies or certificates of deposit as proof**

A. The state treasurer may issue a certificate that gives evidence of proof of financial responsibility that the person named in the certificate has deposited with the state treasurer forty thousand dollars in cash or certificates of deposit with a value of forty thousand dollars issued by a financial institution.

B. The state treasurer shall not accept the deposit and issue a certificate for and the director shall not accept the certificate unless the depositor provides evidence that there are no unsatisfied judgments of any kind against the depositor in the county where the depositor resides.

C. The state treasurer shall hold the deposit to satisfy, in accordance with this chapter, an execution on a judgment issued against the person making the deposit for damages, including damages for care and loss of services, because of bodily injury to or death of a person or for damages because of injury to or destruction of property, including the loss of use of the property, resulting from the ownership, maintenance, use or operation of a motor vehicle after the deposit is made.

D. Monies or certificates of deposit deposited pursuant to this section are not subject to attachment or execution unless the attachment or execution arises out of a suit for damages described in subsection C.

§ 28–4085. **Proof by owner for others**

A. If a person required to give proof of financial responsibility under this chapter is or later becomes either an operator in the employ of an owner or a member of the immediate family or household of an owner, the director shall accept proof given by the owner in lieu of proof by the other person to permit the other person to operate a motor vehicle for which the owner has given proof as provided by this chapter.

B. The director shall designate the restrictions imposed by this section on the face of the person's license.

§ 28-4086. **Substitution of proof**

The director shall consent to the cancellation of a bond or certificate of insurance or shall direct and the state treasurer shall return any monies or certificates of deposit to the person entitled to the monies or certificates of deposit on the substitution and acceptance of other adequate proof of financial responsibility pursuant to this chapter.

§ 28-4087. **Requirement of other proof**

If proof of financial responsibility filed under this chapter no longer fulfills the purposes for which the proof is required, the director shall both:

1. Require for the purpose of this chapter other proof as required by this chapter.

2. Suspend the license and registration or the nonresident operating privilege pending the filing of other proof.

§ 28-4088. **Duration, cancellation and return of proof**

A. On request, the director shall:

1. Consent to the immediate cancellation of a bond or certificate of insurance.

2. Direct and the state treasurer shall return to the person who is entitled monies or certificates of deposit deposited pursuant to this chapter as proof of financial responsibility.

3. Waive the requirement of filing proof under any of the following circumstances:

(a) At any time after three years from the date the proof was required, if during the three year period preceding the request the director has not received a record of a conviction or a forfeiture of bail that would require or permit the suspension or revocation of the license, registration or nonresident operating privilege of the person by or for whom the proof was furnished.

(b) The death of the person on whose behalf the proof was filed or the permanent incapacity of the person to operate a motor vehicle.

(c) If the person who has given proof surrenders the person's license and registration to the director.

B. The director shall not consent to the cancellation of a bond or the return of monies or certificates of deposit if an action for damages on a liability covered by the proof is pending, if a judgment on that liability is unsatisfied or if the person who has filed the bond or deposited the monies or certificates of deposit has been involved within one year immediately preceding the request as an operator or owner in a motor vehicle accident resulting in injury or damage to the person or property of others. An affidavit of the applicant stating that these facts do not exist, that the applicant has been released from all of the applicant's liability or that the applicant has been finally adjudicated not liable for the injury or damage is sufficient evidence in the absence of evidence to the contrary in the records of the director.

C. If a person whose proof has been cancelled or returned under subsection A, paragraph 3, subdivision (c) applies for a license or registration within three years from the date proof was originally required, the director shall refuse the application unless the applicant reestablishes the proof for the remainder of the three year period.

ARTICLE 4. MANDATORY MOTOR VEHICLE INSURANCE

§ 28–4131. Definitions

In this article, unless the context otherwise requires:

1. "Evidence" includes an original, a photocopy or a copy of a current and valid:

(a) Motor vehicle or automobile liability policy that meets the requirements of section 28–4079.

(b) Binder or certificate of motor vehicle or automobile liability insurance that meets the requirements of section 28–4079.

(c) Certificate of self-insurance issued by the department under article 1 of this chapter.

(d) Surety bond that meets the requirements of section 28–4083.

(e) Certificate of deposit that meets the requirements of section 28–4084.

(f) Motor vehicle insurance identification card issued by an authorized insurer or an authorized agent of the insurer for a motor vehicle or automobile liability policy that meets the requirements of section 28–4079.

2. "Motor vehicle" means a self-propelled vehicle that is registered or required to be registered under the laws of this state.

§ 28–4132. Motor vehicle financial responsibility requirement

A motor vehicle that is operated on a highway in this state shall be covered by one of the following:

1. A motor vehicle or automobile liability policy that provides limits not less than those prescribed in section 28–4079.

2. An alternate method of coverage as provided in section 28–4076.

3. A certificate of self-insurance as prescribed in section 28–4007.

§ 28–4133. Evidence of financial responsibility; requirement

A. A person operating a motor vehicle on a highway in this state shall have evidence within the motor vehicle of current financial responsibility applicable to the motor vehicle.

B. On the investigation of a motor vehicle accident or an alleged violation of the motor vehicle laws of this state or a traffic ordinance of a city or town, a law enforcement officer shall:

1. Inquire of the department computer system whether there is a notice of valid insurance cancellation or nonrenewal applicable to the motor vehicle or an indication that the vehicle is not registered for operation pursuant to section 28–4135.

2. Require and the person shall produce evidence of financial responsibility for that motor vehicle.

C. A department report that there is a notice of cancellation or a nonrenewal applicable to the vehicle or that the vehicle is not registered for operation pursuant to section 28–4135 is sufficient cause to charge the owner or operator of the vehicle with a violation of chapter 3, article 16 of this title and section 28–4132. The officer shall issue a citation under section 28–4132, unless the operator of the vehicle produces other or more recent evidence of financial responsibility.

§ 28–4134. Insurance identification cards; documentary evidence; exception

A. An authorized insurer shall issue at least two motor vehicle insurance identification cards for a motor vehicle or automobile liability policy that meets the requirements of section 28–4079.

B. The card shall state that:

1. A person is required to possess evidence of financial responsibility within the motor vehicle.

2. The card meets the requirement.

3. The card is satisfactory evidence if the person is asked by the department of transportation to verify financial responsibility on the motor vehicle.

C. All documentary evidence issued by an insurer or an authorized agent of the insurer shall indicate:

1. The name of the insurer as listed with the department of insurance.

2. For the purpose of verifying insurance coverage, the mailing address and telephone number of the insurer or an authorized agent of the insurer.

3. In order to accurately verify insurance coverage, other information as required by the department of transportation.

4. If a binder is issued by an authorized agent of an insurer, the name, address and telephone number of the agent.

D. This section does not apply to a commercial vehicle policy that provides automatic coverage for additional or newly acquired vehicles until the policy's expiration date.

E. The designation of a motor vehicle as owned or leased by the state or any of its political subdivisions according to section 38–538 is acceptable evidence of financial responsibility for the purposes of this section.

§ 28–4135. Financial responsibility requirement exemptions

A. This article does not apply to the owner or operator of a:

1. Farm tractor.

2. Trailer used solely in the operation of a farm for transporting the unprocessed fiber or forage products of a farm or an implement of husbandry designed primarily for or used in agricultural operations and only incidentally operated or moved on a highway.

3. Road-roller or road machinery, including a power sweeper, temporarily operating or moved on the highway.

4. Trailer not used for commercial purposes or semitrailer not used for commercial purposes.

5. Motor vehicle or vehicle combination subject to the financial responsibility requirements of article 2 of this chapter.

6. Motor vehicle rented without a driver meeting the requirements of section 28–866.

7. Motor vehicle registered pursuant to section 28–854.

8. Motor vehicle owned by the United States government.

B. A vehicle owner or lessee who does not operate a vehicle on a highway of this state is not required to meet the requirements of section 28–4132 during the period in which the vehicle is not in use if the requirements of subsections C through G of this section are met.

C. Within fifteen days after receipt of a notice from the department pursuant to section 28–4148, the vehicle owner or lessee shall do one of the following:

1. Comply with the requirements of section 28–4132 and provide proof of compliance in a manner prescribed by the director.

2. Certify to the department in a manner prescribed by the department all of the following:

(a) That the vehicle is nonoperational, will be placed in storage or will not be operated on a highway of this state.

(b) The reason the vehicle is not operated on a highway of this state.

(c) That the vehicle will not be operated on a highway of this state unless the financial responsibility requirements of section 28–4132 are met and unless proof of compliance is provided to the department pursuant to this section.

D. The certification prescribed in this section does not relieve a person of any registration fees or taxes imposed by the laws of this state.

E. The person shall annually certify to the department that the motor vehicle remains nonoperational, is in storage or is not operated on a highway of this state.

F. By certifying pursuant to subsection C, paragraph 2 of this section, the vehicle owner or lessee consents to the placement of an indicator on the computer records of the department that the vehicle is not registered for operation on a highway of this state until the insurer or vehicle owner meets the requirements of subsection G of this section.

G. The department shall not remove the indicator prescribed in subsection F of this section from the registration record until either of the following occurs:

1. An insurer that is licensed to transact business in this state notifies the department pursuant to section 28–4148 that the requirements of section 28–4079 are met.

2. The department receives proof from the vehicle owner or lessee that the requirements of section 28–4132 are met.

H. On receiving notice from the court that a vehicle owner or lessee who made a certification pursuant to subsection C of this section has been convicted of a violation of section 28–4132 or 28–4133, the owner or lessee is not eligible to certify pursuant to subsection C, paragraph 2 of this section for a one year period from the date of conviction.

§ 28–4136. Financial responsibility violation; civil penalties; rules

A. Notwithstanding section 28–3798 and except as provided in subsection B of this section, a person who violates section 28–4132 is subject to a civil penalty as follows:

1. The court may impose a minimum civil penalty of two hundred fifty dollars for the first violation and may direct the department to suspend the driver license of the person and the registration and license plates of the motor vehicle involved for three months.

2. If a person violates this section a second time within a period of thirty-six months, the court shall impose a minimum civil penalty of five hundred dollars and may direct the department to suspend the driver license of the person and the registration and license plates of the motor vehicle involved for six months.

3. If a person violates this section three or more times within a period of thirty-six months, the court shall impose a minimum civil penalty of seven hundred fifty dollars and direct the department to suspend the driver license and the registration and license plates of the motor vehicle involved for one year.

B. If a person subject to the civil penalty under subsection A of this section:

1. Presents proof to the court that the person has purchased a six month policy of insurance that meets the requirements of section 28–4079, the court may reduce or waive the amount of the penalty.

2. Has not purchased insurance at the time of the person's scheduled court appearance but is willing to do so, the court may suspend the imposition of the civil

penalty for up to thirty days to allow the person the opportunity to purchase the insurance.

C. Suspensions imposed pursuant to subsection A of this section are in addition to any suspensions that may be imposed by the department pursuant to this article.

D. In imposing a civil penalty arising out of the same series of acts for which the department issued a suspension, the court may order a suspension issued pursuant to subsection A of this section to run concurrently with any suspension ordered by the department.

E. The supreme court may adopt rules for the court as necessary to implement subsection B of this section.

§ 28–4137. Charges of violations

A person may be charged for a violation of either section 28–4132 or 28–4133 or both. Only one sanction shall be imposed against a person charged and found to have violated both sections arising out of the same series of acts.

§ 28–4138. License plate display violation; civil penalty; disposition

A. A person who displays a license plate on a motor vehicle if the registration or license plate has been suspended pursuant to this article is subject to a civil penalty of not less than two hundred fifty dollars.

B. The court shall impose the penalty pursuant to this section in addition to any other penalties imposed pursuant to this article.

C. Suspended license plates shall be confiscated at the time of citation, and all penalties imposed pursuant to this section shall be paid to the general fund of the state agency or political subdivision of the citing officer.

D. The department shall provide information on suspended license plates to law enforcement agencies.

§ 28–4139. Violation; civil penalty; dismissal; rules

A. Failure to produce evidence of financial responsibility on the request of a law enforcement officer investigating a motor vehicle accident or an alleged violation of a motor vehicle law of this state or a traffic ordinance of a city or town is a civil traffic violation that is punishable as prescribed in subsection C of this section.

B. A citation issued for violating this section shall be dismissed if the person to whom the citation was issued produces evidence to the appropriate court officer on or before the date and time specified on the citation for court appearance and in a manner specified by the court, including the certification of evidence by mail, of either of the following:

1. That the financial responsibility requirements prescribed in section 28–4132 were met for the motor vehicle at the date and time the citation was issued.

2. A motor vehicle or automobile liability policy that meets the financial responsibility requirements of this state and that insured the person and the motor vehicle the person was operating at the time the person received the citation regardless of whether or not the motor vehicle was named in the policy.

C. Notwithstanding section 28–3798 and except as provided in subsection D of this section, a person who violates this section is subject to a civil penalty as follows:

1. The court shall impose a civil penalty of at least two hundred fifty dollars for the first violation and may order the suspension and surrender of or direct the department to suspend the driver license of the person and the registration and license plate of the motor vehicle involved for three months.

2. If a person violates this section a second time within a period of thirty-six months, the court shall impose a civil penalty of at least five hundred dollars and may order suspension and surrender of or direct the department to suspend the driver license of the person and the registration and license plate of the motor vehicle involved for six months.

3. If a person violates this section three or more times within a period of thirty-six months, the court shall impose a civil penalty of at least seven hundred fifty dollars and order suspension and surrender of or direct the department to suspend the driver license of the person and the registration and license plate of the motor vehicle involved for one year.

D. If a person subject to a civil penalty under this section presents proof to the court that the person has purchased a six month policy of insurance that meets the requirements of section 28–4079, the court may reduce or waive the amount of the penalty. If a person subject to the civil penalty has not purchased insurance at the time of the person's scheduled court appearance but is willing to do so, the court may suspend the imposition of the civil penalty for up to thirty days to allow the person the opportunity to purchase the insurance.

E. The supreme court may adopt rules for the court as necessary to implement subsection D of this section.

F. A person may be charged with a violation of either this section, section 28–4132 or section 28–4133, or any combination of those sections. A person charged and found to have violated these sections arising out of the same series of acts may have only one civil penalty imposed. Suspensions imposed pursuant to subsection C of this section are in addition to any suspensions that may be imposed by the department pursuant to this article. In imposing a civil penalty arising out of the same series of acts for which the department issued a suspension, the court may order that a suspension issued pursuant to subsection C of this section runs concurrently with any suspension ordered by the department.

§ 28–4140. Vehicle registration; certification of financial responsibility requirements; exception; violation; classification

A. A person applying for initial registration or renewal of registration of a motor vehicle required to be registered pursuant to chapter 3 of this title:

1. Shall certify by signing a statement that the motor vehicle described in the application is in compliance with state financial responsibility requirements and will remain in compliance during any period in which the vehicle is operated on a highway of this state.

2. Consents to comply with the financial responsibility verifications conducted by the department pursuant to this article or submits to the suspension of the person's motor vehicle registration and license plate and driver license.

B. The application for registration shall contain a notice to the applicant restating subsection A.

C. Before the department issues the initial registration or the renewal of registration of a motor vehicle, it shall verify that the motor vehicle described in the application is in compliance with state financial responsibility requirements.

D. This section does not apply to a motor vehicle owned by this state or a political subdivision of this state.

E. A person is guilty of a class 2 misdemeanor if the person does any of the following:

1. Forges any evidence of proof of financial responsibility.

2. Signs evidence of proof of financial responsibility without authority.

3. Files or offers for filing a notice or evidence of proof of financial responsibility and knows or has reason to believe that the notice or evidence is forged or signed without authority.

§ 28-4141. Vehicle accident; financial responsibility verification; suspension

A. To ensure compliance with this article, the department may verify the financial responsibility of the owner of a motor vehicle involved in an accident in this state. If an accident involves an unregistered vehicle, the department may conduct a financial responsibility verification in the same manner as required for a registered vehicle.

B. If a motor vehicle is selected for financial responsibility verification under subsection A of this section, the department shall verify all insurance information on file for the requested vehicle by forwarding the information contained on the record to the insurer or the applicable party to determine if the insurance was in effect on the date of the accident.

C. On receipt of a denial from an insurer or any other applicable party or if no insurance information was on file, the department shall mail a notice to the owner requiring evidence, as defined in section 28-4131, from the owner that the motor vehicle met the financial responsibility requirement of section 28-4132 on the date of the accident. The notice shall require the owner to submit evidence of financial responsibility to the department within thirty days after the date the notice was mailed.

D. The department shall verify all evidence of financial responsibility submitted pursuant to subsection C of this section and shall take action as follows:

1. If the evidence of financial responsibility submitted by the owner indicates the existence of a motor vehicle or automobile liability policy covering the motor vehicle, the following steps shall be taken:

(a) The department shall forward the evidence document or the applicable information contained in the evidence document to the listed insurer or other appropriate party to determine whether the policy was valid on the date of the accident.

(b) The insurer or other appropriate party shall notify the department in writing within thirty days after the date the inquiry was mailed if the policy was not valid on the date indicated.

(c) On receipt of a letter of denial from an insurer or any other appropriate party, the department shall send to the owner a suspension notice that states:

(i) The insurer's denial of coverage on the date of the accident.

(ii) The owner's driver license and motor vehicle registration will be suspended fifteen days after the date the suspension notice was mailed unless the owner produces additional evidence to the department on or before the effective date of the suspension that the financial responsibility requirement of section 28-4132 was met for the vehicle on the date of the accident or unless the owner requests a hearing.

2. If the evidence of financial responsibility submitted by the owner indicates either self-insurance, a surety bond or a certificate of deposit, the department shall:

(a) Verify that the evidence is properly reflected in the department records.

(b) If it is determined that the evidence of financial responsibility is false or otherwise invalid, send a suspension notice to the owner that the person's driver license and motor vehicle registration will be suspended fifteen days after the date the suspension notice is mailed unless a hearing is requested.

3. If the person appearing as the registered owner of the vehicle according to department records is able to provide proof as prescribed by the director that the vehicle was sold before the date of the accident, the department shall not suspend the driver license or registration privilege of the person.

§ 28–4142. Notice; suspension

A. If the owner's response to a mailing pursuant to section 28–4141 indicates that the motor vehicle does not meet the financial responsibility requirement of section 28–4132, the department shall send a suspension notice to the owner that:

1. The motor vehicle does not meet the financial responsibility requirements.

2. The owner's driver license and motor vehicle registration will be suspended fifteen days after the date the suspension notice is mailed unless either:

(a) The owner produces additional evidence to the department on or before the effective date of the suspension that the financial responsibility requirement of section 28–4132 was met for the vehicle on the date of the accident.

(b) The owner requests a hearing.

B. If a response is not received within thirty days after the date the original notice requiring proof of financial responsibility is mailed, the department shall:

1. Send a suspension notice to the owner that the owner's driver license and motor vehicle registration or registration privilege will be suspended fifteen days after the date the suspension notice is mailed unless the owner submits evidence of financial responsibility or proof that the vehicle was sold pursuant to section 28–4141 before the effective date of the suspension.

2. If a response or evidence of financial responsibility or proof of vehicle sale pursuant to section 28–4141 is not received within the required time, suspend the motor vehicle registration or registration privilege, license plate and driver license.

3. If there is no other basis for the suspension and evidence of financial responsibility or evidence of vehicle sale is later submitted, verify the evidence of financial responsibility or sale pursuant to section 28–4141 and remove the suspension from the public record if financial responsibility is proven.

C. Except as provided in subsection B of this section, if the motor vehicle registration, registration privilege, license plate or driver license is suspended pursuant to section 28–4141 or this section:

1. The suspension is for a minimum of one year.

2. The department shall not terminate the suspension until the applicant both:

(a) Files with the department proof of financial responsibility in accordance with article 3 of this chapter.

(b) Pays to the department a ten dollar fee for the reinstatement of the driver license and a twenty-five dollar fee for the reinstatement of the motor vehicle registration and license plate, except that these fees do not apply to a suspension removed pursuant to subsection B of this section.

§ 28–4143. Restricted license and registration; rules

A. A person whose driver license, registration and license plate have been suspended pursuant to section 28–4141 or 28–4142 may apply to the department for a restricted license and registration.

B. The license and registration are restricted to travel during the course of employment or between the person's place of employment and residence and their use is limited to specified periods of the day or night according to the person's employment schedule.

C. The director shall prescribe by rule the criteria necessary for issuing a restricted license and registration. The department shall not grant an application for a restricted license and registration until the person meets the requirements of section 28–4132.

§ 28–4144. **Immunity**

Any insurer, insurer's employees or agents or other person is not civilly liable for reports made to the department under section 28–4141 or 28–4142 if the reports are made in good faith based on the most recent information available to the insurer or other appropriate party.

§ 28–4145. **Service of notice**

The department shall send written notice to the owner or lessee of a motor vehicle registered pursuant to chapter 3 of this title of any suspension or any financial responsibility verification. The department shall send the notice by mail to the address provided to the department on the registration application or pursuant to section 28–448. Service of notice is complete on mailing.

§ 28–4146. **Commencement of action for violation**

Notwithstanding section 28–3792, subsection B, a civil traffic violation case pursuant to this article may be commenced within one year of the alleged violation.

§ 28–4147. **Suspension of license, registration and license plates**

A. On imposing a civil penalty for a violation of this article, the court may, if the violation is the first violation within a thirty-six month period, and shall, if the violation is a second or subsequent violation within a thirty-six month period, order the surrender of the person's driver license.

B. If a suspension is ordered, the court shall direct the department to suspend the driver license of the person and the registration and license plate of the motor vehicle involved for the time provided in section 28–4136 or 28–4139.

C. If the person is a nonresident, the court shall direct the department to suspend the nonresident operating privilege of the person and notify the official in charge of issuance of driver licenses in the state where the nonresident resides of the suspension of the person's nonresident operating privilege.

D. Registration and license plates that have been suspended on imposition of a civil penalty for a violation of this article:

1. Remain suspended for the period for which the suspension was issued.

2. On completion of the suspension period, remain suspended until the registered owner both:

(a) Provides proof of financial responsibility pursuant to article 3 of this chapter for the owner's motor vehicle to the department.

(b) Pays a fee of twenty-five dollars to the department.

E. A person's driver license that has been suspended on imposition of a civil penalty for a violation of this article:

1. Remains suspended for the period for which the suspension was issued.

2. On completion of the suspension period, remains suspended until the person both:

(a) Provides proof of financial responsibility pursuant to article 3 of this chapter to the department.

(b) Pays a ten dollar fee to the department.

F. A person whose driver license, motor vehicle registration or nonresident driving privilege is suspended pursuant to a civil penalty for a violation of this article is not entitled to a hearing on the suspension before the department, but is entitled to a hearing for a restricted license as provided in section 28–4150.

§ 28–4148. Notice of insurance cancellation or nonrenewal

A. Each insurer who cancels or becomes aware of the cancellation or nonrenewal of or failure to renew or of issuance of a motor vehicle liability insurance policy issued on a vehicle in this state shall provide to the department all cancellations, nonrenewals or new issues for any reason after thirty days have elapsed from the time of cancellation, nonrenewal or new issue of a policy.

B. The insurer shall provide the information by electronic media in a format pursuant to a schedule specified by and in a manner prescribed by the director.

C. The department shall not require an insurer to specify the vehicle identification number of a vehicle covered under a commercial vehicle policy that provides automatic coverage for additional or newly acquired vehicles until the policy's expiration date.

D. The department shall provide the notice of cancellation or nonrenewal information to all law enforcement agencies on an on-line computerized call in basis from law enforcement vehicles.

E. On cancellation or nonrenewal of a policy, an insurer shall notify the insured that the department has been notified of the cancellation or nonrenewal and that the insured's motor vehicle registration may be suspended.

F. Information provided by an insurer to the department pursuant to this section shall be made available only to law enforcement agencies for law enforcement purposes.

§ 28–4149. Suspension; notice by insurer

A. If the department determines from information provided by an insurer or department records that a motor vehicle liability policy has been cancelled or has not been renewed as provided in section 28–4148 and pursuant to a schedule prescribed by the director, the department shall send the registered owner or lessee a notice of intent to suspend the license plate and registration of the vehicle.

B. On receiving evidence of financial responsibility as prescribed in this article, the department shall immediately delete the cancellation or nonrenewal from the record.

C. If the registered owner or lessee fails to provide evidence of financial responsibility as prescribed in this section within fifteen days of the mailing date of the notice of intent to suspend the registration and license plate of the vehicle, the department shall notify the owner or lessee that the license plate and registration of the vehicle have been suspended. If the owner or lessee at a later date provides evidence that liability insurance coverage meeting the requirements of section 28–4132 was in effect before the effective date of the suspension or provides evidence of compliance with section 28–4135 before the effective date of the suspension, the department shall void the suspension.

D. If the owner's or lessee's motor vehicle registration privilege and license plate are suspended, the department shall not terminate the suspension, except as provided in subsection C of this section, until proof of financial responsibility pursuant to article 3 of this chapter is filed with the department.

§ 28–4150. Restricted license and registration

A. Notwithstanding section 28–4147, a person whose driver license, vehicle registration and license plate have been suspended on imposition of a civil penalty for a violation of this article or have been suspended by the department may apply to the department for a restricted license and registration.

B. The license and registration are restricted to travel during the course of employment, between the person's place of employment and residence or between

the person's place of residence and school, and are limited in use to specified periods of the day or night according to the requirements of the person's employment or school schedule.

C. The department shall not grant the application for a restricted license and registration until the applicant files and maintains proof of financial responsibility with the department.

§ 28–4151. Effect of suspension on contract

The suspension of a motor vehicle registration pursuant to this article does not establish grounds for the rescission or invalidity of a contract or financing agreement entered into for the purchase of a motor vehicle in this state.

§ 28–4152. Reinstatement fee; fund

A. A person shall pay a fee of not more than fifty dollars for the reinstatement of a motor vehicle registration and license plate as prescribed by the department for the purposes prescribed in this article.

B. The director shall transmit the fees collected under this section to the state treasurer for deposit in the motor vehicle liability insurance enforcement fund established by subsection C of this section.

C. A motor vehicle liability insurance enforcement fund is established in the state treasury consisting of monies received pursuant to this article.

§ 28–4153. False certification or affirmation; violation; classification; suspension; fees

A. A person who makes a false certification or affirms falsely to any matter or thing required by section 28–4135 or 28–4140 to be certified or affirmed is guilty of a class 2 misdemeanor.

B. If the department has reasonable grounds to believe the registered owner of a motor vehicle registered in this state has falsely certified or affirmed any matter or thing required by section 28–4135 or 28–4140, the department shall:

1. Suspend the registered owner's motor vehicle registration, license plate and driver license for a period of one year.

2. Send notice to the registered owner that the motor vehicle registration, license plate and driver license will be suspended fifteen days after the date the notice was mailed unless a hearing is requested.

C. The department shall not terminate the suspension until the applicant both:

1. Files with the department proof of financial responsibility pursuant to article 3 of this chapter.

2. Pays ten dollars to the department for the reinstatement of the driver license and twenty-five dollars for the reinstatement of the motor vehicle registration and license plate.

CHAPTER 10

VEHICLE DEALERS, AUTOMOTIVE RECYCLERS AND TRANSPORTERS

ARTICLE 1. GENERAL PROVISIONS

§ 28–4301. Definitions

In this chapter, unless the context otherwise requires:

1. "Automotive recycler" means a person who is engaged in the business of buying or acquiring a motor vehicle solely for the purpose of dismantling, selling or

otherwise disposing of the parts or accessories and who dismantles six or more vehicles in a calendar year.

2. "Branch license" means a license that is issued by the director to a licensed motor vehicle dealer and that permits the licensee to sell motor vehicles from an established place of business within the same county but other than the original or principal place of business for which the license was issued.

3. "Broker" means a person who for any fee, commission or other valuable consideration offers to provide, provides or represents that the person will provide a service of arranging or assisting in effecting the purchase of a motor vehicle and who is not:

(a) A new motor vehicle dealer or an employee or agent of a new motor vehicle dealer.

(b) A used motor vehicle dealer or an employee or agent of a used motor vehicle dealer.

(c) A manufacturer or employee or agent of a manufacturer.

(d) An auctioneer or engaged in the auto auction business.

(e) A wholesale motor vehicle dealer.

4. "Community" means the relevant market area. For the purposes of this paragraph, "relevant market area" means the incorporated city or town in which the franchise is located.

5. "Distributor" means a person who either:

(a) Sells or distributes new motor vehicles to new motor vehicle dealers in this state.

(b) Maintains distributor representatives in this state.

6. "Distributor branch" means a branch office maintained or availed of by a distributor for either:

(a) The sale of new motor vehicles to new motor vehicle dealers in this state.

(b) Directing or supervising its representatives in this state.

7. "Established place of business":

(a) Means a permanent enclosed building or structure that is owned either in fee or leased with sufficient space to display two or more motor vehicles of a kind and type that the dealer is licensed to sell and that is devoted principally to the use of a motor vehicle dealer in the conduct of the business of the dealer.

(b) In the case of a used motor vehicle dealer, trailer dealer or semitrailer dealer:

(i) Need not be a permanent building or structure or part of a permanent building or structure.

(ii) May be a vacant lot or part of a vacant lot.

(iii) Does not mean or include a residence, tent, temporary stand or temporary quarters or permanent quarters occupied pursuant to a temporary arrangement.

(c) In the case of an automotive recycler, means a permanent site or location at which the business of an automotive recycler is or will be conducted.

8. "Exhibitor" means a manufacturer of new motor homes that exhibits new motor homes at a special event.

9. "Factory branch" means a branch office maintained or availed of by a manufacturer for either:

(a) The sale of new motor vehicles to distributors or the sale of new motor vehicles to new motor vehicle dealers in this state.

(b) Directing or supervising its representatives in this state.

10. "Financial institution" means a bank, trust company, savings and loan association, credit union, consumer lender, international banking facility or holding company that is licensed, regulated or insured by the state banking department, the federal deposit insurance corporation, the office of thrift supervision, the comptroller of the currency, the national credit union share insurance fund or the national credit union administration.

11. "Franchise" means a contract between two or more persons if all of the following conditions are included:

(a) A commercial relationship of definite duration or continuing indefinite duration is involved.

(b) The franchisee is granted the right to offer, sell and service in this state new motor vehicles manufactured or distributed by the franchisor.

(c) The franchisee, as a separate business, constitutes a component of the franchisor's distribution system.

(d) The operation of the franchisee's business is substantially associated with the franchisor's trademark, service mark, trade name, advertising or other commercial symbol designating the franchisor.

(e) The operation of the franchisee's business is substantially reliant on the franchisor for the continued supply of new motor vehicles, parts and accessories.

12. "Franchisee" means a person who both:

(a) Receives new motor vehicles from the franchisor under a franchise.

(b) Offers and sells to and services new motor vehicles for the general public.

13. "Franchisor" means a person who both:

(a) Manufactures or distributes new motor vehicles.

(b) May enter into a franchise.

14. "Importer" means a person who transports or arranges for the transportation of a foreign manufactured new motor vehicle into the United States for sale in this state.

15. "Major component part" includes a motor vehicle or vehicle part that the manufacturer has assigned any factory, motor, serial or other identification number or mark.

16. "Manufacturer" means any person who either:

(a) Manufactures or assembles new motor vehicles.

(b) Manufactures or installs on previously assembled truck chassis special bodies or equipment that when installed form an integral part of the new motor vehicle and that constitute a major manufacturing alteration, excluding the installation of a camper on a pickup truck.

17. "Motor home" means a motor vehicle that is primarily designed as temporary living quarters and that:

(a) Is built onto as an integral part of, or is permanently attached to, a motor vehicle chassis.

(b) Contains at least four of the following independent life support systems if each is permanently installed and designed to be removed only for purposes of repair or replacement:

(i) A cooking facility with an on board fuel source.

(ii) A gas or electric refrigerator.

(iii) A toilet with exterior evacuation.

(iv) A heating or air conditioning system with an on board power or fuel source separate from the vehicle engine.

(v) A potable water supply system that includes at least a sink, a faucet and a water tank with an exterior service supply connection.

(vi) A 110–125 volt electric power supply.

18. "Motor vehicle" means an automobile, motor bus, motorcycle, truck or truck tractor or any other self-propelled vehicle, trailer or semitrailer.

19. "Motor vehicle dealer" means a new motor vehicle dealer, a used motor vehicle dealer, a broker or a wholesale motor vehicle auction dealer, excluding a person who comes into possession of a motor vehicle as an incident to the person's regular business and who sells or exchanges the motor vehicle.

20. "New house trailer dealer" means a person who buys, sells, exchanges or offers or attempts to negotiate a sale or exchange of an interest in, or who is engaged in the business of selling, new house trailers or used house trailers taken in trade on new house trailers. For the purposes of this paragraph, "house trailer" means a vehicle, other than a motor vehicle, that is built on a chassis designed for being drawn on the highways by a motor vehicle and that is designed for human habitation.

21. "New motor vehicle" means a motor vehicle, other than a used motor vehicle, that is held either for:

(a) Sale by the franchisee who first acquired the vehicle from the manufacturer or distributor of the vehicle.

(b) Sale by another franchisee of the same line make.

22. "New motor vehicle dealer" means a person who buys, sells, exchanges or offers or attempts to negotiate a sale or exchange of an interest in, or who is engaged in the business of selling, new motor vehicles or used motor vehicles taken in trade on new motor vehicles or used vehicles purchased for resale.

23. "Off-premises display and sales" means a promotion or sale of motor vehicles for a period of time as specified by the director that both:

(a) Is sponsored by a licensed motor vehicle dealer, the licensed motor vehicle dealer's agents or the manufacturer.

(b) Takes place at a location within the same county but not at the licensee's established place of business.

24. "Off-premises exhibition" means the exhibition of a motor vehicle for a period of time as specified by the director at a location within the same county but not at the established place of business of a licensed motor vehicle dealer and at which a solicitation or sale does not occur.

25. "Special event" means an exhibition of new motor homes by a motor vehicle dealer licensed to sell new motor homes or an exhibitor for a period of time specified by the director at a location in this state other than the licensee's or exhibitor's established place of business.

26. "Used motor vehicle" means a motor vehicle that has been sold, bargained, exchanged or given away or the title to the motor vehicle has been transferred from the person who first acquired the vehicle from the manufacturer, or importer, dealer or agent of the manufacturer or importer, and that has been placed in bona fide consumer use. For the purposes of this paragraph, "bona fide consumer use" means actual operation by an owner who acquired a new motor vehicle both:

(a) For use in the owner's business or for pleasure or otherwise.

(b) For which a certificate of title has been issued or that has been registered as provided by law.

27. "Used motor vehicle dealer" means a person, other than a new motor vehicle dealer, who buys, sells, exchanges or offers or attempts to negotiate a sale or

exchange of an interest in, or who is engaged in the business of selling, six or more used motor vehicles during a calendar year.

28. "Wholesale motor vehicle auction dealer" means a person who both:

(a) Is in the business of providing auction services solely in wholesale transactions to motor vehicle dealers licensed by this state or any other jurisdiction.

(b) Does not buy, sell or own the motor vehicles the auction dealer auctions in the ordinary course of business.

29. "Wholesale motor vehicle dealer" means a person who sells used motor vehicles only to licensed motor vehicle dealers.

30. "Zone" means the geographic marketing area or district designated by the franchisor and serviced by the franchisor's factory or distributor branch.

§ 28–4302. Fees; disposition

A. The following fees are required:

1. For filing each application for a dealer's, manufacturer's, importer's, distributor's, factory branch's, distributor branch's, automotive recycler's or wholesale motor vehicle dealer's license, fifteen dollars.

2. For filing each application for a provisional dealer's, automotive recycler's or wholesale motor vehicle dealer's license filed in conjunction with an application for a dealer's or automotive recycler's license, ten dollars.

3. For each criminal background investigation required under section 28–4364, four hundred sixty dollars, and notwithstanding subsection B of this section and section 28–6501, fees collected pursuant to this paragraph shall be transmitted to the state treasurer for deposit in the criminal background investigation fund established by section 28–4305.

4. For each filing or continuation of a dealer's, manufacturer's, distributor's, importer's, factory branch's, distributor branch's, automotive recycler's or wholesale motor vehicle dealer's license if issued annually, one hundred dollars.

5. For filing or continuing a dealer's branch license if issued annually, fifty dollars.

6. For filing each application for a permit for the off-premises exhibition of motor vehicles or for a special event to exhibit new motor homes, twenty-five dollars.

7. For filing each application for a permit for the off-premises display and sale of motor vehicles, twenty-five dollars.

B. Except as otherwise provided by law, the director shall transmit fees collected under this section to the state treasurer for deposit in the Arizona highway user revenue fund.

§ 28–4303. Administration

The director shall supervise and regulate all persons required by this chapter to be licensed. In the supervision and regulation required by this section, the director may:

1. Investigate as the director deems necessary and for that purpose the director may require the aid and assistance of the highway patrol division.

2. Conduct hearings.

3. Compel the attendance of witnesses at the hearings.

§ 28–4304. Dealer enforcement fund

A. A dealer enforcement fund is established in the state treasury consisting of monies collected by the director for the following:

1. Civil penalties and vehicle registration reinstatements pursuant to this chapter.

2. Each filing or continuation of a dealer's, manufacturer's, distributor's, importer's, factory branch's, distributor branch's, automotive recycler's or dealer's branch license pursuant to section 28–4302.

3. Each filing for an application for an off-premises exhibition permit or an off-premises display and sales permit.

B. Monies in the dealer enforcement fund are:

1. Subject to legislative appropriation for the purposes of enforcement of this chapter.

2. Exempt from the provisions of section 35–190 relating to lapsing of appropriations, except that any amounts in the fund in excess of two hundred fifty thousand dollars at the close of each fiscal year revert to the state highway fund established by section 28–6991.

C. The state treasurer may invest and divest inactive monies in the fund as provided by section 35–313 and shall credit all interest earned to the fund.

§ 28–4305. Criminal background investigation fund; reversion

A. A criminal background investigation fund is established in the state treasury composed of the monies collected pursuant to section 28–4302, paragraph 3. The director shall use the monies in the fund for processing the application and for the criminal background investigations required pursuant to this chapter.

B. The fund established in this section is exempt from the provisions of section 35–190 relating to lapsing of appropriations. Monies in excess of two hundred thousand dollars that remain in the fund at the close of each fiscal year revert to the highway user revenue fund.

§ 28–4306. Jurisdiction; service of process

A. A court of this state may exercise jurisdiction over a manufacturer, corporation, importer or distributor that has been granted a license under this chapter with respect to any conduct of the manufacturer, corporation, importer or distributor in this state. In addition to any other method provided by rule or statute, personal jurisdiction over a manufacturer, corporation, importer or distributor may be acquired in a civil action or proceeding instituted in a court by service of process in the manner provided in this section.

B. If a manufacturer, corporation, importer or distributor is not a resident of this state and engages in any business in this state, the manufacturer, corporation, importer or distributor shall designate an agent or the director on whom service of process may be made in this state. The agent shall be a resident of this state or a corporation authorized to do business in this state. The manufacturer, corporation, importer or distributor shall make the designation in writing and file it with the director. If process cannot be served in this state on the designated agent, process may be served on the director, but the plaintiff or petitioner shall immediately mail a copy of the process and pleading by certified mail to the defendant or respondent. Service of process is complete with service on the director.

C. The defendant or respondent shall appear and answer within thirty days after completion of service on the director in the manner and under the same penalty as if the defendant or respondent had been personally served with the summons or other process.

D. The plaintiff or petitioner shall file an affidavit of compliance with this section with the clerk of the court within the time the court allows if process was served to the director.

ARTICLE 2. LICENSING REQUIREMENTS

§ 28–4331. **Prohibition; applicability**

A. A manufacturer, distributor, factory branch, distributor branch, motor vehicle dealer or automotive recycler shall not engage in business except in accordance with the requirements of law.

B. This article does not apply to:

1. A public officer engaged in the discharge of the officer's official duties.

2. Any trustee, receiver or other officer acting under the jurisdiction of a court.

3. A financial institution disposing of a repossessed vehicle.

4. A person disposing of the person's personal vehicles.

C. The provisions of this chapter regulating and licensing manufacturers, distributors, factory branches, distributor branches and franchisors only apply to those manufacturers, distributors, factory branches, distributor branches and franchisors of passenger cars, trucks, buses, motorcycles, trailers and semitrailers.

D. Sections of this chapter that:

1. Refer to a motor vehicle dealer apply to a new house trailer dealer.

2. Refer to a motor vehicle dealer apply to a used house trailer dealer.

§ 28–4332. **Limited exemption; definitions**

A. The director shall grant an exemption from the new or used house trailer dealer licensing requirements of this chapter if the person claiming the exemption furnishes satisfactory proof to the director of licensure as a dealer under title 41, chapter 16.

B. The cash deposit or bond posted by the person pursuant to section 41–2179 is subject to the same conditions and inures to the benefit of the same persons as prescribed in sections 28–4362, 28–4405, 28–4406 and 28–4408.

C. A new or used house trailer dealer who claims an exemption pursuant to subsection A of this section shall comply with all other requirements applicable to a new or used house trailer dealer licensed under this chapter. The director of the department of transportation may suspend or cancel the license issued pursuant to title 41, chapter 16 pursuant to this chapter. On issuing a final order cancelling or suspending a license issued pursuant to section 41–2176, the director of the department of transportation shall notify the director of the department of building and fire safety who shall require the surrender of the license. Section 41–2184 does not apply to this cancellation or suspension.

D. An exemption granted pursuant to subsection A of this section expires on suspension, revocation or nonrenewal of the license issued pursuant to title 41, chapter 16. The director of the department of building and fire safety shall notify the director of the department of transportation of any such suspension, revocation or nonrenewal.

E. For the purposes of this section:

1. "House trailer" means a vehicle, other than a motor vehicle, that is built on a chassis designed for being drawn on the highways by a motor vehicle and that is designed for human habitation.

2. "Used house trailer dealer" means a person, other than a new house trailer dealer, who buys, sells, exchanges or offers or attempts to negotiate a sale or exchange of an interest in used house trailers or who is engaged in the business of selling used house trailers.

§ 28–4333. **Licensing requirement; exemptions**

A. A new motor vehicle shall not be sold in this state unless either the manufacturer on direct dealerships of domestic vehicles, the importer of foreign manufactured vehicles on direct dealerships or the distributor on indirect dealerships of either domestic or foreign vehicles is licensed as provided in this chapter. Obtaining the license conclusively establishes that the manufacturer, distributor or importer is subject to the laws of this state regulating manufacturers, importers and distributors.

B. An organization that has qualified for an exemption from taxation of income under section 43–1201, paragraph 1, 2, 4, 5, 6, 7, 10 or 11 may sell a donated used motor vehicle without obtaining a license under this chapter, subject to the following:

1. The nonprofit organization shall maintain the tax exempt status until any monies received from the sale of the used motor vehicle have been expended and a member, director, officer, employee or agent of the nonprofit organization shall not receive any direct or indirect pecuniary benefit from the sale of the used motor vehicle.

2. The nonprofit organization shall have been in existence continuously in this state for a five year period immediately before the sale of the used motor vehicle.

3. The nonprofit organization shall sell the used motor vehicle by consignment using a licensed motor vehicle dealer.

4. Notwithstanding section 28–758, the nonprofit organization is not required to obtain a new certificate of title or registration for the donated motor vehicle but shall assign the certificate of title to the licensed motor vehicle dealer for ultimate assignment to the retail purchaser of the motor vehicle.

5. The nonprofit organization shall maintain the motor vehicle financial responsibility requirements prescribed by chapter 9, article 4 of this title if operating the motor vehicle including operating the motor vehicle to the place of consignment.

6. The nonprofit organization may operate the donated motor vehicle to the place of consignment without purchasing the one trip registration permit required by section 28–855.

C. Notwithstanding any other provision of this chapter, a person who receives consideration for providing a purchaser the opportunity to purchase a motor vehicle from a licensed new motor vehicle dealer at a price that does not exceed a certain amount is not required to be licensed as a motor vehicle dealer or broker under this chapter if the person does not participate in the negotiation of the actual price paid, the delivery terms or any other terms related to the purchase of the vehicle.

§ 28–4334. **License requirement; established place of business; unimproved lots and premises**

A. Except as provided in sections 28–4335, 28–4401 and 28–4402, a person shall not engage in any business regulated by this chapter except from an established place of business and unless the person has obtained from the director a license authorizing the person to engage in the business.

B. A licensee may use unimproved lots and premises or parts of unimproved lots and premises for the storage of motor vehicles or for the storage of motor vehicle parts or accessories if the lots or premises are located in the county in which the licensee has an established place of business.

§ 28–4335. **Wholesale motor vehicle dealer, broker or person selling mobile medical clinics; definition**

A. A wholesale motor vehicle dealer, a broker or a person engaged in the business of selling mobile medical clinics:

1. Is required to be licensed pursuant to this chapter.

2. Is not required to operate from an established place of business.

3. Shall maintain a place of business in which records of the business are kept.

B. If the licensee is a broker, the principal place of business shall not be a location that is zoned for residential use.

C. For the purposes of this section, "mobile medical clinic" means a motor vehicle retrofitted for exclusive use as a medical office or clinic for medical services regulated under title 32.

§ 28–4336. Separate licenses and permits

A. A branch licensee shall obtain a separate branch license for each place of business at which a licensee transacts business other than the original or principal place of business.

B. A motor vehicle dealer licensee shall obtain a separate permit for and display the separate permit at each location other than the licensee's established place of business at which the licensee conducts an off-premises exhibition, an off-premises display and sales or a special event.

C. An exhibitor shall obtain a separate permit for and display the separate permit at each location at which the exhibitor conducts a special event.

ARTICLE 3. LICENSING PROCEDURES

§ 28–4361. License application

A. A person shall apply for a license to the director in writing on forms prescribed by the director. The person shall include with the application all documents and bonds required and the annual license fees prescribed by section 28–4302.

B. The application shall be verified and shall contain:

1. The name and residence of either:

(a) The applicant.

(b) If the applicant is a partnership, each partner.

(c) If the applicant is a corporation, each principal officer, director, agent or stockholder who owns twenty per cent or more of the corporation and the name of the state in which the corporation was organized.

2. The principal place of business of the applicant.

3. The established place of business or the place of business at or from which the applicant will conduct the business.

4. The make or makes of new motor vehicles, if any, that the applicant will sell or offer for sale in this state.

5. The business hours of the applicant.

6. Other information that the director requires.

C. Each applicant and each partner, officer, director, agent or stockholder owning twenty per cent or more of a corporation seeking a new license shall provide a full set of fingerprints to enable the department to conduct a criminal background investigation. The criminal background investigation may not apply if the application is for a subsequent license and the applicant and each partner, officer, director, agent or stockholder owning twenty per cent or more of a corporation either:

1. Has submitted to a criminal background investigation as provided for in section 28–4364 during the past five years.

2. Is currently licensed under this section.

§ 28–4362. **Application; fee; bond**

Applications shall be accompanied by:

1. The filing fees prescribed in section 28–4302, and each licensee shall pay the annual license fee prescribed in section 28–4302.

2. A bond that:

(a) Is in a form to be approved by the director.

(b) Is in an amount prescribed by the director of at least twenty thousand dollars for an automotive recycler's license and not more than fifty thousand dollars for all other licenses.

(c) Is executed by a surety company authorized to transact business in this state as surety on the bond with the applicant as principal obligor on the bond and the state as obligee.

(d) Is cancellable only on at least sixty days' prior notice to the director.

(e) Inures to the benefit of a person who suffers loss because of either:

(i) Nonpayment by the dealer of customer prepaid title, registration or other related fees or taxes.

(ii) The automotive recycler's or the dealer's failure to deliver in conjunction with the sale of a vehicle a valid vehicle title certificate free and clear of any prior owner's interests and all liens except a lien created by or expressly assumed in writing by the buyer of the vehicle.

§ 28–4363. **Franchises; filing agreement; violation; classification**

A. At the time a franchisee applies for a license, the franchisee shall file with the director a certified copy of the franchisee's written agreement with the manufacturer and a certificate of appointment as dealer or distributor.

B. The certificate of appointment shall be signed as follows:

1. By an authorized agent of the manufacturer of domestic vehicles on direct manufacturer-dealer agreements.

2. If the manufacturer is wholesaling through an appointed distributorship, by an authorized agent of the distributor on indirect distributor-dealer agreements.

3. By an authorized agent of the importer on direct importer-dealer agreements of foreign made vehicles.

4. By an authorized agent of the distributor on indirect distributor-dealer agreements.

5. For a distributor's certificate of appointment, by an authorized agent of the manufacturer of domestically manufactured vehicles or by an authorized agent of the manufacturer or importer of foreign made vehicles.

C. A franchisee is not required to file a written agreement or certificate of appointment if the manufacturer on direct dealerships, the distributor on indirect dealerships or the importer on direct dealerships meets all of the following conditions:

1. Utilizes the identical basic agreement for all of its franchised dealers or distributors in this state.

2. Certifies in the certificate of appointment that this blanket agreement is on file and the written agreement with the dealer or distributor, respectively, is identical with the filed blanket agreement.

3. Has filed with the director one such agreement together with a list of franchised dealers or distributors.

D. The manufacturer, distributor or importer shall notify the director within thirty days of any revisions of or additions to the basic agreement on file or of any franchisee supplements to the agreement.

E. Annual renewal of certificates filed as provided in this section is not required.

F. A manufacturer on direct dealerships, a distributor on indirect dealerships or an importer on direct dealerships who has filed with the director an agreement used by all of its franchisees in this state together with a list of all such franchisees and who knowingly fails to notify the director within thirty days of any revisions, changes or additions to the materials filed is guilty of a class 2 misdemeanor.

§ 28–4364. **Investigation; provisional licenses; fees; definitions**

A. On the filing of the application for a license, the director shall:

1. Investigate the matters set forth in the license application.

2. Inspect the place from which the applicant proposes to transact business.

3. Investigate other matters as the director deems necessary.

B. The director shall select a date and time to conduct the investigation and inspection as the director determines is reasonable and necessary.

C. The first phase of the criminal background investigation is a criminal history record check pursuant to section 41–1750. On notification by the department of public safety that the applicant has not been convicted of a violation that would prohibit the applicant from obtaining a license, the director of the department of transportation may approve an application for a provisional dealer's or automotive recycler's license pending completion of the criminal history record check if the applicant meets all other licensing requirements of this chapter.

D. A provisional motor vehicle dealer's or automotive recycler's license is valid unless revoked by the director or until the applicant receives approval or denial of the application for a motor vehicle dealer's or automotive recycler's license.

E. The director may revoke a provisional motor vehicle dealer's or automotive recycler's license for a violation of this chapter.

F. If a licensee adds or changes a partner, officer, director, agent or stockholder who owns twenty per cent or more of the corporation and who was not included in the criminal background investigation on a prior application, the licensee shall notify the department within thirty days of the change.

G. At the time of notification as required in subsection F of this section, an application, a full set of fingerprints, if applicable, and a fee of four hundred sixty dollars shall be submitted to the department for the purpose of a criminal background investigation.

H. If any individual added or changed by the licensee is found to be ineligible pursuant to section 28–4365, the director, on completion of the investigation, shall advise the licensee and the individual in writing that the license will be revoked, unless the individual is removed from the position, and the grounds for the action.

I. The requirement for a criminal background investigation does not apply to a manufacturer, importer, factory branch or distributor or a person under eighteen years of age on the date the application is filed with the department.

J. A member of the immediate family of a person currently licensed pursuant to section 28–4361 is only subject to a criminal history record check that includes an inquiry to the criminal identification section of the department of public safety. If the information on the application and the criminal history record check from the department of public safety do not provide any further information that would prohibit the applicant from obtaining a license pursuant to section 28–4361, the director shall approve the application. If the application is denied, the applicant may appeal the denial pursuant to section 28–4366. A person applying for licensure

pursuant to this subsection shall pay a fee of ninety dollars for the criminal history record check.

K. For the purposes of this section:

1. "Member of the immediate family" means a husband, wife, child or grandchild who has been a resident of this state for a minimum period of five consecutive years immediately preceding the date the application is filed with the department.

2. "Provisional automotive recycler's license" means a license that both:

(a) Is issued by the department only in conjunction with an application for an automotive recycler's license.

(b) Permits the applicant or applicants to conduct the business of an automotive recycler regulated by this chapter pending completion of the criminal history record check pursuant to this section.

3. "Provisional dealer's license" means a license that both:

(a) Is issued by the department only in conjunction with an application for a dealer's license.

(b) Permits the applicant or applicants to conduct the business of a motor vehicle dealer regulated by this chapter pending completion of the criminal history record check pursuant to this section.

§ 28–4365. Action on application; denial; immunity from costs

A. Within twenty days from completion of the criminal background investigation, the director shall approve or deny the application for the issuance of a license. If the application is denied, the director shall advise the applicant in writing of the denial and the grounds for the denial.

B. The director shall deny an application for a license if:

1. The information on the application is found to be fraudulent.

2. An individual included in the application has been convicted of fraud or an auto related felony in a state, territory or possession of the United States or a foreign country and has not completed the entire sentence imposed by the court, including a term of imprisonment, a term of probation or parole or payment of a fine, as a result of a conviction of fraud or an auto related felony within the past ten years immediately preceding the date the application is filed with the department.

3. An individual included in the application has been convicted of a felony, other than a felony described in paragraph 2 of this subsection, in a state, territory or possession of the United States or a foreign country and has not completed the entire sentence imposed by the court, including a term of imprisonment, a term of probation or parole or payment of a fine, as a result of the felony conviction within the past five years immediately preceding the date the application is filed with the department.

4. The individual or individuals do not meet the requirements of law.

C. The individual whose information is found to be fraudulent is not eligible to reapply for a license for twelve months from the date of denial.

D. The department or its employees are not liable for any costs incurred by an applicant seeking licensure under this chapter.

§ 28–4366. Hearing on application; appeal

A. Within thirty days after receipt of the notice of denial, the applicant may petition the director in writing for a hearing on the application. On filing the petition, the director shall fix a date for the hearing.

B. The applicant has the right to be present at the hearing to testify in the applicant's own behalf and to have other persons as the applicant desires present and testify at the hearing.

C. The director shall issue subpoenas to the persons the applicant requests, requiring them to be present and to testify at the hearing.

D. A transcript of the testimony of all witnesses taken at the hearing shall be made and preserved.

E. Within ten days after the hearing, the director shall make written findings of fact and conclusions and shall either grant or finally deny the application.

F. If the application is finally denied, the applicant, within thirty days from the date of final denial, may appeal to the superior court in Maricopa county. The action shall be tried as other civil actions and shall be conducted as a trial de novo.

ARTICLE 4. VEHICLE DEALER REQUIREMENTS AND RESTRICTIONS

§ 28–4401. Off-premises exhibition, off-premises display and sales and special event permits

A. A licensed motor vehicle dealer may conduct an off-premises exhibition, an off-premises display and sales or a special event by permit.

B. An exhibitor that does not have a licensed franchised dealer in this state may conduct a special event by permit. An exhibitor that has a licensed franchised dealer in this state is limited to participating in a special event through the exhibitor's licensed dealer. A licensed motor vehicle dealer or an exhibitor shall not make a solicitation or sale at a special event.

C. An applicant for an off-premises exhibition, an off-premises display and sales or a special event permit shall submit proof to the department that the proposed site is in compliance with local zoning ordinances.

D. An off-premises exhibition permit, display and sales permit or special event permit is not assignable.

E. A special event shall not be held at the same location at which an off-premises exhibition or an off-premises display and sale are held.

§ 28–4402. Recreational vehicles; permits

A. A motor vehicle dealer who is licensed to sell only recreational vehicles as defined in section 28–1562 and who is the only franchisee for that line make may exhibit those recreational vehicles at a fair or similar public event in an adjacent county by permit.

B. A licensed motor vehicle dealer may display and sell motor vehicles during a public event for a limited period of time, not to exceed ten days in any one calendar year, outside of the county in which the licensed motor vehicle dealer has an established place of business if the display and sales take place in an incorporated city or town whose boundaries include territory within two counties and the licensed motor vehicle dealer's established place of business is in one of the two counties. Before any display or sales, the licensed motor vehicle dealer shall obtain a permit from the department and shall submit proof to the department that the proposed site is in compliance with local zoning ordinances.

§ 28–4403. Record requirements; motor vehicle information

A. A licensee shall keep and maintain at the licensee's established place of business, or place of business if the licensee is a motor vehicle dealer in mobile medical clinics, a broker or a wholesale motor vehicle dealer, a permanent record in the form prescribed by the director containing:

1. A particular description of each motor vehicle of a type subject to registration under the laws of this state that is bought, sold, brokered or exchanged by the licensee or received or accepted by the licensee for sale, brokering or exchange.

2. A particular description of each used motor vehicle body or chassis that is sold or otherwise disposed of.

3. A particular description of each motor vehicle that is bought or otherwise acquired and wrecked by the licensee.

4. The name and address of the person from whom a motor vehicle, motor vehicle body or chassis was purchased or otherwise acquired and the date it was purchased or acquired.

5. The name and address of the person to whom the motor vehicle, motor vehicle body or chassis was sold or otherwise disposed of, the date it was sold or disposed of and a sufficient description of the vehicle, body or chassis by name or identifying number or otherwise to identify it.

B. A licensed automotive recycler that has a vehicle in the automotive recycler's inventory shall:

1. At the same time have possession of a duly and regularly assigned salvage certificate of title or a dismantling permit to the vehicle.

2. Not offer for sale or sell a vehicle unless a salvage certificate of title or a dismantling permit to the vehicle has been obtained.

C. Each motor vehicle dealer shall give the customer a written contract and shall maintain a copy of the contract for three years at the dealer's established place of business.

D. Each record required by this section and all inventories relating to the records of a licensee shall be available at all times for physical inspection by agents of the department or members of the highway patrol division. The agents or members may enter on premises where the records or inventories are located during normal business hours for purposes of the inspection. The licensee or any designated employee or agent may accompany any person making the inspection while the person is on the licensee's premises.

E. The licensee is only liable to a person making an inspection under this section for an injury arising out of the condition of the premises that occurs while the person is on the licensee's premises if the licensee knowingly allows the person to encounter a hidden peril or wantonly or wilfully causes the person harm.

§ 28-4404. Record requirements; vehicles and parts; classification

A. Each licensee shall keep and maintain at the licensee's place of business, or at each of the licensee's places of business if the licensee has more than one, a permanent record on a form prescribed by the director as follows:

1. Recording and describing each of the following:

(a) Each vehicle that is wrecked, dismantled, disassembled or substantially altered by the licensee.

(b) Each major component part that is acquired by the licensee together with a bill of sale signed by a seller whose identity has been verified and the name and address of the person, firm or corporation from which the licensee purchased the vehicle or part.

(c) The following information regarding the wrecked or acquired vehicle that is the source of a major component part:

(i) If previously titled in this or any other state, the certificate of title number.

(ii) The name of the state where last registered.

(iii) The number of the last license plate issued.

(iv) The make and model of the vehicle.

(v) The identification number and serial number of the vehicle.

(vi) The date purchased.

(vii) The disposition of the chassis.

(viii) The name and address of the person from whom a motor vehicle, motor vehicle body or chassis was purchased or otherwise acquired and the date of the purchase.

(ix) The name and address of the person to whom the motor vehicle, motor vehicle body or chassis was sold or otherwise disposed of, the date of the sale and a description of the vehicle, body or chassis by make and model or identification number.

2. Including a bill of sale signed by the seller for any motor vehicle parts other than major component parts acquired by the licensee, identifying the seller by name, address and date of sale.

B. The licensee shall maintain the record at the licensee's established place of business or principal place of business if the licensee is a broker or a wholesale motor vehicle dealer for a period of three years from the date of acquiring each item recorded.

C. Members of a police department, a sheriff's office, the department of transportation and the department of public safety may inspect the record kept by the licensee at any time during regular business hours.

D. An automotive recycler shall maintain a similar record of all disabled vehicles that have been towed or transported to the automotive recycler's place of business or to other places designated by the owner of the vehicle or the owner's representative. This record shall specify the make, model and description of the vehicle, name of the owner, number of the license plate, condition of the vehicle and place to which it was towed or transported.

E. Each licensee shall allow any person described in subsection C, during business hours and after reasonable demand, to physically compare the records required to be maintained with the vehicles or major component parts that are located at the licensee's place of business.

F. A person who fails to display the records required to be maintained after reasonable demand by a person under subsection C or E is guilty of a class 1 misdemeanor.

§ 28-4405. Display of license; expiration date; late penalty

A. A license issued under this chapter:

1. Shall be conspicuously displayed in either:

(a) The established place of business for which it was obtained.

(b) The place of business if the licensee is a motor vehicle dealer in mobile medical clinics, a broker or a wholesale vehicle dealer.

2. Is not assignable.

B. If a licensee fails, neglects or refuses to pay the required fee for the ensuing year on or before December 1 of each year, the fee is delinquent and a penalty equal to the fee shall be added to the fee and collected.

§ 28-4406. Sign requirements

A. Each motor vehicle dealer and automotive recycler shall erect and maintain at the entrance to the motor vehicle dealer's or automotive recycler's established place of business a permanent sign indicating that the business of a motor vehicle dealer

or automotive recycler is conducted at or from the premises. The sign shall be legible at a distance of at least three hundred feet during daylight.

B. A wholesale motor vehicle dealer shall erect and maintain at the entrance of the dealer's principal place of business a permanent sign indicating that the business of a wholesale motor vehicle dealer is conducted at or from the premises.

§ 28–4407. **Business hours; notice of change**

Each person issued a license pursuant to this chapter shall:

1. Include business hours on each renewal application.

2. Provide written notice of any change in business hours to the director at least ten days before the change to the hours.

§ 28–4408. **Change in place of business**

Before a licensee moves from one established place of business to another, or from one place of business to another if the licensee is a motor vehicle dealer in mobile medical clinics, a broker or a wholesale motor vehicle dealer, the licensee shall apply to and obtain consent to the removal from the director.

§ 28–4409. **Evidence of ownership requirement; exception**

A. Except as provided in section 28–4410:

1. Each dealer in motor vehicles, trailers and semitrailers, including manufacturers who sell to other than dealers, having possession of a motor vehicle, trailer or semitrailer shall have at the same time either:

(a) Possession of a duly and regularly assigned certificate of title to the vehicle.

(b) Reasonable indicia of ownership or right of possession as provided in section 28–4410.

2. A dealer or manufacturer shall not offer for sale or sell a motor vehicle, trailer or semitrailer until the dealer or manufacturer has obtained a certificate of title to the motor vehicle, trailer or semitrailer, except that a certificate of title is not required for a new motor vehicle sold by manufacturers to dealers.

B. A wholesale motor vehicle auction dealer is exempt from the requirement of having to possess a duly and regularly assigned certificate of title and from other requirements relating to the reassignment of title documents and disclosures to buyers. A wholesale motor vehicle auction dealer may buy or sell a motor vehicle at wholesale in the wholesale motor vehicle auction dealer's own name if the wholesale motor vehicle auction dealer complies with the provisions of this title relating to certificates of title, reassignments of title documents and disclosures to buyers.

§ 28–4410. **Consignment contracts; definitions**

A. A dealer in motor vehicles, trailers and semitrailers may possess and offer for sale a motor vehicle, trailer or semitrailer without having a duly or regularly assigned certificate of title in the dealer's possession if the dealer possesses all of the following:

1. A consignment contract or dealer acquisition contract.

2. The most recent registration card for the vehicle.

3. A statement by the lienholder disclosing all unsatisfied liens, if applicable.

B. A dealer may complete the sale of a motor vehicle, trailer or semitrailer offered for sale under subsection A of this section when the dealer possesses verification that all liens on the motor vehicle, trailer or semitrailer have been satisfied by the dealer or assumed by the purchaser.

C. A dealer who offers a vehicle for sale on consignment shall inform a prospective customer that the vehicle is on consignment to the dealer.

D. The director shall adopt rules on the minimum form and content of consignment contracts and dealer acquisition contracts.

E. This chapter does not allow the consignment of motor vehicles from one licensee to another licensee.

F. A dealer in motor vehicles, trailers or semitrailers may offer for sale or sell a motor vehicle, trailer or semitrailer without having a duly or regularly assigned certificate of title in the dealer's possession if the dealer possesses a complete photocopy of the duly or regularly assigned certificate of title, the original of which has been delivered to a financial institution as defined in section 28–4301 or a subsidiary of the financial institution pursuant to an inventory financing arrangement.

G. For the purposes of this section:

1. "Consignment contract" means an agreement executed by both the owner of a vehicle and a licensed motor vehicle dealer pursuant to which the vehicle is delivered to the dealer to sell for the owner.

2. "Dealer acquisition contract" means an agreement that both:

(a) Is executed by both the owner of a vehicle, the title for which is in possession of a lienholder in accordance with the laws of another state, and a licensed motor vehicle dealer.

(b) Transfers ownership of the vehicle described in subdivision (a) to a licensed dealer from a person other than a manufacturer, distributor, franchisor or dealer.

3. "Inventory financing arrangement" means an agreement under which a dealer grants a security interest to a financial institution under the provisions of title 47, chapter 9.

§ 28–4411. Damage to new motor vehicles; disclosure; definition

A. Except as provided in subsection B, a new motor vehicle dealer shall disclose in writing to a purchaser of the new motor vehicle before entering into a sales contract that the new motor vehicle has been damaged and repaired if the damage to the new motor vehicle exceeds three per cent of the manufacturer's suggested retail price as calculated at the rate of the dealer's authorized warranty rate for labor and parts.

B. A new motor vehicle dealer is not required to disclose to a purchaser that any glass, tires or bumper of a new motor vehicle was damaged at any time if the damaged item has been replaced with original or comparable equipment.

C. If disclosure is not required under this section, a purchaser may not revoke or rescind a sales contract due solely to the fact that the new motor vehicle was damaged and repaired before completion of the sale.

D. For purposes of this section, "manufacturer's suggested retail price" means the retail price of the new motor vehicle suggested by the manufacturer, including the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment physically attached to the new motor vehicle at the time of delivery to the new motor vehicle dealer that is not included within the retail price suggested by the manufacturer for the new motor vehicle.

§ 28–4412. Guaranty disclosure; used motor vehicles; definition

A. Before the consummation of the sale of a used motor vehicle, a motor vehicle dealer shall:

1. Provide each purchaser with a written statement that:

(a) Indicates whether or not an express warranty or guaranty is associated with the used motor vehicle.

(b) Is distinguished from the body of the sales agreement through the use of either bold-faced type or bold-faced type of a color other than that used in the body of the agreement.

(c) States "as is — not expressly warranted or guaranteed", if the used motor vehicle to be sold is not expressly warranted or guaranteed.

(d) Explicitly states the nature and extent of the express warranty or guaranty, if the used motor vehicle to be sold is expressly warranted or guaranteed.

(e) States "as is — not guaranteed to pass vehicle emissions inspection. Vehicle not eligible for certificate of waiver and must be repaired to meet emissions standards", if the used motor vehicle is a disabled vehicle that is offered for sale at a wholesale public auction with an auctioneer who is a licensed used motor vehicle dealer and if the vehicle does not comply with the requirements prescribed in section 49–542.

2. Direct the purchaser's attention to the written statement.

B. This section does not negate any implied warranties otherwise applicable to the sale of a used motor vehicle.

C. For the purposes of this section, "disabled vehicle" means a motor vehicle that cannot operate on its own motive power.

ARTICLE 5. FRANCHISE REGULATION

§ 28–4451. Product liability

A. Each manufacturer shall file with the director a copy of the delivery and preparation obligations required to be performed by a dealer before delivery of new motor vehicles to buyers. These delivery and preparation obligations constitute the dealer's only responsibility for the product liability as between the dealers and the manufacturer.

B. Any mechanical, body or parts defects arising from any express or implied warranties of the manufacturer constitute the manufacturer's product or warranty liability.

C. The manufacturer shall reasonably compensate an authorized dealer who performs work to rectify the manufacturer's product or warranty defects or delivery and preparation obligations.

D. The dealer shall furnish the purchaser of a new vehicle with a signed copy of the manufacturer's delivery and preparation requirements indicating that all of the requirements have in fact been performed. The manufacturer shall pay the cost of the manufacturer's delivery and preparation requirements.

§ 28–4452. Limitations; franchise cancellation, termination or noncontinuance

A. Notwithstanding the terms, provisions or conditions of an agreement or franchise, a franchisor shall not cancel, terminate or refuse to continue a franchise unless the franchisor has good cause for termination or noncontinuance.

B. A franchisor shall not enter into a franchise for the purpose of establishing an additional new motor vehicle dealership in a community in which the same line-make is then represented, unless there is good cause for the additional new motor vehicle dealership under the franchise and unless it is in the public interest.

C. Notwithstanding any other law, a franchisor may initiate proceedings under this article to establish a new franchise before naming the particular franchisee and before designating or purchasing the particular site of the new franchise.

§ 28–4453. **Franchise; notice of intention**

A. If a franchisor seeks to terminate or not continue a franchise or seeks to enter into a franchise establishing an additional new motor vehicle dealership of the same line-make, the franchisor shall, and the franchisee may at any time, file with the director a notice of intention to terminate or not continue the franchise or to enter into a franchise for additional representation of the same line-make.

B. A notice of intention to terminate or not continue a franchise is not required from a franchisor until the conclusion of any review proceedings of the intention offered to the franchisee under the franchise.

C. This section does not apply to an intended termination or noncontinuance of a franchise that the franchisee elects voluntarily, pursuant to a plan established by the franchisor, to submit to binding arbitration.

D. The relocation or the reopening of a dealership within two years of the closing within the area of responsibility assigned in the franchise is not considered an additional dealership for purposes of this chapter, provided that the location of the replacement dealership is not within five miles of an existing dealership of the same line-make.

E. On receiving a notice of intention under this section, the director, within five days of receipt of the notice of intention, shall send by certified mail, with return receipt requested, a copy of the notice to the franchisor and to the franchisee whose franchise the franchisor seeks to establish, terminate or not continue.

F. If the franchisor intends to establish an additional new motor vehicle dealership, the director shall send notice within five days of receipt to all franchisees of the same line-make in the community and to all other franchises located within eight miles of the proposed dealership by the shortest street route, if located outside the community, who are then engaged in the business of offering to sell or selling the same line-make. In counties with a population of less than one hundred fifty thousand persons, the notice additionally shall be sent to all dealers located within twenty miles of the proposed new franchise as determined by the shortest street route.

G. The director shall address copies of notices to the principal place of business of the franchisees.

§ 28–4454. **Objection to approval of notice**

A. A person who receives or is entitled to receive a copy of a notice provided for in section 28–4453 may object to the approval of a notice by filing a written objection with the director within fifteen days from the date the notice was received by the person.

B. If there is an objection to the establishment of a new motor vehicle dealership, the objecting new motor vehicle dealer shall submit evidence to the director to establish that:

1. The objector is a new motor vehicle dealer located in the same community as the proposed new motor vehicle dealership, or within eight miles by the shortest street route of the proposed dealership, if located outside the community. If the proposed franchise is located in a county with a population of less than one hundred fifty thousand persons, a dealer of the same line-make located within twenty miles, as determined by the shortest street route, also has standing to object pursuant to this section.

2. The objector is providing facilities, equipment, parts, capital and personnel in substantial compliance with its contractual obligation to the franchisor.

3. The percentage of new motor vehicle registrations of the same line-make compared to total motor vehicle industry registrations for two of the three most

recent full calendar year periods in the area of sales and service responsibility as defined in the franchise of the protesting dealer or dealers is equal to or greater than ninety-five per cent of the franchisor's percentage of registration of new motor vehicles of the same line-make compared to total motor vehicle industry registrations of the zone during comparable periods.

§ 28–4455. Determination of standing

If the director intends to determine that the objector has established all of the reasons prescribed by section 28–4454, the director shall notify the franchisor and allow the franchisor to submit evidence in rebuttal before the director makes a final determination. The director's determination is only for the purpose of establishing standing to object to the establishment of the new motor vehicle dealer franchise. If no objection is filed within fifteen days from the date the notice was received by the person or if the objector fails to establish all of the reasons pursuant to section 28–4454, the director shall approve the notice.

§ 28–4456. Hearing on objection; appeal

A. If a timely objection has been filed that meets all of the reasons prescribed by section 28–4454, the director shall:

1. Enter an order fixing the time, which is within thirty days of the date of the order, and place of a hearing on the objection.

2. Send by certified or registered mail with return receipt requested a copy of the order to the same persons entitled to receive a copy of the notice provided for in section 28–4453.

3. Appoint a member of the Arizona state bar who is designated as an administrative law judge to conduct the hearing and who shall be compensated under a contractual relationship.

B. At the hearing the franchisor has the burden of proof to establish that good cause exists to terminate or not continue the franchise. If there is an objection to the establishment of a new motor vehicle dealership, the objector has the burden of proof that good cause does not exist.

C. Evidence that would be admissible under the issues in such an action in a state or federal court is admissible in a hearing held by the administrative law judge. The administrative law judge shall reasonably apportion all costs between the parties, including compensation for the administrative law judge's services.

D. The administrative law judge may:

1. Issue subpoenas.

2. Administer oaths.

3. Compel the attendance of witnesses and the production of books, papers, documents and all other evidence.

4. Apply to the superior court in the county in which the hearing is held for a court order enforcing this article.

E. A transcript of the testimony of all witnesses taken at the hearing shall be made and preserved. Within forty-five days after the hearing the administrative law judge shall make written findings of fact and conclusions and enter a final order.

F. A party to the hearing before the administrative law judge may appeal pursuant to title 12, chapter 7, article 6. An appeal of a decision of an administrative law judge has preference over other civil matters and shall be heard at the earliest practicable date.

G. As a condition to the appeal, the appealing party shall file a cash bond, supersedeas bond or its equivalent with the director. The bond shall be sufficient in

amount to cover the damages incurred by the prevailing party, but the amount of the bond shall not exceed the lesser of fifty thousand dollars or ten per cent of the appealing party's net worth. The party may file alternatives to cash such as certificates of deposit purchased from a financial institution licensed to do business in this state or bonds of the United States government.

§ 28–4457. **Franchise termination or noncontinuance; good cause; changes**

A. Notwithstanding the terms, provisions or conditions of an agreement or franchise, the following are not good cause for the termination or noncontinuance of a franchise:

1. The change of ownership of the franchisee's dealership. This paragraph does not authorize a change in ownership that would have the effect of the sale of the franchise without the manufacturer's or distributor's consent. The consent shall not be unreasonably withheld. The burden of establishing the reasonableness is on the franchisor.

2. The fact that the franchisee refused to purchase or accept delivery of a new motor vehicle, parts or accessories or any other commodity or service not ordered by the franchisee.

B. Notwithstanding the terms, provisions or conditions of an agreement or franchise and subject to subsection E, in the event of the sale or transfer of ownership of the franchisee's dealership by sale or transfer of the business or by stock transfer to the dealer's spouse, son or daughter, the franchisor shall give effect to the change in the franchise unless the transfer of the franchisee's license under this chapter is denied or the new owner is unable to obtain a license under this chapter, as the case may be.

C. If a franchisor enters into or attempts to enter into a franchise, whether on termination, on refusal to continue another franchise or on the establishment of an additional new motor vehicle dealership in a community where the same line-make is then represented, without first complying with this chapter, a license under this chapter shall not be issued to that franchisee or proposed franchisee to engage in the business of selling new motor vehicles that are manufactured or distributed by that franchisor.

D. In determining whether good cause has been established for terminating or not continuing a franchise, the administrative law judge shall consider the existing circumstances, including the following:

1. Amount of business transacted by the franchisee.

2. Investment necessarily made and obligations incurred by the franchisee in the performance of the franchisee's part of the franchise.

3. Permanency of the investment.

4. Whether it is injurious to the public welfare for the business of the franchisee to be discontinued.

5. Whether the franchisee has adequate new motor vehicle facilities, equipment, parts and qualified management, sales and service personnel to reasonably provide consumer care for the new motor vehicles sold at retail by the franchisee and any other new motor vehicle of the same line-make.

6. Whether the franchisee refuses to honor warranties of the franchisor to be performed by the franchisee if the franchisor reimburses the franchisee for the warranty work performed by the franchisee.

7. Except as provided in subsection A:

(a) Failure by the franchisee to substantially comply with those requirements of the franchise that are determined by the administrative law judge to be reasonable and material.

(b) Bad faith by the franchisee in complying with those terms of the franchise that are determined by the administrative law judge to be reasonable and material.

E. In determining whether good cause has been established for entering into an additional franchise for the same line-make the administrative law judge shall consider the existing circumstances including the following:

1. Amount of business transacted by other franchisees of the same line-make in that community.

2. Investment necessarily made and obligations incurred by other franchisees of the same line-make in that community in the performance of their part of their franchises.

3. Whether the franchisees of the same line-make in that community are providing adequate consumer care for the new motor vehicle products of the line-make, including the adequacy of new motor vehicle dealer sales and service facilities, equipment, supply of parts and qualified management, sales and service personnel.

§ 28–4458. Coercion prohibited

A manufacturer of new motor vehicles, factory branch, distributor, distributor branch, field representative, officer or agent or any representative of a manufacturer of new motor vehicles, factory branch, distributor, distributor branch, field representative, officer or agent shall not coerce or attempt to coerce a new motor vehicle dealer to either:

1. Accept delivery of a new motor vehicle or vehicles, parts or accessories for the vehicle or vehicles or any other commodities that the dealer has not ordered.

2. Enter into an agreement with the manufacturer, factory branch, distributor, distributor branch or representative.

3. Do any other act unfair to the dealer by threatening to cancel or not renew a franchise existing between the manufacturer, factory branch, distributor, distributor branch or representative of the manufacturer, factory branch, distributor or distributor branch and the dealer.

ARTICLE 6. LICENSE REGULATION

§ 28–4491. Enforcement powers

Notwithstanding sections 28–4494 and 28–4495, in the enforcement of this article pertaining to licensed or unlicensed dealers or automotive recyclers, the director may conduct hearings pursuant to title 41, chapter 6, take testimony and conduct investigations as the director deems necessary.

§ 28–4492. Appeal

Decisions of the director are subject to judicial review pursuant to title 12, chapter 7, article 6.

§ 28–4493. Cancellation or suspension; grounds

The director may suspend or cancel the license, off-premises exhibition permit, off-premises display and sales permit or special event permit of any licensee or exhibitor if the director determines that the licensee or exhibitor:

1. Has made a material misrepresentation or misstatement in the licensee's or exhibitor's application for a license, off-premises exhibition permit, off-premises display and sales permit or special event permit.

2. Has used or is using any false advertising as prescribed by section 13–2203.

3. Has violated or is violating a law of this state, the enforcement or administration of which is vested in the director, or a rule adopted by the director pursuant to law.

4. Has failed or is failing to keep and maintain records required to be kept and maintained by the licensee or exhibitor.

5. Has no established place of business or principal place of business as required by this chapter.

6. Has knowingly dealt in stolen motor vehicles or parts or accessories of stolen motor vehicles.

7. Has failed or is failing or the licensee's or exhibitor's manager, agents or representatives have failed or are failing to devote a substantial portion of time to the business for which the licensee or exhibitor is licensed or to be actively or principally engaged in the business for which the licensee or exhibitor is licensed.

8. Has refused to service and fulfill the manufacturer's warranty.

9. Has used or is using a private residence to illegally transact business regulated by this chapter.

10. As a manufacturer, factory branch, distributor, field representative, officer or agent or any representative of a manufacturer, factory branch, distributor, field representative, officer or agent without good cause has cancelled or failed to renew the franchise of a new motor vehicle dealer. All existing dealers' franchises continue in full force and operation under a newly appointed distributor on the termination of an existing distributor unless otherwise by mutual agreement of the newly appointed distributor and the dealer.

§ 28–4494. License cancellation; hearing

A. On determining that grounds for cancellation of a license exist, the director shall give notice of the grounds to the licensee in writing and by the notice shall require the licensee to appear before the director at a specified time and place to show cause why the licensee's license should not be cancelled.

B. At the time and place fixed by the director and at least ten days after the notice, the licensee shall appear and be heard and may have other persons the licensee desires present and testify at the hearing.

C. The director shall issue subpoenas to persons as the licensee requests that require them to be present and testify at the hearing. A transcript of the testimony of witnesses taken at the hearing shall be made and preserved.

D. Within ten days after the hearing, the director shall make written findings of fact and conclusions and by order either shall cancel or decline to cancel the license.

E. If the license is subject to suspension or cancellation for a violation of section 28–4493, paragraph 10, the suspension or cancellation is effective for not more than two years and is effective only in the territory formerly served by the unfairly cancelled dealer, except that in a metropolitan area served by several dealers enfranchised to sell the same make of new motor vehicles, the suspension or cancellation order does not affect the relationship of the manufacturer with the remaining dealers in the area.

F. The director may cancel the license of a licensee, after providing at least thirty days' written notice to the licensee, if any of the following occurs:

1. A bond furnished by a licensee pursuant to this chapter is insufficient and the licensee fails to provide any additional or other bond as required by the director.

2. The surety on a bond furnished by a licensee pursuant to this chapter requests to be released and discharged and the licensee fails to provide any additional or other bond as required by the director.

§ 28–4495. Permits; cancellation; cease and desist order; hearing

A. Notwithstanding any other law, if the licensee or exhibitor is conducting an off-premises exhibition, off-premises display and sale or special event pursuant to a permit granted under section 28–4401, on determining that grounds for cancellation of an off-premises exhibition permit, off-premises display and sales permit or a special event permit exist, the director may issue a cease and desist order and notice of cancellation of the permit to the licensee or exhibitor.

B. If the director determines that the licensee or exhibitor has failed to obtain a permit authorized under section 28–4401 for an off-premises exhibition, off-premises display and sale or special event, the director may issue a cease and desist order and may suspend the privilege of obtaining subsequent off-premises exhibition permits, off-premises display and sales permits and special event permits for the licensee or exhibitor for a period of one year from the date of suspension.

C. A licensee or exhibitor whose off-premises exhibition permit, off-premises display and sales permit or special event permit privileges are canceled or suspended may request a hearing to show cause why the permit privileges should not be canceled or suspended. At the time and place fixed by the director, the licensee or exhibitor shall appear and be heard. Other persons the licensee or exhibitor desires may be present and may testify at the hearing.

§ 28–4496. Licensed dealer or automotive recycler; hearing; civil penalty

A. Notwithstanding section 28–4495, the director may conduct a hearing pursuant to section 28–4491 if an officer authorized to enforce this chapter alleges that a licensed dealer or automotive recycler refuses or fails to comply with a cease and desist order issued pursuant to section 28–4498.

B. The director shall hold the hearing at least fifteen but not more than thirty days after service of a written notice. The director shall send the notice by personal delivery or certified mail to the address provided to the department in the report alleging the noncompliance.

C. A finding that a licensed dealer or automotive recycler is in violation of this chapter requires that all of the following conditions exist, and the scope of the hearing is limited to the following:

1. A determination that the person refuses or fails to comply with the requirements of section 28–4498.

2. A determination that the person ordered to appear at the hearing is responsible for the violation.

D. If after reviewing the allegations and results of the hearing the director determines that the licensed dealer or automotive recycler is in violation of this chapter, the director may impose the civil penalty pursuant to section 28–4501.

E. After consideration of the evidence presented at the hearing, the director shall serve notice of the director's finding and order within five days after the hearing.

§ 28–4497. Action to restrain violation by licensee

If the director has reasonable cause to believe that a licensee has violated or is violating any law of this state that the director enforces or administers or has violated or is violating a rule or order adopted or issued by the director pursuant to law, in addition to any remedies existing under this chapter or otherwise, the director may bring and maintain, in the name and on behalf of this state, an action in the superior court in Maricopa county against a licensee to restrain or enjoin the licensee from continuing the violation. In the action, the court shall proceed as in other actions for injunction.

§ 28–4498. Licensed dealer; cease and desist order

A. If the director has reasonable cause to believe from an investigation made by the director that a licensed motor vehicle dealer is engaging in business that violates section 28–4336, subsections B and C, the director may immediately issue and serve on the person by personal delivery or certified mail at the business address of record a cease and desist order requiring the person to immediately cease and desist from further engaging in the business on the receipt of the notice. On failure of a licensee to comply with the order, the director, after a hearing, may suspend or cancel the licensee's license or permit pursuant to sections 28–4493 and 28–4494 or may take action pursuant to section 28–4496.

B. The director of the department of transportation shall provide a copy of the cease and desist order to the director of the department of revenue.

§ 28–4499. Unlicensed dealer and automotive recycler; cease and desist order

A. If the director has reasonable cause to believe from information furnished to the director or from an investigation made by the director that a person is engaged in a business regulated by this chapter without being licensed as required by law, the director shall immediately issue and serve on the person by personal delivery or certified mail at the person's last known address a cease and desist order requiring the person to cease and desist from further engaging in the business. On failure of the person to comply with the order, the director may conduct a hearing pursuant to section 28–4500.

B. The director of the department of transportation shall provide a copy of the cease and desist order to the director of the department of revenue.

§ 28–4500. Unlicensed dealer and automotive recycler; hearing; civil penalty; suspension of motor vehicle registrations; reinstatement fee

A. The director may conduct a hearing pursuant to section 28–4491 if an officer authorized to enforce this chapter alleges that a person refuses or fails to comply with a cease and desist order issued pursuant to section 28–4499.

B. The director shall hold the hearing at least fifteen but not more than thirty days after service of a written notice. The director shall send the notice by personal delivery or by certified mail to the address provided to the department in the report alleging the noncompliance.

C. A finding that a person is in violation of the dealer or automotive recycler licensing requirements of this chapter requires that both of the following conditions exist, and the scope of the hearing is limited to the following:

1. A determination that the person refuses or fails to comply with a cease and desist order issued pursuant to section 28–4499.

2. A determination that the person ordered to appear at the hearing is responsible for the violation.

D. If, after reviewing the allegations and results of the hearing, the director determines that the person is in violation of the dealer or automotive recycler licensing provisions of this chapter, the director may prescribe a civil penalty pursuant to section 28–4501.

E. After consideration of the evidence presented at the hearing, the director shall serve notice of the director's finding and order within five days after the hearing.

F. Unless a continuance is granted, if a person who is alleged to be in violation of the dealer or automotive recycler licensing provisions of this chapter and who has been notified by personal delivery or certified mail fails to appear for a hearing, the director may suspend the registrations of all motor vehicles owned and leased by the

person. The director shall not remove the suspension until the person appears for the hearing and pays a fee of fifty dollars to the department for the reinstatement of each motor vehicle registration and license plate.

§ 28–4501. Licensed or unlicensed dealer and automotive recycler; civil penalty

A. Notwithstanding the suspension authorized by section 28–4500, if the director finds that a person is in violation of the licensing provisions of this chapter, after a hearing conducted pursuant to section 28–4500, the director may impose a civil penalty of at least one thousand dollars but not more than three thousand dollars.

B. The person shall pay the civil penalty imposed pursuant to this section to the department no later than thirty days after the order is final. If the person fails to pay the civil penalty within thirty days after the order is final, the director shall file an action in the superior court in the county in which the hearing is held to collect the civil penalty.

ARTICLE 7. DEALER AND MANUFACTURER LICENSE PLATES

§ 28–4531. Definitions

In this article, unless the context otherwise requires:

1. "Cargo" means commercial or industrial items but does not include personal items such as luggage and camping equipment.

2. "Employee of the dealer" means an employee of the dealer who is paid compensation and who appears on the records of the dealer as an employee for whom social security, withholding taxes and all other deductions required by law for employees are made and for whom all applicable payroll taxes are paid by the dealer.

3. "Employee of the manufacturer" means an employee of the manufacturer who is paid compensation and who appears on the records of the manufacturer as an employee for whom social security, withholding taxes and all other deductions required by law for employees are made and for whom all applicable payroll taxes are paid by the manufacturer.

4. "Full-time employee of the dealer" means a person who qualifies as an employee of the dealer and who works at least twenty-four hours each week for the dealer.

5. "Full-time employee of the manufacturer" means a person who qualifies as an employee of the manufacturer and who works at least twenty-four hours each week for the manufacturer.

§ 28–4532. Dealer owned vehicles; registration exemption

A. A vehicle that is owned by a dealer and that is otherwise required to be registered is exempt from registration while the vehicle is owned by the dealer. A vehicle owned by a dealer may be operated under owner responsibility on highways and streets according to the following provisions:

1. The vehicle displays a license plate issued to the owner as provided in this article in the manner prescribed in section 28–1054.

2. The owner, an employee of the dealer or a prospective buyer may operate the vehicle according to subsection C of this section.

B. A person shall not use a dealer license plate on the following dealer owned vehicles:

1. A work or service vehicle.

2. A leased or rented vehicle owned by a dealer.

3. A laden vehicle designed for the transportation of cargo unless the cargo consists of no more than three vehicles that are owned by the dealer and the laden vehicle and the cargo are being operated or transported by the dealer for resale.

4. A vehicle that has been sold.

C. Except as provided in subsection B of this section, a dealer plate may be used on a dealer owned vehicle as follows:

1. When operated by the dealer or by an employee of the dealer in connection with the dealer's business. The vehicle may be operated as personal use transportation if it is assigned to a dealer or full-time employee of the dealer on a full-time use basis and if a record of the assignment is made as specified in section 28–4535. The authorized use applies to dealers or employees solely and does not apply to any other person as operator.

2. When operated by a prospective buyer for demonstration purposes for a period of not more than forty-eight hours for passenger vehicles and seventy-two hours for unladen pickups and trucks.

§ 28–4533. Dealer's certificate; dealer license plates; fees

A. A dealer may apply to the department, on a form provided for that purpose, for a dealer's certificate containing a general distinguishing number and for one or more pairs of dealer license plates or single dealer license plates appropriate to various types of vehicles. If the applicant is a dealer in new motor vehicles, trailers or semitrailers, the applicant shall submit satisfactory proof that the applicant is a duly authorized distributor or dealer for a manufacturer.

B. The department, on granting the application, shall issue to the applicant a certificate containing the applicant's name and address and the general distinguishing number assigned to the applicant and the dealer license plates for which the applicant applied on payment of the fee provided in this section.

C. The fee for each license plate or pair of license plates issued to a dealer is:

1. Thirty dollars, if the dealer is not a motorcycle dealer.

2. Ten dollars, if the dealer is a motorcycle dealer.

D. The plate or pair of plates issued shall contain a number or symbol distinguishing them from every other plate or pair of plates issued to the same dealer.

E. The right to use a dealer license plate issued terminates at midnight on December 31 of each year unless the plate fees for the following year are paid.

F. A dealer who applies for and obtains dealer license plates shall comply with chapter 9 of this title.

§ 28–4534. Delinquent fee; penalty

If a dealer fails, neglects or refuses to pay the required fee for the ensuing year on or before midnight on December 1 of each year, the fee is delinquent, and the department shall charge and collect a penalty equal to the fee if the dealer files an application for reinstatement after December 1.

§ 28–4535. Dealer records; replacement; fee

A. A dealer shall keep a written record of the vehicles on which the dealer license plate or plates are used and the person to whom each plate or pair of plates is assigned. The dealer shall make the record available for inspection by the department, a member of the highway patrol or any other peace officer.

B. The record required by this section shall contain the following information for each dealer license plate:

1. The date assigned.

2. The make, type, year, model and identification number of a vehicle to which it is assigned.

3. The name and address of any assignee.

C. The director may authorize a dealer to use an inventory stock number in lieu of the vehicle identification number required in subsection B of this section if the director is satisfied that the dealer's records are sufficiently detailed and accurately maintained to disclose the full vehicle identity if necessary.

D. If a dealer license plate is lost or stolen, the dealer shall make a written report immediately to the director that identifies the plate by type and number, including all available data concerning the loss or theft.

E. For each dealer license plate, pair of plates or year validating tab to replace lost, destroyed or mutilated plates or tab, the dealer shall pay a replacement fee as prescribed in section 28–4542.

§ 28–4536. Authority to operate vehicle with cargo

If a valid demonstration of a vehicle cannot be accomplished without hauling cargo on the vehicle, the director may issue, on written application, special authority before the actual demonstration for the laden movement while displaying a dealer license plate.

§ 28–4537. Rules

The director shall adopt rules for the enforcement and administration of sections 28–4532, 28–4533, 28–4534, 28–4535 and 28–4536.

§ 28–4538. Suspension of dealer and manufacturer license plates

A. The department shall suspend the use of any or all of the dealer license plates issued to a dealer for not more than three months if a dealer violates sections 28–4532, 28–4533, 28–4534, 28–4535 and 28–4536 or the rules adopted under section 28–4537.

B. If the director finds that a manufacturer or licensed dealer displays a manufacturer or dealer license plate that is provided pursuant to section 28–4533, 28–4540 or 28–4544 on a work or service vehicle, a vehicle used for private use or a vehicle for hire, the director may suspend, after a hearing, the right of the dealer or manufacturer to use the plate.

§ 28–4539. Manufacturer unladen truck and passenger vehicles; registration exemption

A. An unladen truck or passenger vehicle that is owned by a manufacturer and that is of a type otherwise required to be registered is exempt from registration while the vehicle is used according to this section. The vehicle may be operated under owner responsibility on highways and streets if the vehicle displays in the manner prescribed in section 28–1054 a manufacturer unladen truck and passenger vehicle test license plate or plates issued to the owner as provided in this section.

B. A person shall not use a manufacturer unladen vehicle test license plate on the following manufacturer owned unladen trucks or passenger vehicles:

1. A leased or rented vehicle owned by the manufacturer.

2. A vehicle carrying more than three hundred pounds of cargo.

3. A work or service vehicle.

4. A vehicle that has been sold.

5. A laden vehicle designed for the transportation of cargo.

C. Except as provided in subsection B of this section, the manufacturer, a full-time employee of the manufacturer in connection with the manufacturer's business, a person who has permission of a full-time employee or a person contracted and designated by the manufacturer to operate the vehicle for business purposes may use a manufacturer unladen vehicle test license plate on a vehicle. The use authorized by this subsection includes operation of the vehicle as personal use transportation if it is assigned to a manufacturer or full-time employee or contracted person on a full-time use basis and if a record of the assignment is made as provided in section 28–4542.

§ 28–4540. Manufacturer unladen vehicle test license plates and certificate; fee

A. A manufacturer may obtain a general distinguishing number and one or more pairs of unladen vehicle test license plates or single test plates appropriate to various types of vehicles by applying to the department on a form provided by the department and by paying a fee of thirty dollars for each plate.

B. After granting the application, the department shall issue to the applicant a certificate containing the applicant's name and address and the general distinguishing number assigned to the applicant and the unladen vehicle test license plates for which the applicant applied.

C. The test license plate or pair of plates issued shall contain a number or symbol distinguishing them from every other test license plate or pair of plates issued to the same manufacturer.

D. The right to use a test license plate issued for a calendar year terminates at midnight on December 31 of each year unless the plate is renewed.

E. A manufacturer who applies for and obtains manufacturer unladen vehicle test license plates shall comply with chapter 9 of this title.

§ 28–4541. Delinquent fee due from manufacturer; penalty

If a manufacturer fails, neglects or refuses to file an application for renewal and pay the required fee for the ensuing year on or before midnight of December 1 of each year the fee is delinquent, and the department shall charge and collect a penalty equal to the fee if the manufacturer files an application for renewal after December 1.

§ 28–4542. Manufacturer records; replacement; fee

A. A manufacturer shall keep a written record of the vehicles on which the unladen vehicle test license plate or plates are used and the person to whom each test license plate or pair of plates is assigned. The manufacturer shall make the record available for inspection by the department, an officer or agent of the department, a member of the highway patrol or a peace officer.

B. The record required by this section shall contain the following information for each test license plate:

1. The date assigned.

2. The make, type, year, model and identification number of a vehicle to which it is assigned and the name and address of any assignee.

C. The director may authorize a manufacturer to use an inventory stock number in lieu of the vehicle identification number required in subsection B if the director is satisfied that the manufacturer's records are sufficiently detailed and accurately maintained to disclose the full vehicle identity if necessary.

D. If a manufacturer unladen vehicle test license plate is lost or stolen, the manufacturer shall make a written report immediately to the director that identifies the plate by type and number, including all available data concerning the loss or theft.

E. For each test license plate, pair of plates or year validating tab to replace lost, destroyed or mutilated plates or tab, the manufacturer shall pay a replacement fee of five dollars.

§ 28–4543. Rules; manufacturer unladen vehicle test license plates; suspension of use

A. The director shall adopt rules for the enforcement and administration of sections 28–4539 through 28–4542.

B. The rules shall provide for the suspension of the use of any or all of the unladen vehicle test license plates that were previously issued to a manufacturer for a violation of sections 28–4539 through 28–4542 or the rules adopted under this section.

C. The director shall not suspend the use of the test license plates under subsection B of this section for failure, neglect or refusal to file for timely renewal or for more than three months.

§ 28–4544. Manufacturer laden vehicle test license plates; fees

A. For the purposes of testing laden vehicles designed for the transportation of cargo, a manufacturer may obtain a manufacturer laden vehicle test license plate or year validation tab by applying to the department and by paying an annual fee as follows:

1. Thirty-six dollars, for a vehicle with a declared gross weight of twelve thousand pounds or less.

2. Two hundred fifty-three dollars, for a vehicle with a declared gross weight of more than twelve thousand pounds but not more than twenty-six thousand pounds.

3. One thousand seventy dollars, for a vehicle with a declared gross weight of more than twenty-six thousand pounds.

B. Except as provided in subsection C of this section, the manufacturer shall use the laden vehicle test license plate on a laden vehicle that is being tested on the highways of this state by the manufacturer during the period for which the fee is paid.

C. A manufacturer shall not use a manufacturer laden vehicle test license plate issued for a vehicle in one fee class pursuant to subsection A of this section on a vehicle in another fee class designated for a vehicle with a higher declared gross weight.

D. The procedures for applying for and receiving a manufacturer laden vehicle test license plate and the privileges and restrictions on the use of the plates are the same as for a manufacturer unladen truck and passenger vehicle test license plate as provided by sections 28–4539 through 28–4542, except that a person operating a laden vehicle with a manufacturer laden vehicle test license plate may not operate or use the laden vehicle for personal use transportation.

§ 28–4545. Manufacturer's and dealer's permit to move without license plates

A manufacturer of motor vehicles, trailers or semitrailers may operate or move the vehicles for a distance of seventy-five miles and a dealer in new motor vehicles, trailers or semitrailers may operate or move the vehicles for a distance of fifty miles, or a further distance authorized by the department, to or from the factory where the

vehicles are manufactured or a railway depot, vessel, place of shipment or delivery or salesroom without registering them and without license plates attached if both:

1. A written permit is first obtained from the department or local authority with jurisdiction over the highway traversed.

2. A placard bearing the name and address of the manufacturer authorizing or directing the movement is prominently displayed on each vehicle and is plainly readable from a distance of one hundred feet during daylight.

§ 28–4546. Temporary license plates or markers

The department may issue to licensed motor vehicle dealers temporary registration plates or markers that dealers may issue subject to the limitations and conditions prescribed in sections 28–4547 through 28–4554.

§ 28–4547. Requirements for temporary registration plates or markers

A. A dealer shall not:

1. Issue, assign or deliver temporary registration plates or markers to anyone other than a bona fide purchaser of a vehicle that is not registered for the current year.

2. Issue temporary registration plates or markers unless the purchaser files an application for a certificate of title and an application for annual registration of the vehicle before or at the time the plates or markers are issued.

3. Issue temporary registration plates or markers unless the application for a certificate of title is accompanied by either a manufacturer's certificate of origin properly assigned by a licensed new motor vehicle dealer or a properly signed certificate of title.

B. The dealer, as the agent of the purchaser, shall forward the application for a certificate of title, the application for registration and the prescribed fees for both applications to the department and the county assessor, respectively.

§ 28–4548. Issuance of temporary registration permits by manufacturers or dealers

Notwithstanding section 28–4547, the director may furnish to licensed manufacturers or new motor vehicle dealers temporary registration permits that the manufacturer or dealer may issue if temporarily donating new motor vehicles to either of the following:

1. An organization that has qualified for an exemption from taxation of income under section 43–1201, paragraph 1, 2, 4, 5, 6, 7, 10 or 11.

2. This state or a political subdivision of this state.

§ 28–4549. Copy of temporary registration as notice of transfer

A dealer who issues temporary registration plates or markers shall send to the department on the day the dealer issues the plates or markers a copy of the temporary registration plates or markers. This copy is written notice of the transfer.

§ 28–4550. Temporary registration plate or marker

A person who issues temporary registration plates or markers shall affix or insert, clearly and indelibly, on the face of each temporary registration plate or marker the date of issuance and expiration and the make, motor and serial number of the vehicle for which it is issued. The temporary registration plates or markers shall not bear

the name or address of the person who purchased the vehicle in a position that is legible from outside the vehicle.

§ 28–4551. Expiration of temporary registration

A. A temporary registration plate or marker expires and is void on receipt of the annual registration plate or on expiration of forty-five days from the date of issuance.

B. A person to whom a temporary registration plate or marker has been issued shall destroy the temporary registration plate or marker immediately on receipt of the annual registration plate. If the annual registration plate is not received within forty-five days from the issuance of the temporary registration plate or marker, the owner shall destroy the temporary registration plate or marker immediately on expiration of the forty-five day period.

§ 28–4552. Dealer records; temporary registration plates or markers

A. A dealer to whom temporary registration plates or markers are issued shall maintain in permanent form a record of all temporary registration plates or markers delivered to the dealer, a record of all temporary registration plates or markers issued by the dealer and a record of other information pertaining to the receipt or issuance of temporary registration plates or markers that the department requires.

B. The dealer shall keep each record for at least three years from the date of entry of the record.

C. A dealer shall allow the director full and free access to the records during regular business hours.

§ 28–4553. Violations; temporary registration plates or markers

A. A dealer shall not lend to a person or use on a vehicle that the dealer owns temporary registration plates or markers.

B. It is unlawful for a person to issue a temporary registration plate or marker that contains a misstatement of fact or to knowingly insert false information on the face of a plate or marker.

§ 28–4554. Suspension of issuance of temporary registration plates or markers

If the director finds that a dealer has not complied with sections 28–4546 through 28–4554 or the directions of the director, the director may suspend, after a hearing, the right of the dealer to issue temporary registration plates or markers.

§ 28–4555. Notice of vehicle transfer

A manufacturer, dealer, distributor, factory branch, distributor branch, field representative or officer or an agent or representative of a manufacturer, dealer, distributor, factory branch, distributor branch, field representative or officer, on transferring a motor vehicle, whether by sale, lease or otherwise, to a person other than a manufacturer or dealer shall immediately give written notice of the transfer to the department on an official form. The form shall contain the date of the transfer, the names and addresses of the transferor and transferee and a description of the vehicle as provided in the form.

§ 28–4556. Disposition of fees; highway user revenue fund

Except as otherwise provided, the director shall transmit fees collected under this article to the state treasurer for deposit in the Arizona highway user revenue fund.

ARTICLE 8. VIOLATIONS

§ 28-4591. Violation; classification

A person who violates this article or articles 1 through 7 of this chapter is guilty of a class 3 misdemeanor unless another classification is specifically prescribed in this chapter.

§ 28-4592. License assignment prohibited; classification

A licensee who assigns a license to another person is guilty of a class 1 misdemeanor.

§ 28-4593. Altering a serial or identification number; classification

A. A person who knowingly removes, defaces, alters or destroys a manufacturer's serial or identification number of a motor vehicle or major component part of a vehicle without the permission of the department is guilty of a class 3 misdemeanor.

B. A person who intentionally removes, defaces, alters or destroys a manufacturer's serial or identification number of a motor vehicle or major component part of a vehicle with the intent to alter the identity of that or another motor vehicle or major component part is guilty of a class 5 felony.

§ 28-4594. Altered serial or identification number; seizure; disposition

A. Except if a manufacturer's serial or identification number of a motor vehicle or major component part of a vehicle is removed, defaced, altered or destroyed with the permission of the department or if a special serial or identifying number issued by the department has been properly affixed to a vehicle pursuant to section 28-865, a motor vehicle or major component part of the vehicle that has had the manufacturer's or department's serial or identification number removed, defaced, altered or destroyed and a serial or identification number so removed are contraband.

B. A law enforcement agency shall both:

1. Immediately seize and store the motor vehicle or major component part of a vehicle or serial or identification number that is contraband pursuant to subsection A of this section.

2. Attempt to restore the original manufacturer's serial or identification numbers on the item seized as follows:

(a) If the original identification numbers can be permanently restored and the last owner as identified on official title records maintained by the vehicle registration agency of the state, country or territory in which the vehicle was last titled or the person or entity to which title was assigned by the last owner as identified on official title records can be found, the law enforcement agency shall return the motor vehicle or major component part of a vehicle to the person or entity.

(b) If the original identification numbers can be temporarily restored and the last owner as identified on official title records maintained by the vehicle registration agency of the state, country or territory in which the vehicle was last titled or the person or entity to which title was assigned by the last owner as identified on official title records can be found, the county attorney of the county in which the motor vehicle or major component part of a vehicle was seized or the attorney general, within sixty days after the date of seizure or such other reasonable time that is set by the court, shall file a petition or action in the superior court in the county in which the item was seized or in Maricopa county to forfeit the motor vehicle or major component part of a vehicle to this state for use or other appropriate disposition by the law enforcement agency that seized the item or for such other disposition as the state deems appropriate. The petition shall set forth probable

cause that the item is contraband. A copy of the petition or notice of pending forfeiture shall be served as follows:

(i) On the person from whom the item was seized by certified mail to the person's last known address.

(ii) On the last owner and any lienholders or interest holders identified on official title records by certified mail to the names and addresses identified on official title records.

(iii) On any other known interest holders by certified mail to each holder's last known address.

(iv) By publication in one issue of a newspaper of general circulation in the county in which the property was seized.

(c) If the original identification numbers cannot be permanently or temporarily restored or the last owner as identified on official title records cannot be found, the county attorney in the county in which the motor vehicle or major component part of a vehicle was seized or the attorney general, within sixty days after the date of seizure or such other reasonable time as is set by the court, shall file a petition or action in the superior court in the county in which the item was seized or in Maricopa county to forfeit the motor vehicle or major component part of a vehicle to this state for use or other appropriate disposition by the law enforcement agency that seized the item or for such other disposition as the state deems appropriate. The petition shall set forth probable cause that the item is contraband. A copy of the petition or notice of pending forfeiture shall be served on the person from whom the item was seized by certified mail to the person's last known address.

C. If a verified claim is not filed within the time period provided in section 28–4595, subsection A, the court shall declare the seized item to be contraband and shall sign an order forfeiting the seized item to the state for use or other appropriate disposition by the law enforcement agency that seized the item or for other disposition as the state deems appropriate.

§ 28–4595. Verified claim disputing contraband status; hearing; disposition

A. Within thirty days after the date of service of the notice required by section 28–4594, any person claiming an interest in the item seized may file a verified claim, signed by the claimant, disputing the contraband status of the item seized. The verified claim shall include the following:

1. A statement that the claimant is the lawful owner of the item seized and the basis, including documentation, for the claim of ownership.

2. A statement setting forth that portions of the seized item are claimed not to be contraband and the basis for each claim.

B. If a verified claim is filed within the time period provided in subsection A of this section, the court shall conduct a hearing to determine whether the item seized is contraband. Notice of the hearing shall be provided to all persons who filed verified claims in accordance with this section.

C. If a claimant does not prove by a preponderance of the evidence that the original identification numbers can be permanently restored to the item or that the item can be rendered noncontraband, the court shall declare the item contraband and forfeit the item to this state for use or other appropriate disposition by the law enforcement agency that seized the item or for other disposition as the state deems appropriate.

D. If a claimant proves by a preponderance of the evidence that all or any portion of the item seized is not contraband, the claimant proving lawful ownership of that portion of the seized item, within thirty days or within a reasonable time period set by the court, may segregate and retrieve at the claimant's cost all or any portion of the seized item determined by the court not to be contraband. The

seizing agency shall sell or otherwise dispose of all or any portion of the item not retrieved by the claimant within the prescribed time period, and the proceeds of the disposition, less any costs incurred by the seizing agency, shall be returned to the claimant proving lawful ownership at the claimant's address of record.

E. On return of a motor vehicle or a major component part of a vehicle that can be rendered noncontraband by obtaining a special serial number pursuant to section 28–865, the person who is awarded possession of the item shall apply to the department within ten days after taking possession for assignment of a special serial number pursuant to section 28–865 and shall file with the court proof that the application was made. After the granting or denial of an application for a special serial number, the person who is awarded possession of the item shall file proof with the court that a special serial number was obtained or denied. If the application is denied:

1. The court shall order the person awarded possession of the item to return the item to the seizing agency.

2. The seizing agency shall sell or otherwise dispose of the item.

3. The proceeds of the disposition, less any costs incurred by the seizing agency, shall be returned to the claimant proving lawful ownership at the claimant's address of record.

F. An item defined as contraband in section 28–4594, subsection A shall not be returned to a claimant under any circumstances.

ARTICLE 9. TRANSPORTER LICENSE PLATES

§ 28–4621. Definitions

In this article, unless the context otherwise requires:

1. "Driveaway or towaway methods" means the transportation service rendered by a transporter by which motor vehicles are driven singly or in combinations by the tow bar, saddle-mount or full-mount methods or a lawful combination of the tow bar, saddle-mount or full-mount methods or by which a truck or truck tractor tows or draws a semitrailer or trailer.

2. "Transporter" means a person who is lawfully engaged in the business of transporting or delivering vehicles that are not the person's own and vehicles of a type otherwise required to be registered, by the driveaway or towaway methods, from a point of manufacture, assembly or distribution or from the owner of the vehicles to a dealer or sales agent of a manufacturer or to any consignee designated by the shipper or consignor.

§ 28–4622. Exceptions

This article does not apply to work or service vehicles that are owned or operated by a transporter or that are hauled by the truckaway method.

§ 28–4623. Transporter certificate; transporter license plates and tabs

A. A transporter may apply to the department on the appropriate form for a certificate containing a general distinguishing number and for two or more single transporter license plates.

B. The applicant shall submit proof of the applicant's status as a bona fide transporter as reasonably required, tender the proper fees as required by section 28–4629 and submit proof of compliance with chapter 15, article 4 of this title.

C. On granting the application, the department shall issue to the applicant a registration certificate containing the applicant's name, address and identifying status and the general distinguishing number assigned solely to the applicant.

D. The department shall issue single serially numbered transporter license plates for which the applicant applied. The transporter license plates shall display a symbol identifying the status of the applicant.

E. A certificate or transporter license plate or tab expires at midnight on December 31 of each year.

F. In lieu of issuing new plates annually, the department may furnish and issue tabs to indicate the year for which the plates are valid.

§ 28–4624. **Vehicles with transporter license plates; registration exemption**

Notwithstanding any other law, a transporter may operate, move or transport a vehicle that is not the transporter's own and that is otherwise required to be registered without registering the vehicle if all of the following conditions are met:

1. The driveaway or towaway methods are used.

2. The sole purpose is to transport or deliver the vehicle.

3. One transporter license plate issued to the transporter pursuant to this article is displayed on the vehicle.

§ 28–4625. **Display of transporter license plates**

A. If a transporter operates one vehicle singly, the vehicle shall display a transporter license plate on the front of the vehicle.

B. If a transporter operates and moves more than one vehicle, the first vehicle in the combination shall display one transporter license plate on the front of the vehicle and each other vehicle in the combination shall display one plate on the rear of the vehicle.

§ 28–4626. **Transporter records**

A. A transporter shall keep a written record of the vehicles on which the plates are used and of the date of use. The transporter shall make available to the director for inspection all of the records of the transporter.

B. A copy of bills of lading showing invoices or orders or other documents containing the following information is a sufficient record:

1. The names of the consignor and consignee.

2. A complete description of the vehicle, including the make, model, year of manufacture, motor number and serial number.

C. The transporter shall file one executed copy of the document at the office of the director or at a port of entry.

§ 28–4627. **Suspension or revocation; reissue**

A. After an impartial investigation, the director may notify a transporter who is allegedly violating this article of a hearing to be held before the director after ten days. On hearing the evidence and on finding and determining that fraud has been committed in the application for a certificate or a transporter license plate or tab or in the use of a plate or tab or that there is no satisfactory proof of the status of the transporter, the director may withhold, suspend or revoke a certificate or a transporter license plate or tab.

B. On good cause shown, the director may reissue a certificate or a transporter license plate or tab after it has been withheld, suspended or revoked.

§ 28–4628. **Violation; classification**

A person who violates a provision of this article or a person who wrongfully uses or permits wrongful use of the privileges of this article by any other person is guilty of a class 3 misdemeanor.

§ 28–4629. **Fees and taxes**

A. The following fees are required:

1. For the registration certificate and the first two transporter license plates or tabs issued to a transporter, three hundred seventy-five dollars.

2. For each additional transporter license plate or tab and for replacement of each plate or tab, thirty dollars.

3. For replacement of lost certificates or for additional copies of a certificate, seven dollars fifty cents.

B. The fees provided in this section are in full consideration for the right to use the highways of this state and are in lieu of all other taxes and fees except fuel taxes and the motor carrier tax required by chapter 15, article 4 of this title.

§ 28–4630. **Election for limited operation transporters**

In lieu of complying with this article, a transporter that has a limited operation may elect to comply with all other applicable statutes.

§ 28–4631. **Transfer prohibited**

The certificate and transporter license plates and tabs issued pursuant to this article are not transferable from the applicant and holder to any other person.

§ 28–4632. **Deposit of monies**

The director shall transmit monies received or collected by the director pursuant to this article to the state treasurer for deposit in the Arizona highway user revenue fund before the fifteenth day of each month.

ARTICLE 10. VEHICLE SERVICE TRANSPORTER LICENSE PLATES

§ 28–4661. **Definitions**

In this article, unless the context otherwise requires:

1. "Established place of business", in the case of a transporter, means a permanent site or location where the business of a transporter is conducted.

2. "Service" includes:

(a) Exterior surface protection.

(b) Interior surface protection.

(c) Window sunscreen installation or glass tinting.

(d) Body repair or maintenance.

(e) Undercoating, soundproofing or rustproofing.

(f) Audio equipment installation.

(g) Other similar work required to prepare a vehicle for sale to the public.

3. "Transporter" means a person who is lawfully engaged in a contract with a dealer to perform service at the transporter's established place of business.

§ 28–4662. **Vehicle service transporter license plates; fee**

A. A dealer may apply to the director on a form the director prescribes for the issuance of vehicle service transporter license plates. The applicant shall submit proof of the applicant's status as a dealer pursuant to this chapter and pay the fee prescribed by this section.

B. On approval of the application, the director shall issue to the dealer single serially numbered vehicle service transporter license plates. The director may limit the number of plates issued to one dealer based on the custom and usage of the industry and the volume of vehicles sold annually to the public.

C. In lieu of issuing new vehicle service transporter license plates annually, the director may furnish and issue tabs to indicate the year for which the plates are valid.

D. A plate or tab expires at midnight December 31 of each year.

E. The fee for a plate or tab issued to a dealer pursuant to this section is twenty dollars.

§ 28–4663. **Vehicles with vehicle service transporter license plates; registration of exemption; civil traffic violation**

A. A transporter may operate, move or transport on a highway a vehicle that is otherwise required to be registered without registering the vehicle if the following conditions are met:

1. The vehicle displays one valid transporter license plate issued to the dealer pursuant to this article.

2. The dealer placed the vehicle service transporter license plate on the vehicle for use by the transporter.

3. The transporter is operating, moving or transporting the vehicle directly to or from the transporter's established place of business and the dealer's established place of business.

B. A person other than a transporter or an employee of a transporter shall not operate on a highway a vehicle bearing vehicle service transporter license plates.

C. A violation of this section is a civil traffic violation.

§ 28–4664. **Maintenance of dealer records**

A. A dealer shall keep a written record of the vehicles on which vehicle service transporter license plates are used and of the date of use. The dealer shall make available to the director all records of the dealer for inspection during normal business hours.

B. A sufficient written record includes all of the following:

1. Documents containing the name of the transporter operating, moving or transporting the vehicle.

2. The address of the transporter's established place of business.

3. A complete description of the vehicle, including the make, model, year of manufacture and vehicle identification number.

§ 28–4665. **Revocation of vehicle service transporter license plates; cancellation or suspension of license**

A. The director shall notify a dealer of an alleged violation of this article by the dealer and conduct a hearing within ten days after the notice. If after a hearing the director finds that there has been a violation of this article or any rules adopted by

the director to enforce this article, the director shall revoke the vehicle service transporter license plate or tab issued to the dealer under this article.

B. The director may also conduct a hearing to cancel or suspend the license of the dealer pursuant to section 28-4494 for a violation of this article.

CHAPTER 11

ABANDONED, SEIZED AND JUNK VEHICLES

ARTICLE 1. GENERAL PROVISIONS

§ 28-4801. Definitions

In this chapter, unless the context otherwise requires:

1. "Abandoned vehicle" means a vehicle, trailer or semitrailer that is of a type subject to registration under this title whether lost, stolen, abandoned or otherwise unclaimed and that has been abandoned on a highway, public property or elsewhere in this state, including private property. Evidence that a vehicle was left unattended for a period of forty-eight hours within the right-of-way of any highway, road, street or other public thoroughfare or for a period of seventy-two hours on public or private property or elsewhere in this state is prima facie evidence of abandonment.

2. "Officer" means any police officer or other law enforcement officer.

3. "Vehicle registration agency" means the agency or department of any state that has charge of the records of motor vehicle registration in that state.

§ 28-4802. Fees

A. Except as provided in subsection B of this section, the owner of record of a vehicle at the time of abandonment of the vehicle is liable to the department for the transfer of ownership or disposal in the amount of fifty dollars if the vehicle was:

1. Abandoned and junked pursuant to section 28-4882 on private property or public land or on or within the right-of-way of a street or highway.

2. Abandoned on private property or public land or on or within the right-of-way of a street or highway and the department issues a transfer of ownership pursuant to the procedures prescribed by this chapter of this title.

3. Abandoned and junked pursuant to section 28-4882 and towed with the written permission of the state land commissioner from state trust land located within the boundaries of an incorporated city or town.

B. The owner of record of a vehicle at the time of abandonment is liable to the department for the transfer of ownership or disposal in the amount of two hundred dollars if the vehicle was:

1. Abandoned and junked pursuant to section 28-4882 and towed with the written permission of the governing authority off of national forest, state park, bureau of land management or state trust land located outside the boundaries of an incorporated city or town.

2. Abandoned and towed with the written permission of the governing authority off of national forest, state park, bureau of land management or state trust land located outside the boundaries of an incorporated city or town and the department issues a transfer of ownership pursuant to the procedures prescribed by this chapter of this title.

3. Abandoned outside the right-of-way of a street or highway located outside the boundaries of an incorporated city or town.

C. In addition to the registration fee or driver license fee prescribed by sections 28-703 and 28-1502, the department shall collect the fee prescribed in subsections A

and B of this section as an additional registration fee at the time the owner of the vehicle subsequently registers another vehicle in this state or as an additional driver license fee at the time the owner of the vehicle subsequently applies for or renews a driver license issued by this state. The department shall transmit the additional fee collected for the transfer of ownership or disposal to the state treasurer for deposit in the abandoned vehicle administration fund established by section 28–4804.

D. The department:

1. Shall notify the owner of an abandoned vehicle for which ownership has been transferred or of a junk vehicle that has been disposed of of the additional fee at the time of a subsequent vehicle registration or driver license application or renewal.

2. Shall provide a complete description of the abandoned or junked vehicle, the vehicle identification number of the vehicle and the date on which the vehicle was disposed of or ownership was transferred by the department.

3. May waive the additional fee if the person provides proof satisfactory to the director that the vehicle had been transferred or assigned to another person before the day of abandonment.

4. May prescribe by rule a fee of not more than ten dollars for processing an abandoned vehicle report.

§ 28–4803. Public vehicle; fee exemption

Fees as prescribed in this title shall not be collected if the transfer of ownership is in the name of a state agency or political subdivision.

§ 28–4804. Abandoned vehicle administration fund

A. The department may establish an abandoned vehicle administration fund in the state treasury composed of monies received pursuant to section 28–4802 and all monies collected pursuant to this chapter. The department shall use monies collected pursuant to this article to carry out the duties prescribed by this chapter.

B. The abandoned vehicle administration fund is exempt from the provisions of section 35–190 relating to lapsing of appropriations. Monies in the fund are subject to annual legislative appropriation. Any amounts in excess of one hundred thousand dollars remaining in the fund at the close of each fiscal year revert to the state highway fund.

C. The state treasurer may invest inactive monies in the fund and shall credit all interest earned on the fund monies to the fund.

§ 28–4805. Towing company; reimbursement

If a vehicle is abandoned pursuant to section 28–4802 on national forest, state park, bureau of land management or state trust land and a fee is collected by the department, the towing company that towed the abandoned vehicle off of the land, if still in business, is entitled to receive one hundred dollars from the fee collected.

ARTICLE 2. REGULATION

§ 28–4831. Abandonment prohibited

A person shall not abandon a vehicle on any street or highway or on any other public, federal, state trust, national forest, state park or bureau of land management land or private property.

§ 28–4832. Exemption

A motor vehicle eligible for licensing pursuant to chapter 3, article 14 of this title or section 28–1111 is not an abandoned vehicle and shall not be seized pursuant to

this chapter or any ordinance authorized by this chapter while the vehicle is stored or maintained on the vehicle owner's private property.

§ 28–4833. **Local ordinances**

Subject to the limitations imposed by section 28–4832, an incorporated city or town may provide for the removal and custody of abandoned vehicles on public or private property within its jurisdiction by ordinance. The disposal of these vehicles shall be pursuant to this chapter.

§ 28–4834. **Vehicle removal**

A. An officer who has reasonable grounds to believe that a vehicle has been lost, stolen, abandoned or otherwise unclaimed may remove or cause the removal of the vehicle from any street or highway or on any other public, federal, state trust, national forest, state park or bureau of land management land or private property.

B. If a person removes or causes the removal of an abandoned vehicle from private property, the person shall both:

1. Obtain written authorization from the owner or lessee of the property on a form prescribed by the director.

2. Submit the form and the vehicle identification form to the department.

C. An officer who is employed by a public agency or political subdivision and who has removed an abandoned vehicle pursuant to this section or who has removed or caused to be removed a vehicle pursuant to section 28–2453 shall inspect the vehicle and shall complete the vehicle identification form prescribed or approved by the director. The agency or political subdivision shall determine whether the abandoned vehicle is a stolen abandoned vehicle.

D. A person who has removed or caused to be removed an abandoned vehicle from public land pursuant to section 28–4802 or private property shall have the vehicle inspected by an officer or agent of the department who shall complete the vehicle identification form prescribed by the director. The officer or agent designated by the director shall determine whether the abandoned vehicle is a stolen abandoned vehicle.

§ 28–4835. **Presumption of responsibility**

The abandonment of a vehicle in a manner provided in this chapter is a presumption that the last registered owner of record is responsible for the abandonment and is subject to this chapter, unless either:

1. An affidavit has been filed that the vehicle was stolen pursuant to section 28–4844.

2. A stolen report has been accepted by a local law enforcement agency.

3. A report has been filed pursuant to section 28–758.

§ 28–4836. **Towed vehicles; notification; violation; classification**

A. Except if acting under the direction of a peace officer, a person who moves or tows a vehicle into a public garage, parking lot, storage yard or automotive recycling yard or on private property without the consent of the vehicle owner or the owner's agent shall notify the law enforcement agency of the jurisdiction where the vehicle was located before the moving or towing by telephone within one hour of the time the vehicle is moved or towed.

B. A person who fails to comply with this section forfeits all claims for towing and storing the vehicle and is guilty of a class 1 misdemeanor.

§ 28–4837. **Towing and storage costs**

A. The public agency employing an officer who has removed or causes the removal of a vehicle under this chapter is not liable for the cost of towing or storing the vehicle if the officer acts under color of the officer's lawful authority.

B. The owner of a vehicle that is removed or caused to be removed under this chapter is liable for any reasonable costs incurred in towing or storing the vehicle.

§ 28–4838. **Report; abandoned and seized vehicles; violation; classification**

A. A person who has knowledge and custody of a vehicle that is either lost, stolen, abandoned or otherwise unclaimed, that has been seized pursuant to law or removed from the right-of-way of any highway, road, street or other public thoroughfare or other public property by order of an officer of the department of public safety, sheriff's officer or city or town police officer and that has been held for a period of ten days and a claim has not been made for the return or possession of the vehicle by a person legally entitled to the vehicle shall do all of the following within five days after the expiration of the ten day retention period:

1. Submit an abandoned vehicle report to the director that is on a form prescribed by the director and that contains all of the following:

(a) A complete description of the vehicle.

(b) The vehicle license or registration number, if any.

(c) The circumstances of the person's or officer's removal or custody.

(d) Other information the director requires.

2. Provide a completed application for transfer of ownership.

3. Submit a vehicle identification form as prescribed by the director.

4. If applicable, the authorization form signed by the private property owner as prescribed in section 28–4834.

5. Pay all fees prescribed by this title.

B. Except if the vehicle inspection as prescribed in section 28–4834 is not completed within the time prescribed in subsection A of this section due to no fault of the person, a person who fails to submit the documents for the purpose of transferring ownership by the time specified in subsection A of this section:

1. Forfeits all claims for towing and storing the vehicle.

2. Is guilty of a class 2 misdemeanor.

§ 28–4839. **Report; vehicle abandoned in storage; violation; classification; disposition**

A. A vehicle that is left in a public garage or parking lot for storage or parking more than fifteen days, that has not been left under a written contract of storage and that has not during that period been removed by the person leaving it is an abandoned vehicle. The party in possession of such a vehicle shall:

1. Report the vehicle on forms prescribed by the director of the department of transportation.

2. Submit the report to the director of the department of transportation.

3. Submit a copy of the report to the director of the department of public safety.

B. Except if the vehicle inspection prescribed in section 28–4834 is not completed within the prescribed time period due to no fault of the person, a person who fails to make the report to the director of the department of transportation and the director of the department of public safety at the end of five days after the fifteen day period forfeits all claims for storage of the vehicle and is guilty of a class 2 misdemeanor.

C. A vehicle that is abandoned by being left in a public garage or parking lot as provided by this section shall be disposed of pursuant to sections 28–4841 and 28–4842.

§ 28–4840. Report; vehicle abandoned in repair facility; disposition

A. A vehicle that is left in a repair facility operated for commercial purposes for more than ten days after notice to pick up the vehicle has been mailed to the owner by certified restricted mail to be delivered to the addressee only, return receipt requested, at the address listed on the vehicle registration is deemed an abandoned vehicle. Unless the vehicle is left under a contract for repair, the party in possession of such a vehicle shall:

1. Report the vehicle to the director.

2. File all other applicable documents.

3. Pay all fees prescribed by this title.

B. Except if the vehicle inspection prescribed in section 28–4834 is not completed within the prescribed time period due to no fault of the person, an operator of a repair facility who fails to make the report to the director by the end of the succeeding thirty days forfeits all claims for towing, repair estimates or storage of the vehicle.

C. A vehicle that is abandoned by being left in a repair facility as provided by this section shall be disposed of pursuant to sections 28–4841 and 28–4842.

D. This section does not impair any lien of a proprietor of a garage or repair or service station under the laws of this state or the right of a lienholder to foreclose. For the purposes of this subsection, "service station" has the same meaning as prescribed in section 28–5701.

§ 28–4841. Abandoned vehicle; notice of intent to transfer vehicle

A. On receipt of a report as required by this chapter the director shall determine the name and address of the owner and lienholder, if any, or any other person identified on the department's record by either:

1. Searching the department records.

2. Asking the vehicle registration agency of another state if the vehicle is registered in that state.

B. On receipt of information from reports pursuant to section 28–4838 or 28–4839 and after determining the name and address of the owner and lienholder, if any, or any other person identified on the department's record who may have an interest in the vehicle, the director shall notify all interested persons by certified restricted mail to be delivered to the addressee only, return receipt requested, within five days for a vehicle with a record in this state or within thirty days for all other vehicles. The director shall make the notice on a form prescribed by the director. The notice shall include:

1. A complete description of the vehicle.

2. A notice of intent to transfer ownership of the vehicle to the person in possession of the vehicle if within thirty days from the date placed on the notification by the department the owner or lienholder or a person who has an interest in the vehicle does not notify the department of the owner's, lienholder's or person's interest in the vehicle or claim the vehicle.

3. The vehicle identification number.

4. The place and date the vehicle was found, seized or taken into possession.

5. The storage location of the vehicle.

6. A statement that the owner is liable to the department for the amounts provided in section 28–4802 if the vehicle was abandoned and removed pursuant to section 28–4802 and that the cost will be collected if the owner subsequently registers another vehicle in this state or subsequently applies for or renews a driver license issued by this state.

C. If the records of the department or out of state jurisdiction do not disclose the name and address of the owner and lienholder, if any, or any other person identified on the department's record who may have an interest in the vehicle, if the notice is returned marked unclaimed or addressee unknown or if the certified restricted mail return receipt is not returned, the department shall publish the notice of the intent of the director to transfer ownership of abandoned vehicles pursuant to this section once in a newspaper of general circulation in the county in which the vehicle was found or seized. The published notice shall include a statement of the intent of the director to transfer ownership of abandoned vehicles after ten days of the published notice and that the department will make available to the public a complete vehicle description of abandoned vehicles subject to transfer of ownership.

D. A person who has filed a report of an abandoned vehicle pursuant to sections 28–4838, 28–4839 and 28–4840 shall notify the director within twenty-four hours and in the manner prescribed by the director if the vehicle is claimed by the lawful owner.

§ 28–4842. Unclaimed vehicle; transfer of ownership; immunity

A. If the vehicle remains unclaimed at the expiration of the dates prescribed in section 28–4841, subsections B and C, the director shall determine if the vehicle is a stolen vehicle. On receiving notice that the vehicle has not been reported stolen, the director may transfer ownership of the vehicle free and clear of all liens or encumbrances on compliance with this chapter to the person in possession of the vehicle.

B. This state and its agencies, employees and agents are not liable for relying in good faith on the contents of the abandoned vehicle report or affidavits as prescribed by this chapter.

C. A person in possession of a vehicle is not liable for obtaining a transfer of ownership of an abandoned vehicle if the person in possession of the vehicle complies with this chapter.

§ 28–4843. Reclaimed vehicle; payment of costs

On proof by the person in possession of an abandoned vehicle that notice of the abandonment and intention to transfer ownership has been given in the manner provided by law, the person in possession of the vehicle is entitled to be paid a reasonable amount for storage of the vehicle and the fee for processing an abandoned vehicle report as prescribed by section 28–4802 from the owner, lienholder or person who has an interest in the vehicle if this person reclaims the vehicle before the transfer of ownership.

§ 28–4844. Affidavit; stolen vehicle; suspension of registration

A. When the owner of a motor vehicle, trailer or semitrailer that is stolen or embezzled files an affidavit with the department alleging the vehicle is stolen or embezzled, the department shall immediately suspend registration of the vehicle and shall not transfer the registration or reregister the vehicle until it is notified that the owner has recovered the vehicle.

B. The affidavit is effective only during the current registration year in which given, but if during that year the vehicle is not recovered, the owner may file a new affidavit with like effect for the ensuing year.

C. An owner who has filed an affidavit of theft or embezzlement shall immediately notify the department of the recovery of the vehicle.

§ 28–4845. Stolen and recovered vehicles; record and report; distribution

A. The director of the department of public safety shall maintain a record of stolen and recovered vehicles. On request by any law enforcement agency of this state or of any political subdivision of this state, the director of the department of public safety shall provide the requesting agency with information in the record. On receipt by the director of the department of public safety, the information shall be forwarded to the appropriate agency of the federal government.

B. Each law enforcement agency of this state or any political subdivision of this state authorized to accept stolen vehicle reports shall provide all information in the report to the director of the department of public safety immediately on receipt of the report.

§ 28–4846. Stolen vehicles; inspection; violation; classification

A. For the purposes of enforcing this chapter or locating stolen vehicles or parts of those vehicles, peace officers may:

1. Inspect a vehicle to examine any vehicle identification number, serial number or other unique distinguishing number, sign or symbol in any public garage, vehicle storage, repair, leasing or rental lot or facility, vehicle equipment rental yard, vehicle salvage pool or other similar establishment.

2. Inspect the title or registration of those vehicles in order to establish their rightful ownership or possession.

B. Peace officers may also inspect a bicycle, an implement of husbandry, special construction equipment and a motor vehicle designed for off-highway use that is on the premises described in subsection A or if such a vehicle is incidentally operated or transported on a highway.

C. Inspections shall be conducted at a time and in a manner that minimizes any unreasonable interference with or delay of the business operation.

D. If information comes to the attention of the person conducting an inspection pursuant to this section that may necessitate obtaining a search warrant and if steps are promptly initiated for the procurement of a search warrant, the persons conducting the inspection may take all necessary steps to secure the premises under inspection until the warrant application is acted on by a judicial officer.

E. A person who refuses to permit inspection under this section is guilty of a class 1 misdemeanor.

ARTICLE 3. JUNK VEHICLES

§ 28–4881. Definition of junk vehicle

For the purposes of this article, "junk vehicle" means a vehicle that is in such a state of deterioration that it cannot be profitably dismantled or salvaged for parts and cannot be profitably restored.

§ 28–4882. Junk vehicle; disposition

A. If a vehicle has been reported abandoned under section 28–4838, the person making the report may request that the vehicle be processed as a junk vehicle. An agent of the department shall inspect the vehicle to determine if the vehicle is a junk vehicle.

B. On making a determination that the vehicle is a junk vehicle, the director shall determine the name and address of the owner and lienholder, if any, or any other person identified on the department's record by either:

1. Searching the department records.

2. Asking the vehicle registration agency of another state if a junk vehicle is registered in that state.

C. On receipt of information disclosing the name and address of the owner and lienholder, if any, or any other person identified on the department's record who may have an interest in the vehicle and at least fifteen days before the date of taking the action, the director shall give notice to all interested persons of the director's intention to allow the disposition of the junk vehicle as prescribed by this section. The director shall give the notice by certified restricted mail to be delivered to the addressee only, return receipt requested.

D. If the records of the department or out of state jurisdiction do not disclose the name and address of the owner and lienholder, if any, or any other person identified on the department's record who may have an interest in the vehicle, if the notice is returned marked unclaimed or addressee unknown or if the certified restricted mail return receipt is not returned, the department shall publish the notice of the intention of the director to allow the disposition of the junk vehicle as prescribed by this section once in a newspaper of general circulation in the county in which the junk vehicle was found. The published notice shall include a statement that the department will make available to the public a complete vehicle description of junk vehicles.

E. If the vehicle is unclaimed at the expiration of fifteen days after mailing the certified restricted notice or the publication as provided in subsections C and D of this section, the director shall determine if the vehicle is a stolen vehicle. On receiving notification that the vehicle has not been reported stolen, the director shall issue written authorization to the owner of the property authorizing the owner of the property or a licensed automotive recycler to dispose of the junk vehicle pursuant to section 28–4883.

§ 28–4883. Vehicle crusher required

A. The junk vehicle shall not be restored or dismantled for parts for resale but shall be disposed of by a vehicle crusher. The person authorized by the director to dispose of the junk vehicle shall enter on the person's copy of the written authorization the name of the person crushing the junk vehicle.

B. The person crushing the junk vehicle shall mail a copy of the written authorization to the department within five days of receipt of the written authorization certifying that the vehicle has been crushed and including the certificate of title or dismantle permit, registration card and license plate or plates assigned to the vehicle. If the certificate of title, registration card or license plate or plates are not available, the person authorized to dispose of the junk vehicle shall forward the available documents and plates with a description of the vehicle, including the make, model, year, vehicle identification number, color and last known owner of the vehicle.

C. A person disposing of a junk vehicle is exempt from paying fees prescribed in this chapter.

§ 28–4884. Records destroyed

A. On receipt of the written authorization, documents, plates and information prescribed in section 28–4883, the department shall void the certificate of title or dismantle permit to the vehicle and shall maintain a record of all vehicles destroyed pursuant to this section.

B. A certificate of title shall not be issued for a vehicle destroyed pursuant to this article.

C. A certificate of title voided pursuant to this section removes all liens or encumbrances, including any liens relating to titling and registration.

CHAPTER 12

TITLE SERVICE COMPANIES

ARTICLE 1. GENERAL PROVISIONS

§ 28–5001. Definition of title service company

In this chapter, unless the context otherwise requires, "title service company" means a person, other than a licensed motor vehicle dealer, who for a fee issues temporary registration plates or markers or prepares and submits to the director applications for registration of, and certificates of title to, motor vehicles.

§ 28–5002. Requirements

A. A title service company shall not engage in business in this state unless the company is licensed pursuant to this chapter.

B. A person shall not engage in any business pursuant to this chapter unless both:

1. It is from an established place of business.

2. The person has obtained a license from the director authorizing the person to engage in the business.

§ 28–5003. Licensing procedure

A. A person shall apply to the director in writing for an application on forms prescribed by the director.

B. The application shall be verified and shall contain:

1. The name and residence of either:

(a) The applicant.

(b) Each partner if the applicant is a partnership.

(c) Each principal officer if the applicant is a corporation.

2. The principal place of business of the applicant.

3. The established place of business at or from which the business will be conducted.

4. Other information the director requires.

C. The applicant shall submit all documents and bonds required and annual license fees prescribed by section 28–5005 with the application.

D. On filing of the application, the director:

1. Shall promptly investigate the matters stated in the application.

2. Shall inspect the place from which the applicant proposes to transact business.

3. May further investigate as the director deems necessary.

E. Within twenty days after the filing of the application, the director shall grant the application if the director determines that the application is made in good faith, that no representation made in the application is false or untrue and that the applicant has met the requirements of law. If the director determines that the application is not made in good faith, that any false or untrue statement has been made in the application or that the applicant has not met the requirements of law,

the director shall deny the application and advise the applicant in writing of the denial and the grounds for the denial.

§ 28–5004. Hearing on application; appeal

A. Within thirty days after receipt of the notice of denial of the application, the applicant may petition the director in writing for a hearing on the application. On filing the petition, the director shall set a date for the hearing.

B. The applicant may be present at the hearing, may testify in the applicant's own behalf and may have other persons present to testify at the hearing as the applicant desires. The director shall issue subpoenas to persons the applicant requests that require them to be present and testify at the hearing.

C. A transcript of the testimony of all witnesses taken at the hearing shall be made and preserved.

D. Within ten days after the hearing, the director shall make written findings of fact and conclusions of law and shall either grant or finally deny the application.

E. If the application is finally denied and within thirty days from the date of final denial, the applicant may seek judicial review under title 12, chapter 7, article 6.

§ 28–5005. Fees; bond

A. The applicant shall submit a filing fee of fifteen dollars with the application. Each licensee shall pay an annual license fee of ten dollars.

B. A bond in a form approved by the director and in an amount of at least twenty-five thousand dollars as the director prescribes is required with an application. The bond:

1. Shall be executed by a surety company authorized to transact business in this state as a surety on the bond, with the applicant as principal obligor on the bond and the state as obligee.

2. Shall be conditioned that the applicant will faithfully comply with all of the provisions of law and that the bond is noncancellable without at least sixty days' written notice to the director.

3. Inures to the benefit of a person who suffers loss because of any of the following:

(a) Nonpayment by the company of any title fee, registration fee or other related fee or tax paid to the company by that person.

(b) Insolvency.

(c) Discontinuance of business.

(d) Any unlawful act of the company.

§ 28–5006. Issuance of temporary registration

A. A title service company shall not issue, assign or deliver temporary registration plates or markers unless both of the following apply:

1. The temporary registration plates or markers are issued, assigned or delivered before or at the same time the title service company files an application for a certificate of title and an application for annual registration of the vehicle.

2. All other prerequisites to the registration of a vehicle pursuant to law are satisfied.

B. The title service company shall promptly send the applications and the fees prescribed in section 28–5005 to the registering officer.

C. A person may operate a vehicle for which application is made on a highway in this state while the temporary registration is valid.

§ 28–5007. **Copy of temporary registration; notice of transfer**

On the day a title service company issues temporary registration plates or markers, the company shall send to the director a copy of the temporary registration plates or markers. This copy is written notice of the transfer.

§ 28–5008. **Temporary registration plates or markers; expiration**

A. A person who issues temporary registration plates or markers shall affix or insert clearly and indelibly on the face of each temporary plate or marker both:

1. The date of issuance and expiration.

2. The make, motor number and serial number of the vehicle for which the plate or marker is issued.

B. A temporary registration plate or marker expires and is void on receipt of the annual license plates or on the expiration of forty-five days from the date of issuance.

C. A person to whom temporary plates or markers have been issued shall destroy the temporary plates or markers immediately on receiving the annual license plates. If the annual license plates are not received within forty-five days from issuance of the temporary plates or markers, the owner shall destroy the temporary registration plates or markers immediately on expiration of the forty-five day period.

§ 28–5009. **Prohibitions**

A. A title service company shall not lend temporary registration plates or markers to a person or use them on a vehicle owned by the company.

B. It is unlawful for a person to:

1. Issue a temporary registration plate or marker containing a misstatement of fact.

2. Knowingly insert false information on the face of the temporary registration plate or marker.

§ 28–5010. **Record requirements**

A. A title service company to which temporary registration plates or markers are issued shall maintain in permanent form a record of:

1. All temporary registration plates or markers delivered to the company.

2. All temporary registration plates or markers issued by the company.

3. All titles and registrations accepted for processing.

4. Any other information that the director requires.

B. The title service company shall:

1. Keep each record for at least three years from the date of its entry.

2. Allow full and free access to the records during regular business hours to authorized representatives of the director.

§ 28–5011. **Suspension of right to issue plates or markers**

If the director finds that a title service company is not complying with this chapter or the directions of the director, the director may suspend, after a hearing, the right of the title service company to issue temporary registration plates or markers.

§ 28–5012. **License suspension or cancellation**

The director shall suspend or cancel a license if the director determines that the licensee has done any of the following:

1. Made a material misrepresentation or misstatement in the application for a license.

2. Violated or is violating a law of this state, the enforcement or administration of which is vested in the director.

3. Violated or is violating a rule adopted by the director pursuant to law.

4. Failed or is failing to keep and maintain records as required by law.

5. Failed to keep an established place of business.

§ 28–5013. **Hearing**

A. On determining that grounds for cancellation of a license exist, the director shall give written notice to the licensee and by the notice shall require the licensee to appear before the director at a specified time and place to show cause why the license should not be cancelled. At the time and place fixed by the director, which is at least ten days after the notice, the licensee shall appear and be heard and may have other persons the licensee desires present to testify at the hearing.

B. The director shall issue subpoenas to persons the licensee requests requiring them to be present and to testify at the hearing.

C. A transcript of the testimony of witnesses taken at the hearing shall be made and preserved.

D. Within ten days after the hearing, the director shall:

1. Make written findings of fact and conclusions.

2. By order either cancel or decline to cancel the license.

E. If the license is cancelled, the licensee may seek judicial review under title 12, chapter 7, article 6 within thirty days after the date of cancellation. The order of cancellation shall not be suspended during pendency of the appeal.

§ 28–5014. **Temporary registration plates or markers**

The director may furnish to the title service companies temporary registration plates or markers that title service companies may issue, subject to the limitations and conditions provided in this chapter.

CHAPTER 13

THIRD PARTY MOTOR VEHICLE REGISTRATION

ARTICLE 1. GENERAL PROVISIONS

§ 28–5101. **Third party authorization; violation**

A. The director may authorize third parties to perform certain title and registration functions.

B. A person shall not engage in any business pursuant to this article unless the director authorizes the person to engage in the business.

C. The director may furnish necessary documents, license plates or markers subject to this chapter.

§ 28–5102. **Powers and duties of director; rules**

A. The director shall supervise and regulate all persons required by this chapter to obtain authorization.

B. The director may:

1. Conduct investigations the director deems necessary.

2. Conduct audits.

C. The director shall consult with the county assessor for those counties that are an agent of the department pursuant to section 28–702 when adopting rules to carry out this chapter.

§ 28–5103. **Application procedure**

A. A person may apply for authorization pursuant to this chapter to the director in writing on a form prescribed and furnished by the director. The person shall include with the application all documents and fees prescribed by the director.

B. The application shall be verified and shall contain:

1. The name and residence of the applicant, the name and residence of each partner if the applicant is a partnership or the name and residence of each principal officer if the applicant is a corporation.

2. The principal place of business of the applicant.

3. The established place of business at or from which the business is to be conducted.

4. Other information the director requires.

§ 28–5104. **Bond requirement**

A. A person who applies for authorization pursuant to this chapter shall accompany the application with a bond in a form to be approved by the director and in an amount of at least twenty-five thousand dollars.

B. A surety company authorized to transact business in this state shall execute the bond with the applicant as principal obligor on the bond and the state as obligee. The bond shall be conditioned that the applicant will faithfully comply with all of the provisions of law and that the bond is noncancellable for the period of time for which the authorization to the applicant is issued.

C. The bond inures to the benefit of any person who suffers loss because of any of the following:

1. Nonpayment by the authorized person of any title fee, registration fee or other related fee or tax paid to the third party by that person.

2. Insolvency or discontinuance of business.

3. An unlawful act of the authorized third party.

D. The bond requirement of this section does not apply to:

1. A department, agency or political subdivision of this state.

2. An Arizona court.

3. An Arizona law enforcement agency or department.

4. A financial institution and enterprise under the jurisdiction of the state banking department or a federal monetary authority.

5. The federal government or any of its agencies.

6. A motor vehicle dealer that is licensed and bonded by the department or state organization of licensed and bonded motor vehicle dealers.

7. A manufacturer, importer, factory branch or distributor licensed by the department.

8. An insurer under the jurisdiction of the department of insurance.

9. An owner of a fleet as defined in section 28–901.

10. A public utility.

11. A tribal government.

12. A title service company that is bonded by the department.

§ 28–5105. Criminal background investigation

A. An applicant and each partner, officer, director, agent or stockholder owning twenty per cent or more of a corporation seeking authorization pursuant to this chapter shall provide a full set of fingerprints and a fee of four hundred sixty dollars to enable the department to conduct a criminal background investigation. The criminal background investigation does not apply if both:

1. The applicant is either exempt pursuant to subsection H of this section or is currently licensed pursuant to chapter 10 of this title.

2. The applicant and each partner, officer, director, agent or stockholder owning twenty per cent or more of a corporation have submitted to a criminal background investigation as prescribed by this section during the past five years.

B. The director shall deny an application to act as a third party if an individual included in the application has either:

1. Been convicted of a felony in any state, territory or possession of the United States or any foreign country.

2. Made a misrepresentation or misstatement in the application to purposely conceal a matter that would cause the application to be denied.

C. The first phase of the criminal background investigation shall be a criminal history record check pursuant to section 41–1750. On notification by the department of public safety that the applicant has not been convicted of a violation that would prohibit the applicant from obtaining authorization, the director may approve an application for provisional authorization pending completion of the criminal background investigation if the applicant meets all other requirements of this article. The director may revoke a provisional authorization for a violation of this chapter or chapter 2, 3 or 15 of this title. A provisional authorization is valid unless revoked by the director or until the applicant receives approval or denial of the application for authorization.

D. Within twenty days of completion of the criminal background investigation, the director shall approve or deny the application for authorization. If the application is denied, the director shall advise the applicant in writing of the denial and the grounds for denial. The department or its employees are not liable for any costs incurred by an applicant seeking authorization under this chapter.

E. Within thirty days after receipt of the notice of denial, the applicant may petition the director in writing for a hearing on the application pursuant to section 28–5107.

F. If the authorized third party adds a partner, officer, director, agent or stockholder who owns twenty per cent or more of the corporation and who was not included in the criminal background investigation on a prior application, the authorized third party shall notify the department within thirty days of the change.

G. At the time of notification pursuant to subsection F of this section, the third party shall submit to the department an application, a nonrefundable fee of four hundred sixty dollars and, if applicable, a full set of fingerprints for the purpose of a criminal background investigation. If the individual added or changed by the authorized third party is found to be ineligible pursuant to subsection B of this section and on completion of the investigation, the director shall advise the authorized third party and the individual in writing of the grounds for the action and that the authorization will be revoked unless the individual is removed from the position.

H. The requirement for a criminal background investigation does not apply to:

1. A department, agency or political subdivision of this state.

2. An Arizona court.

3. An Arizona law enforcement agency or department.

4. A financial institution and enterprise under the jurisdiction of the state banking department or a federal monetary authority.

5. The federal government or any of its agencies.

6. A motor vehicle dealer that is licensed and bonded by the department or a state organization of licensed and bonded motor vehicle dealers.

7. A manufacturer, importer, factory branch or distributor licensed by the department.

8. An insurer under the jurisdiction of the department of insurance.

9. An owner or registrant of a fleet as defined in section 28–901.

10. A public utility.

11. A tribal government.

12. A title service company that is bonded by the department.

I. The director shall transmit background investigation fees collected pursuant to this section to the state treasurer for deposit in the criminal background investigation fund established by section 28–4305.

§ 28–5106. Records

A third party who is authorized pursuant to this chapter shall:

1. Maintain records in a form and manner prescribed by the director.

2. Provide the director with access to the records during regular business hours to ensure compliance with all applicable statutes and rules.

§ 28–5107. Application denial; hearing; appeal

A. The director shall deny an application for third party authorization under this chapter and shall advise the applicant in writing within twenty days of the denial and the grounds for the denial if the director determines from the information revealed in the criminal background investigation pursuant to section 28–5105 any of the following:

1. That the applicant is not eligible for third party authorization under this chapter.

2. That the application is not made in good faith.

3. That the application contains a false or untrue statement.

4. That the applicant has not met the requirements of law.

B. An applicant who is aggrieved by the denial of an application may make a written request to the department for a hearing on the application within thirty days after service of the notice of denial. If the applicant does not request a hearing within thirty days, the denial is final.

C. If the applicant requests a hearing, the director shall give written notice to the applicant to appear at a hearing to show cause why the denial of the applicant's application should not be upheld. After consideration of the evidence presented at the hearing, the director shall serve notice in writing to the applicant of the director's findings and order. A timely request for a hearing stays the denial of the application.

D. If the application is denied, the applicant may appeal the decision pursuant to title 12, chapter 7, article 6.

§ 28–5108. **Cancellation or suspension of authorization; hearing; appeal**

A. The director shall suspend or cancel the authorization of a third party granted pursuant to this chapter if the director determines that the third party has done any of the following:

1. Made a material misrepresentation or misstatement in the application for authorization.

2. Violated a law of this state.

3. Violated a rule adopted by the department.

4. Failed to keep and maintain records required by this chapter.

5. Allowed an unauthorized person to engage in any business pursuant to this chapter.

B. On determining that grounds for suspension or cancellation of authorization exist, the director shall give written notice to the third party to appear at a hearing before the director to show cause why the authorization should not be suspended or canceled.

C. After consideration of the evidence presented at the hearing, the director shall serve notice of the director's finding and order to the third party.

D. If the authority is suspended or canceled, the third party may appeal the decision pursuant to title 12, chapter 7, article 6.

§ 28–5109. **Cease and desist order**

A. If the director has reasonable cause to believe that a person authorized to engage in a business regulated by this chapter is violating any provision of this chapter or chapter 2, 3 or 15 of this title, the director shall issue and serve on the person, by personal delivery or certified mail at the person's last known address, a cease and desist order.

B. The cease and desist order shall require the person to cease and desist from further engaging in business on receipt of the notice.

C. On failure of the person to comply with the cease and desist order, the director may conduct a hearing pursuant to this chapter.

§ 28–5110. **Action to restrain violation**

If the director has reasonable cause to believe that a person authorized under this chapter is violating any law of this state, the enforcement or administration of which is vested in the director, or has or is violating any rule or order adopted by the director pursuant to law, in addition to any remedies existing under this chapter, the director may bring an action in the superior court in Maricopa county in the name of and on behalf of the state and against the person to restrain or enjoin the person from continuing the violation.

CHAPTER 14

MOTOR CARRIER SAFETY

ARTICLE 1. GENERAL PROVISIONS

§ 28–5201. **Definitions**

In this chapter, unless the context otherwise requires:

1. "Declared gross weight" has the meaning prescribed in section 28–5431. If a declaration has not been made, declared gross weight means gross weight.

2. "Gross weight" has the meaning prescribed in section 28–5431.

3. "Hazardous material" means a substance that has been determined by the United States department of transportation under 49 Code of Federal Regulations to be capable of posing an unreasonable risk to health, safety and property if transported in commerce.

4. "Hazardous substance" means a material and its mixtures or solutions that has been determined by the United States department of transportation under 49 Code of Federal Regulations to be capable of posing an unreasonable risk to health, safety and property if transported in commerce.

5. "Hazardous waste" means a material that is subject to the hazardous waste manifest requirements of the department of environmental quality or the United States environmental protection agency.

6. "Lightweight motor vehicle" means a motor vehicle or vehicle combination that has a declared gross weight of twenty thousand pounds or less except:

(a) A motor vehicle that is used to transport passengers for hire.

(b) A motor vehicle that is used to transport hazardous materials, hazardous substances or hazardous wastes and that is required by the department to be marked or placarded, except that a motor vehicle that has a declared gross weight of twenty thousand pounds or less and that carries a hazardous material in an amount of less than one thousand pounds or not more than one hundred ten gallons of combustible liquid as listed in 49 Code of Federal Regulations section 172.504(A), table 2 is a lightweight motor vehicle.

7. "Manufacturer" means a person who transports or causes to be transported or shipped by a motor vehicle or lightweight motor vehicle a hazardous material, hazardous substance or hazardous waste or who manufactures, fabricates, marks, maintains, reconditions, repairs or tests a package or container that is represented, marked, certified or sold by a person for use in the transportation in commerce of hazardous materials, hazardous substances or hazardous wastes.

8. "Motor carrier" means a person who operates or causes to be operated a motor vehicle on a highway.

9. "Motor vehicle" means a self-propelled motor driven vehicle or vehicle combination, except a lightweight motor vehicle, that is used on a highway in the furtherance of a commercial enterprise.

10. "Person" means a public or private corporation, company, partnership, firm, association or society of persons, the federal government and its departments or agencies, this state or any of its agencies, departments, political subdivisions, counties, towns or municipal corporations and a natural person.

11. "Highway" means a public street, alley, road, highway or thoroughfare of any kind in this state that is used by the public or that is open to the use of the public as a matter of right, for the purpose of vehicular travel.

12. "Shipper" means a person who offers a hazardous waste, hazardous substance or hazardous material for motor vehicle transportation in commerce.

13. "Transportation" means a movement of person or property by a motor vehicle and any loading, unloading or storage incidental to the movement.

14. "Vehicle combination" has the meaning prescribed in section 28–5431.

§ 28–5202. Applicability

A. Except as otherwise provided, this chapter applies to all manufacturers, shippers, motor carriers and drivers who transport or cause the transportation of hazardous materials, hazardous substances or hazardous wastes.

B. Vehicles owned or operated by this state or a political subdivision or public authority of this state are subject to this chapter.

C. This chapter applies throughout this state, and any city, town, county or other political subdivision of this state shall not adopt or implement a law or rule relating to hazardous materials, hazardous substances or hazardous wastes other than as authorized by this chapter.

§ 28–5203. Motor carrier safety revolving fund

A. A motor carrier safety revolving fund is established in the state treasury consisting of monies appropriated to the fund by the legislature, monies deposited pursuant to this chapter and monies received from private grants or donations if so designated by the grantor or donor.

B. Monies in the fund are a continuing appropriation to the department to be used by the department, the attorney general, the department of public safety and the hazardous materials management advisory council to carry out this chapter. The director shall distribute monies in the fund.

C. The director of the department of transportation shall make a full accounting of the use of the fund to the director of the department of administration annually or as required by the director of the department of administration.

D. The motor carrier safety revolving fund is exempt from the provisions of section 35–190 relating to lapsing of appropriations.

§ 28–5204. Administration and enforcement; rules; exemption

A. In the administration and enforcement of this chapter, the department of transportation shall adopt:

1. Reasonable rules it deems proper governing the safety operations of motor carriers, including rules governing safety operations of motor carriers, shippers and vehicles transporting hazardous materials, hazardous substances or hazardous wastes and shall prescribe necessary forms. In determining reasonable rules, the department of transportation shall consider:

(a) The nature of the operations and regulation of public service corporations as defined in article XV, sections 2 and 10, Constitution of Arizona.

(b) The recommendations of the special waste best management practices advisory committee pursuant to section 49–854 or rules adopted by the director of environmental quality pursuant to section 49–855, whichever is applicable.

2. Rules necessary to enforce and administer this chapter, including rules setting forth reasonable procedures to be followed in the enforcement of this chapter and rules adopting hazardous materials, hazardous substances and hazardous waste transporter safety standards. In adopting the rules, the department shall consider, as evidence of generally accepted safety standards, the publications of the United States department of transportation and the environmental protection agency.

B. Rules adopted by the department of transportation also apply to a manufacturer, shipper, motor carrier and driver.

C. The department of public safety shall and a political subdivision may enforce this chapter and any rule adopted pursuant to this chapter by the department of transportation. A person acting for a political subdivision in enforcing this chapter is required to be certified by the department of public safety as qualified for the enforcement activities.

D. The department may audit records and inspect vehicles transporting hazardous materials, hazardous wastes and hazardous substances as prescribed in title 49.

E. This section does not apply to a lightweight motor vehicle carrying hazardous materials in an amount of less than one thousand pounds or not more than one hundred ten gallons of combustible liquid as listed in 49 Code of Federal Regulations section 172.504(A), table 2.

ARTICLE 2. REGULATION

§ 28-5231. Records requirements; inspection

A. For the purpose of enforcement of this chapter, a manufacturer, shipper and motor carrier shall maintain and keep within this state books, records and other data as required by the department. The manufacturer, shipper or motor carrier shall not destroy the books, records and other data for a period of three years.

B. During usual business hours or at any time if the cause is to protect the public safety, the manufacturer, shipper or motor carrier shall allow employees of the department of public safety or the department of transportation to inspect the books, records or other data.

C. To verify the truth and accuracy of a statement, report or return and to determine compliance with safety rules imposed under this article, an officer of the department of public safety or any peace officer, during usual business hours or at any time if the cause is to protect the public safety, may examine:

1. Records, books or other data required to be kept by a manufacturer, shipper or motor carrier under this chapter.

2. Equipment and facilities pertinent to the operation.

3. Other books of account, records and data kept by the manufacturer, shipper or motor carrier in any other business in which the manufacturer, shipper or motor carrier also engages.

§ 28-5232. Danger to public safety; suspension of registration or license; civil penalty; hearing; reinstatement

A. If after reviewing a report submitted by a law enforcement agency authorized to enforce this chapter the director determines that probable cause exists to believe that the continued operation by a manufacturer, shipper or motor carrier or the continued operation of a motor vehicle by a driver constitutes a danger to the public safety, the director shall issue both:

1. An order immediately imposing either of the following:

(a) Suspension of the registration of the motor vehicle owned or leased by the manufacturer, shipper or motor carrier.

(b) Suspension of the driver license or nonresident operating privilege of a driver.

2. An order to require the manufacturer, shipper, motor carrier or driver to show cause why the director should not impose a civil penalty and to show cause why the director should not continue the registration or license suspension.

B. The manufacturer, shipper, motor carrier or driver shall respond to the order to show cause at a hearing held not more than sixty days after service of written notice. The director shall send the notice by certified mail to the address provided to the department in the law enforcement agency's report alleging the safety danger or to the address provided in the application for vehicle registration or in the notification provided by an interstate carrier.

C. The scope of the hearing is limited to the following:

1. A determination that the respondent was operating on the highway and that the operation constituted a danger to the public safety.

2. That the respondent ordered to appear at the hearing is responsible for the danger and is responsible under this title or a rule adopted under this title to prevent the danger or to remedy the danger.

D. After consideration of the evidence presented at the hearing, the director shall serve written notice of the director's finding and order within five days after the hearing. If the director enters a finding of responsibility, the director shall

continue the suspension of the vehicle registration of the vehicles owned or leased by the manufacturer, shipper or motor carrier or shall continue the suspension of the driver license or nonresident operating privilege of the driver. A rehearing or a request for a rehearing on the matter does not stay the suspension of the vehicle registration or driver license or nonresident operating privilege.

E. If the director enters a finding of responsibility, the director shall impose a civil penalty as prescribed in section 28–5238.

F. The director shall not reinstate the registration of the motor vehicle owned or leased by the manufacturer, shipper or motor carrier or the driver license or nonresident operating privilege of the driver until all of the following are met:

1. The department of public safety or the law enforcement agency originally submitting the report provides in writing to the director that, if applicable, the cause for the finding of responsibility has been remedied.

2. All fees prescribed by statute to reinstate the vehicle registration or driving privileges are paid.

3. A civil penalty that has been imposed is paid.

G. If the manufacturer, shipper, motor carrier or driver fails to appear for a hearing, in addition to any other remedies provided by law, the director shall continue the suspension of the registration of the motor vehicle owned or leased by the manufacturer, shipper or motor carrier or the driver license or the nonresident operating privilege of the driver. The director shall not remove the suspension until the manufacturer, shipper, motor carrier or driver appears for the hearing and all of the conditions prescribed in subsection F of this section are met.

§ 28–5233. Vehicles transporting explosives; rules

A. A person operating a vehicle transporting an explosive on a highway shall comply at all times with the following provisions:

1. The vehicle shall be placarded in accordance with the placarding requirements specified in 49 Code of Federal Regulations part 172.

2. The vehicle shall be equipped with a fire extinguisher as required in 49 Code of Federal Regulations part 393.

B. The director shall adopt additional rules governing the transportation of explosives and other dangerous articles by vehicles on the highways as the director deems advisable for the protection of the public.

§ 28–5234. Exemption from rules on drivers' qualification and hours of service; definitions

A. If the department adopts 49 Code of Federal Regulations parts 390 through 397 as a rule, a telecommunications corporation engaged in rendering public utility service or a railroad and its employees whose work necessarily involves the operation of a motor vehicle weighing more than either ten thousand pounds unladen weight or twenty thousand pounds declared gross vehicle weight rating but which operation is only incidental to the performance of their principal nondriving duties and purpose of employment are exempted from compliance with 49 Code of Federal Regulations parts 391 and 395, except that 49 Code of Federal Regulations part 391, subparts A and E apply unless it is the practice of the telecommunications corporation engaged in rendering public utility service or the railroad to assign regular drivers, qualified in accordance with 49 Code of Federal Regulations parts 390 through 397, to motor vehicles weighing more than either ten thousand pounds unladen weight or twenty thousand pounds gross vehicle weight rating, and if such driver becomes unavailable or unable to operate the motor vehicle on a given occasion due to an unavoidable or unforeseen circumstance against which provisions

could not be reasonably made, compliance with 49 Code of Federal Regulations parts 391 and 395 is not required.

B. A person who is an employee of a public service corporation, a political subdivision of this state that is engaged in rendering public utility service or a railroad is exempt from any hours of service requirements at any time when relief assistance is needed to supplement state or local efforts and capabilities to save lives, protect against substantial loss of property, protect the public health and safety or lessen or avert the consequence of a catastrophe. If an emergency respondent independently identifies an occasion or instance that jeopardizes life or property or that endangers public health and safety, an emergency situation exists, and the respondent is exempt from any hours of service requirements if the respondent contacts with due diligence and coordinates with state or local officials.

C. For the purposes of this section:

1. "Public service corporation" means a public service corporation as defined in article XV, section 2, Constitution of Arizona.

2. "Railroad" means a railway or railroad that is regulated as a common carrier under article XV, section 10, Constitution of Arizona, and that is subject to title 40, chapter 4, article 3.

3. "Telecommunications corporation" means an entity as defined in section 40–201 that is subject to regulation by the corporation commission.

§ 28–5235. Notification; denial of vehicle registration and operating privileges; audits

A. A person who owns or leases a vehicle transporting hazardous materials, hazardous substances or hazardous wastes shall notify the director of all vehicles transporting the materials, substances or wastes in a manner prescribed by the director. Each notification shall contain the name and current address of the person transporting the materials, substances or wastes and other information the department requires by rule.

B. The department may deny the vehicle registration, the operating privilege or the nonresident operating privilege for any of the following reasons:

1. Failure to pay any applicable fees.

2. Misrepresentation in the application or notification.

3. Failure to comply with the rules of the department.

4. Failure to make vehicles available for inspection or to make records available for audit.

5. Revocation of an operating privilege within the preceding twelve months.

C. The department shall provide for compliance audits pursuant to this chapter and rules adopted pursuant to this chapter. The department of transportation shall provide for reciprocity of audits with the department of public safety and the United States department of transportation.

§ 28–5236. Violations; inspection; material containment

A. A person shall not operate a vehicle that transports hazardous materials, hazardous substances or hazardous wastes on a highway in this state unless the vehicle has been properly inspected pursuant to 49 Code of Federal Regulations.

B. A person shall not transport or cause the transportation of hazardous materials, hazardous substances or hazardous wastes unless the material is properly contained and manifested as prescribed by applicable statutes and rules.

§ 28–5237. Noncompliance; hearing; suspension of registration or license; civil penalty

A. The director may conduct a hearing if a law enforcement agency authorized to enforce this chapter alleges that probable cause exists that a manufacturer, shipper, motor carrier or driver refuses to comply with section 28–5231 or has failed to comply with this chapter or a rule adopted pursuant to this chapter.

B. If after reviewing the allegations the director determines that probable cause exists to believe that the manufacturer, shipper, motor carrier or driver is responsible, the director shall issue an order to show cause why the director should not impose any of the following:

1. A suspension of the registrations of any motor vehicles owned or leased by the manufacturer, shipper or motor carrier.

2. A suspension of the driver license or nonresident operating privilege of a driver.

3. A civil penalty on the manufacturer, shipper, motor carrier or driver.

C. The manufacturer, shipper, motor carrier or driver shall respond to the order at a hearing held not more than sixty days after service of written notice. The director shall send the notice by certified mail to the address provided to the department in the agency's report alleging the noncompliance.

D. A finding of responsibility requires that all of the following conditions exist, and the hearing is limited to the following:

1. The respondent refuses to comply with the requirements of section 28–5231 or failed to comply with any other provision of this chapter or a rule adopted pursuant to this chapter.

2. The respondent ordered to appear at the hearing is responsible for the noncompliance and is responsible under this chapter or a rule adopted pursuant to this chapter to effect compliance or to remedy the noncompliance.

3. The law enforcement agency submitting the report served written notice on the respondent that noncompliance exists.

4. A reasonable period of time of at least ten but not more than thirty days has been provided to attain compliance.

5. The department of public safety or the department of transportation performed a follow-up inspection or audit.

6. The inspection or audit shows that compliance was not subsequently attained.

E. After consideration of the evidence presented at the hearing and within five days after the hearing, the director shall serve notice of the director's finding and order. If the director enters a finding of responsibility, the director shall both:

1. Impose a civil penalty as prescribed in section 28–5238.

2. Suspend the registrations of any motor vehicles owned or leased by the manufacturer, shipper or motor carrier or suspend the driver license or nonresident operating privilege of a driver.

F. If the manufacturer, motor carrier, shipper or driver fails to appear for a hearing, in addition to any other remedies provided by law, the director shall suspend the registrations of any motor vehicles owned and leased by the manufacturer, shipper or motor carrier or the driver license or the nonresident operating privilege of the driver. The director shall not remove the suspension until the manufacturer, motor carrier, shipper or driver appears for the hearing and all fees required to reinstate vehicle registration or driving privileges prescribed by statute are paid.

§ 28-5238. **Civil penalty schedule; suspension of registration or license; reinstatement; enforcement**

A. If the director imposes a civil penalty on the manufacturer, motor carrier, shipper or driver, the civil penalty is determined pursuant to the following schedule:

1. A minimum civil penalty of one thousand dollars but not more than five thousand dollars, or if the director determines that the manufacturer, motor carrier, shipper or driver failed to attain compliance with a rule relating to hazardous materials, hazardous substances or hazardous wastes, a minimum civil penalty of five thousand dollars but not more than twenty-five thousand dollars.

2. For a second finding of responsibility within a sixty month period involving the same manufacturer, motor carrier, shipper or driver and the same class of violation, as prescribed by subsection E of this section, either:

(a) A minimum civil penalty of five thousand dollars but not more than ten thousand dollars.

(b) If the director determines that the manufacturer, motor carrier, shipper or driver failed to attain compliance with a rule relating to hazardous materials, hazardous substances or hazardous wastes, a minimum civil penalty of ten thousand dollars but not more than twenty-five thousand dollars.

3. For a third and any subsequent finding of responsibility within a sixty month period involving the same manufacturer, motor carrier, shipper or driver and the same class of violation, as prescribed by subsection E of this section, either:

(a) A minimum civil penalty of ten thousand dollars but not more than twenty-five thousand dollars.

(b) If the director determines that the manufacturer, motor carrier, shipper or driver failed to attain compliance with a rule relating to hazardous materials, hazardous substances or hazardous wastes, a minimum civil penalty of fifteen thousand dollars but not more than twenty-five thousand dollars.

B. On the third and any subsequent finding of responsibility within a sixty month period involving the same manufacturer, motor carrier, shipper or driver and the same class of violation, in addition to imposing the civil penalties prescribed in subsection A, paragraph 3 of this section, the director shall suspend the registrations of any motor vehicles owned or leased by the manufacturer, shipper or motor carrier or the driver license or nonresident operating privilege of the driver for thirty days, except that in the case of noncompliance the suspension may exceed thirty days until the department of public safety states in writing to the director of the department of transportation that the cause for the finding of responsibility has been remedied.

C. The manufacturer, motor carrier, shipper or driver shall pay the civil penalty imposed in the order to the department no later than ten days after the order is final.

D. If a civil penalty is imposed and if the civil penalty is not paid when due, the director shall suspend the registrations of any motor vehicles owned or leased by the manufacturer, shipper or motor carrier or shall suspend the driver license or nonresident operating privilege of the driver.

E. For the purpose of determining the amount of civil penalty for repeat findings of responsibility for the same class of violation, the director may adopt rules categorizing violations of this chapter or violations of rules adopted under this chapter into the following classes:

1. Equipment.

2. Commodities transport, including hazardous materials, hazardous substances or hazardous wastes.

3. Driver, shipper or manufacturer records or requirements.

4. Other records.

F. In addition to any other requirements imposed in this section, the director shall not reinstate any suspended registrations of the motor vehicles of the manufacturer, shipper or motor carrier or any suspended driver license or nonresident operating privilege of the driver, manufacturer, shipper or motor carrier until both of the following conditions are met:

1. All fees prescribed by statute to reinstate the vehicle registration or driving privileges are paid.

2. Any civil penalty that has been imposed is paid.

G. The director shall immediately transfer all monies from civil penalties imposed under this chapter to the state treasurer who shall deposit the monies in the motor carrier safety revolving fund established by section 28-5203.

H. A city, town or county shall not enact an ordinance or resolution imposing civil penalties against any shipper, manufacturer or motor carrier for a motor carrier safety violation.

I. The attorney general shall enforce this section.

§ 28-5239. Judicial review

Decisions of the director are subject to judicial review pursuant to title 12, chapter 7, article 6. The court shall consider only evidence that was presented at the original hearing.

§ 28-5240. Violation; classification; attorney general enforcement

A. In addition to civil penalties imposed under this chapter, a motor carrier, shipper or manufacturer who operates or causes to be operated a motor vehicle in violation of this chapter or who knowingly violates or knowingly fails to comply with any provision of this chapter or with any rule adopted pursuant to this chapter is guilty of:

1. A class 2 misdemeanor for a first offense.

2. A class 1 misdemeanor for a second offense.

3. A class 6 felony for any subsequent offense.

B. The attorney general may enforce this section.

CHAPTER 15

FEES

ARTICLE 1. GENERAL PROVISIONS

§ 28-5401. Disposition of fees

Except as otherwise provided, the director shall transmit fees and taxes collected under this chapter to the state treasurer for deposit in the Arizona highway user revenue fund.

ARTICLE 2. GROSS WEIGHT FEES

§ 28-5431. Definitions

In this article, unless the context otherwise requires:

1. "Declared gross weight" means the gross weight in pounds ascribed to a motor vehicle, trailer, semitrailer or vehicle combination by the applicant for registration.

2. "Gross weight" means the sum of the empty weight in pounds of a motor vehicle combination plus the weight in pounds of the maximum load to be carried on the motor vehicle combination at any one time, except that for tow trucks, gross weight means the sum of the empty weight in pounds of the tow truck plus the weight in pounds of operational supplies and equipment.

3. "Vehicle combination" means a motor vehicle and the trailers and semitrailers that it tows.

§ 28–5432. **Gross weight fees; application; exceptions**

A. This article applies to all of the following:

1. A trailer or semitrailer with a gross weight of ten thousand pounds or less.

2. A motor vehicle or vehicle combination if the motor vehicle or vehicle combination is designed, used or maintained primarily for the transportation of passengers for compensation or for the transportation of property.

3. A hearse, an ambulance or any other vehicle that is used by a mortician in the conduct of the mortician's business.

B. This article does not apply to:

1. A vehicle commonly referred to as a station wagon or to a vehicle commonly known as and referred to by the manufacturer's rating as a three-quarter ton or less pickup truck or three-quarter ton or less van unless such a vehicle is maintained and operated more than one thousand hours in a vehicle registration year for the transportation of passengers or property in the furtherance of a commercial enterprise. An applicant requesting title or registration of a motor vehicle in the name of a commercial enterprise shall pay the fees imposed by this article unless the applicant certifies on the application that the vehicle will not be maintained and operated more than one thousand hours in a vehicle registration year in the furtherance of a commercial enterprise.

2. A trailer or semitrailer with a declared gross weight of less than six thousand pounds, if the trailer or semitrailer is not used in the furtherance of a commercial enterprise.

C. The following motor vehicles, trailers and semitrailers are exempt from the gross weight fee prescribed in section 28–5433:

1. A motor vehicle, trailer or semitrailer that is owned and operated by a religious institution and that is used exclusively for the transportation of property produced and distributed for charitable purposes without compensation. For the purposes of this paragraph, "religious institution" means a recognized organization that has an established place of meeting for religious worship and that holds regular meetings for that purpose at least once each week in at least five cities or towns in this state.

2. A motor vehicle, trailer or semitrailer that is owned and operated by a nonprofit school and that is recognized as being tax exempt by the federal or state government if it is used exclusively for any of the following:

(a) The transportation of pupils in connection with the school curriculum.

(b) The training of pupils.

(c) The transportation of property for charitable purposes without compensation.

3. A motor vehicle, trailer or semitrailer that is owned by a nonprofit organization in this state that presents to the department a form approved by the director of the division of emergency management pursuant to section 26–318.

4. A vehicle that is owned and operated by a foreign government, a consul or any other official representative of a foreign government, by the United States, by a state or political subdivision of a state or by an Indian tribal government.

5. A motor vehicle that is privately owned and operated exclusively as a school bus pursuant to a contract with a school district. If a privately owned and operated school bus is temporarily operated for purposes other than those prescribed in the definition of school bus in section 28–101, the registering officer shall assess and collect a monthly gross weight fee equal to one-tenth of the annual gross weight fee prescribed by section 28–5433 for each calendar month that the motor vehicle is so operated in this state. The registering officer shall not apportion the gross weight fee for a fraction of a calendar month.

§ 28–5433. Gross weight fees; additional registration fees; consolidation

A. In addition to the registration fee required by section 28–703, a person shall pay to the department at the time of application for registration of a vehicle that is subject to this article pursuant to section 28–5432 a commercial registration fee of four dollars and a gross weight fee calculated beginning on the first day of the month following the date of transfer for the declared gross weight of the trailer, semitrailer, motor vehicle or vehicle combination according to the following table:

Gross weight		Weight fee
up	to 8,000	$ 7.50
8,001	to 10,000	36.00
10,001	to 12,000	63.00
12,001	to 14,000	103.00
14,001	to 16,000	121.00
16,001	to 18,000	144.00
18.001	to 20,000	162.00
20,001	to 22,000	198.00
22,001	to 24,000	216.00
24,001	to 26,000	234.00
26,001	to 28,000	288.00
28,001	to 30,000	324.00
30,001	to 32,000	378.00
32,001	to 36,000	414.00
36,001	to 40,000	468.00
40,001	to 45,000	522.00
45,001	to 50,000	576.00
50,001	to 55,000	630.00
55,001	to 60,000	684.00
60,001	to 65,000	738.00
65,001	to 70,000	792.00
70,001	to 75,000	864.00
75,001	to 80,000	918.00

B. If an unregistered vehicle was operated on the highways of this state during the preceding registration year, the director may collect the gross weight fee for the preceding year.

C. The director shall consolidate the gross weight fee prescribed by this section for a vehicle or vehicle combination of more than twelve thousand pounds but less than twenty-six thousand one pounds gross vehicle weight with the motor carrier tax imposed by section 28–5855 for the purpose of reducing administrative activities of motor carriers and of the department. The director shall prepare forms necessary to perform the consolidation.

§ 28–5434. Proration of gross weight fees

For a registration issued after the beginning of the registration year, a person shall pay the fees prescribed in this article reduced by one-twelth for each month of

the year that elapsed since the beginning of the first day of the month following the date of transfer of the vehicle or vehicle combination or the date the vehicle or vehicle combination becomes subject to registration.

§ 28–5435. Increase in gross vehicle weight; additional fee

A. A person may increase the declared gross weight of a vehicle or vehicle combination after the original registration and during the registration year by reregistration of the vehicle or vehicle combination. The person shall pay a fee in addition to the gross weight fee prescribed in this article based on the difference between the fee due at the time of reregistration for the weight class in which the vehicle or vehicle combination was originally registered and the fee due at the time of reregistration for the increased weight class. If during a registration year the declared gross weight of a vehicle or vehicle combination is reduced, there is no reduction or refund allowed for a part of the original weight fee previously paid.

B. A vehicle or vehicle combination that is operated under a special permit allowing excess weight pursuant to section 28–3412 is not required to declare an increased gross weight or to pay a fee ascribed to the increased gross weight pursuant to this article.

§ 28–5436. Reduced gross weight fees; seasonal agricultural work

A. On application, a resident owner of a motor vehicle, trailer or semitrailer that is operated solely in seasonal agricultural work and that is subject to the fees prescribed by section 28–5433 may pay a reduced fee for a period of at least ninety days but less than a full year.

B. The application shall specify a number of thirty day periods. The director shall compute the reduced fee on a basis of one-twelfth of the annual fee prescribed by section 28–5433 for the motor vehicle, trailer or semitrailer multiplied by the number of thirty day periods specified in the application. The operation of the motor vehicle, trailer or semitrailer is valid for the period for which the reduced fees are paid.

C. The resident owner shall pay all other fees and taxes applicable to the motor vehicle, trailer or semitrailer in full without regard to the reduction authorized by this section.

§ 28–5437. Operation with excess weight

A person who operates or who causes, permits or authorizes the operation on the highways of this state of a vehicle singly or in a vehicle combination with a gross weight in excess of the vehicle's or vehicle combination's declared gross weight:

1. Is guilty of a class 2 misdemeanor notwithstanding section 28–3721.

2. Is deemed to have set a new declared gross weight for the vehicle or vehicle combination.

3. Shall reregister the vehicle or vehicle combination and shall pay a fee for the new gross weight or the maximum gross weight allowed by law, whichever is lower, without any allowance or reduction in the fee as provided for in this article or the proportional mileage per cent factor as provided in chapter 3, article 7 or 8 of this title.

ARTICLE 3. HIGHWAY USE FEES

§ 28–5471. Highway use fees; commercial motor vehicles; definition

A. Except as otherwise provided in this article and in addition to all other fees, an owner of a motor vehicle registered in this state under chapter 3, article 7 or 8 of

this title or section 28–1024 shall pay for each motor vehicle or vehicle combination a highway use fee determined according to the following table:

Gross weight	Use fee for 1979 and newer models	Use fee for 1973 through 1978	Use fee for 1972 and older models
75,001 – 80,000	$1,095	$380	$180
70,001 – 75,000	1,040	360	105
65,001 – 70,000	975	335	95
60,001 – 65,000	915	315	90
55,001 – 60,000	860	295	85
50,001 – 55,000	790	270	80
45,001 – 50,000	715	250	70
40,001 – 45,000	635	220	65
36,001 – 40,000	560	195	55
32,001 – 36,000	485	165	50
30,001 – 32,000	405	140	45
28,001 – 30,000	325	115	30
26,001 – 28,000	245	85	25
24,001 – 26,000	190	65	20
22,001 – 24,000	135	50	20
20,001 – 22,000	125	45	15
18,001 – 20,000	115	40	15
16,001 – 18,000	105	40	10
14,001 – 16,000	90	35	10
12,001 – 14,000	80	30	10
10,001 – 12,000	70	25	5
8,001 – 10,000	60	25	5
0 – 8,000	50	20	5

B. For the purposes of this section, "model year" means the year that is assigned to the motor vehicle for vehicle titling purposes.

§ 28–5472. Additional highway use fees; nonresident owners

In addition to the highway use fee pursuant to section 28–5471, a nonresident owner of a foreign vehicle operated in this state and registered under section 28–1024 shall pay a highway use fee determined according to the following table:

Gross weight	Use fee	Use fee for 1978 and older models
75,001 – 80,000	$110	$40
70,001 – 75,000	105	35
65,001 – 70,000	100	35
60,001 – 65,000	90	30
55,001 – 60,000	85	30
50,001 – 55,000	80	30
45,001 – 50,000	70	25
40,001 – 45,000	65	25
36,001 – 40,000	55	20
32,001 – 36,000	50	20
30,001 – 32,000	40	15
28,001 – 30,000	35	15
26,001 – 28,000	25	10
24,001 – 26,000	20	10
22,001 – 24,000	15	8
20,001 – 22,000	15	8

Gross weight	Use fee	Use fee for 1978 and older models
18,001 - 20,000	10	8
16,001 - 18,000	10	8
14,001 - 16,000	10	8
12,001 - 14,000	10	8
10,001 - 12,000	10	8
8,001 - 10,000	8	8
0 - 8,000	8	8

§ 28-5473. Highway use fee; reduction; basis; proration

A. The highway use fee provided by this article is based on the gross weight as declared for the gross weight fee pursuant to section 28-5433.

B. The department shall reduce the highway use fee liability for a registration year provided by this article for a fleet of vehicles proportionally registered pursuant to chapter 3, article 7 or 8 of this title by the amount of vehicle license taxes paid pursuant to section 28-5801 for the same registration year and for the same motor vehicles, trailers and semitrailers in the fleet.

C. The department shall reduce the highway use fee prescribed in this article on a motor vehicle not previously registered or otherwise qualified for operation in this state by one-fourth for each full quarter of the registration year that has expired.

CHAPTER 16

TAXES

ARTICLE 1. MOTOR VEHICLE FUEL TAX

§ 28-5601. Definition of distributor

For the purposes of this article, "distributor" means a person who refines, manufactures, produces, compounds, blends or imports motor vehicle, aviation or liquid use fuel in the original package or container or otherwise, including a person who imports motor vehicle, aviation or liquid use fuel by a pipeline or in any other manner but excluding a person who imports motor vehicle, aviation or liquid use fuel in the fuel tank of a motor vehicle or aircraft.

§ 28-5602. Enforcement

The highway patrol and its officers have authority to enforce this article.

§ 28-5603. Motor vehicle fuel testing

A. The director may take samples of any liquid believed to be motor vehicle fuel or aviation fuel and may make or cause to be made an analysis of the liquid.

B. The chemistry department or other qualified department of the university of Arizona shall:

1. Analyze samples on request of the director.

2. Promptly furnish to the director a full report of the analysis without cost.

§ 28-5604. Reward for detecting violations

The department may set up in its budget for the fiscal year an item from which a person, other than a state officer or employee, who directs the attention of the director to a distributor who has failed to file the required reports and has failed to pay the tax imposed by this article or section 28-8344 may be paid an amount that in

the discretion of the department is deemed proper but that does not exceed ten per cent of the amount of the tax, penalty and interest ultimately collected from the distributor as a result of the information.

§ 28–5605. Violations; classification

A. Unless another classification is specifically prescribed in this article, a person is guilty of a class 1 misdemeanor who either:

1. Knowingly refuses or fails to make a statement, report or return required by this article.

2. Knowingly makes a false statement in a report to the director or in connection with an application for refund of a tax.

3. Knowingly collects or causes to be repaid to the person or to another person, either directly or indirectly, a refund of the tax without being entitled to the refund.

4. Engages in business in this state as a distributor without being the holder of a license to engage in the business.

5. Sells motor vehicle fuel or aviation fuel the person purchased from another person other than a duly licensed distributor on which the tax imposed by this article has not been paid.

B. Each day or part of a day during which a person engages in business as a distributor without being the holder of a license is a separate offense within the meaning of this section.

§ 28–5606. Motor vehicle fuel tax; rate

In addition to all other taxes provided by law, each distributor shall pay to the state a license tax of eighteen cents for each gallon of motor vehicle fuel possessed, refined, manufactured, produced, blended or compounded in this state by the distributor or imported by the distributor, whether in the original package or container in which it was imported or otherwise.

§ 28–5607. Fuel imported by other than licensed distributor; payment of tax; fee; import limitation

A. A person who is not licensed as a distributor and who imports motor vehicle fuel from a point outside this state to a point in this state shall pay both:

1. The license tax at a department facility approved by the director before importing the fuel.

2. A twenty-five dollar administrative processing fee.

B. A person who is not licensed as a distributor, who causes motor vehicle fuel or aviation fuel to be transported from a point outside this state to a point in this state and who fails to pay the tax at the time the tax payment is due shall pay to the director the following:

1. The tax required by section 28–5606 or 28–8344.

2. A penalty equal to the tax required by section 28–5606 or 28–8344.

3. Interest of twelve per cent per year on the tax.

C. A person who is not licensed as a distributor may not import more than sixteen thousand gallons of motor vehicle fuel per calendar year.

§ 28–5608. Fuel imported in fuel tanks; violation; classification

A. An owner or operator of a motor vehicle or aircraft who imports motor vehicle fuel or aviation fuel into this state in the fuel tank or tanks of a motor vehicle or aircraft in a quantity exceeding the capacity of the fuel tank or tanks of that vehicle

or aircraft according to the manufacturer's stock specifications shall pay to the director, on demand of the director, the license tax required of distributors on the excess motor vehicle or aviation fuel.

B. A person who violates this section is guilty of a class 2 misdemeanor.

§ 28-5609. Railroad common carrier exemption; exception; report

A. Except for section 28-5607, subsection B and sections 28-5602, 28-5603, 28-5608, 28-5610 through 28-5613 and 28-5622 through 28-5625 and this section, this article does not apply to railroad common carriers that are not engaged in the business of a distributor for pecuniary gain.

B. A railroad common carrier:

1. If it imports motor vehicle fuel or aviation fuel, shall make a verified report to the director on forms prescribed and furnished by the director, on or before the twenty-fifth day of the next succeeding month, showing the amount of fuel it has imported.

2. If it sells, otherwise disposes of or uses any fuel it has imported in a motor vehicle operated on the highways of this state or in an aircraft, shall make a verified report to the director on forms prescribed and furnished by the director, on or before the twenty-fifth day of the next succeeding month, showing either:

(a) The name of the person or persons to whom the fuel was sold or otherwise disposed of.

(b) If used by it in a motor vehicle operated on the highways of the state or in an aircraft, a description of the vehicle or aircraft in which the fuel was used.

3. Shall pay to the director at the time the report is made the tax required of distributors by this article.

4. Shall furnish to the director other information concerning motor vehicle fuel or aviation fuel imported by it as the director requires.

5. May be required to file a bond with the director in an amount fixed by the director to ensure compliance with this section.

§ 28-5610. Tax exemptions; interstate movement; military use

Motor vehicle fuel or aviation fuel that is moving in interstate or foreign commerce and that is not destined or diverted to a point in this state or motor vehicle fuel or aviation fuel that is sold to the United States armed forces for use in ships or aircraft or for use outside this state is not subject to the payment of license taxes required by this article or the tax prescribed in section 28-8344.

§ 28-5611. Refunds

A. Except as otherwise provided in subsection C, on application to the director pursuant to this article and if subsection B is complied with, a person who buys and uses motor vehicle fuel shall receive a refund in the amount of the tax if the person pays the tax on the fuel and either:

1. Uses the fuel other than in:

(a) A motor vehicle on a highway in this state.

(b) Watercraft on the waterways of this state.

(c) A motor vehicle operating on a transportation facility or toll road pursuant to chapter 22 of this title.

2. Buys aviation fuel for use in aircraft applying seeds, fertilizer or pesticides.

3. Buys motor vehicle fuel or aviation fuel and exports it.

4. Loses the fuel by fire, theft or other accident.

B. The director shall accept only one application for refund of motor vehicle fuel or aviation fuel taxes for any one person within a twelve month period if the total allowable gallonage included in the application is less than two hundred gallons.

C. If a claim for refund is based on the use of motor vehicle fuel in aircraft, five cents of the license tax collected on each gallon of motor vehicle fuel claimed shall remain in the state aviation fund, and the department shall refund the remainder of the tax pursuant to this section.

§ 28–5612. Refund procedure; violation

A. If motor vehicle fuel is sold to a person who claims the person is entitled to a refund of the tax because the motor vehicle fuel is not purchased for use in a motor vehicle or watercraft, the seller shall:

1. Prepare in triplicate on a form prescribed by the director an invoice setting forth:

(a) The name and address of the purchaser.

(b) The number of gallons of motor vehicle fuel sold.

(c) The fact that the fuel was used in aircraft.

(d) Other information the director requires.

2. Give the original invoice to the purchaser at the time of sale.

3. Mail the duplicate to the director not later than Tuesday of the week immediately after the sale.

B. A person entitled to a refund of the motor vehicle fuel tax or aviation fuel tax shall receive a refund if the person does all of the following:

1. Files an application with the director within twelve months after the date of purchase or invoice of the motor vehicle fuel or aviation fuel for which a refund is claimed.

2. Makes an application on a form furnished by the department that requests only the following information:

(a) Name and address of the claimant.

(b) Period covered by the claim showing dates.

(c) Location of equipment.

(d) Gallons on which a refund is claimed.

(e) Amount of the refund claimed that is not made under oath but that contains or is accompanied by a written declaration that it is made under penalties of perjury and complies completely with the provisions of section 28–5611 relating to refunds.

3. If a claim for refund for motor vehicle fuel or aviation fuel exported is filed, makes satisfactory proof of export to the director and files the claim within three months after the date of export in the form and containing the information required by the director.

4. Submits the original invoice or an acceptable duplicate showing the purchase with the application.

C. It is unlawful for a person to knowingly operate a motor vehicle on the highways or a watercraft on the waterways using motor vehicle fuel that has been sold to a person making the claim and receiving the invoice provided in subsection A of this section on the motor vehicle fuel used.

D. In addition to other penalties prescribed by law, the director shall not give a person who violates this section a refund on motor vehicle fuel or aviation fuel purchased during the six months succeeding the date the director advises the person by mail of the director's discovery of the violation.

E. A person whose right to a refund is suspended may bring an action in superior court in Maricopa county to set aside the suspension.

F. The director may recover excess refunds from the person to whom the refund was made. The director shall assess the claimant the amount of the excess refund and interest. The director shall compute interest at one per cent per month of the amount of excess refund due beginning on the date of refund and until the date the assessment is paid.

§ 28–5613. Collection

A. In an action for the collection of the motor vehicle fuel tax or aviation fuel tax or interest or penalties imposed in connection with the taxes, an assessment by the director of the amount of the tax due or interest or penalties due this state is prima facie evidence of the claim of the state, and the burden of proof is on the person or distributor to show that the assessment was incorrect and contrary to law.

B. The attorney general shall prosecute an action to collect any delinquent tax or penalty.

§ 28–5614. Assessments; hearing

A. Within fifteen days after service of notice, a distributor or person against whom the director has made an assessment may make a written request for a hearing in the office of the director to show cause why the assessment is in error or to present any other relevant evidence. If the person against whom the assessment was served or its agent does not request a hearing within fifteen days, the assessment becomes due. The assessment is delinquent unless paid fifteen days after becoming due.

B. After consideration of the evidence presented at the hearing, the director shall serve notice in writing to the appellant of the director's finding and order. Within ten days after service of notice of the finding and order, the appellant may request in writing a rehearing in the matter.

C. If the appellant or its agent does not request a rehearing, the assessment becomes due ten days after notice. If the appellant requests a rehearing and the director denies the request for rehearing, the assessment becomes due ten days after notice of denial. The assessment is delinquent unless it is paid within fifteen days after becoming due.

D. If a rehearing is granted, the director shall serve notice in writing after the rehearing to the appellant of the director's findings and order. The assessment becomes due ten days after notice of the findings and order and is delinquent unless it is paid within fifteen days after becoming due.

§ 28–5615. Payment; distribution

A. The license tax that is accrued in any calendar month or the aviation fuel tax that is imposed pursuant to section 28–8344 and that is accrued in any calendar month shall be paid on or before the twenty-fifth day of the next succeeding calendar month to the director.

B. On payment, the director shall promptly:

1. Distribute the amount of money collected as a license tax on sales of motor vehicle fuel used in propelling watercraft pursuant to section 28–5616 beginning with the month following the conclusion of the survey conducted pursuant to section 28–5616.

2. Deduct all exemptions and refunds and transmit all remaining monies to the state treasurer for deposit in the Arizona highway user revenue fund or the state aviation fund as determined from the reports filed pursuant to section 28–5618.

§ 28–5616. Fuel used in watercraft; survey; costs

A. Every three years, the directors of the department of transportation, the Arizona game and fish department and the Arizona state parks board shall have a survey conducted by a public or private agency to determine at least the following information:

1. The percentage of the total license taxes paid on motor vehicle fuel that is used for propelling watercraft.

2. The number of days of recreational watercraft use in each county.

B. The survey shall be completed by the fiscal year ending in 1982 and every three years thereafter.

C. The director shall:

1. Use the percentage determined pursuant to subsection A of this section to determine the amount of license taxes collected on the sale of fuel used in watercraft.

2. Except as provided in subsection D of this section, transmit the amount determined pursuant to paragraph 1 of this subsection on a monthly basis to the state treasurer for deposit in the state lake improvement fund to be distributed pursuant to section 5–382.

D. Of the percentage of motor vehicle tax paid on fuel used to propel watercraft, the department of transportation shall retain:

1. One per cent to defray administrative expense.

2. An amount equal to the expenses of the survey provided for in subsection A of this section.

§ 28–5617. Transfer; off-highway vehicle recreation fund

Fifty-five one hundredths of one per cent of the total license taxes on motor vehicle fuel shall be transferred from the monies collected pursuant to section 28–5606 to the off-highway vehicle recreation fund established by section 28–2586 on a monthly basis.

§ 28–5618. Report requirements; distributors

On or before the twenty-fifth day of each month, a distributor shall:

1. File with the director a true and verified statement on forms prescribed and furnished by the director showing:

(a) The total number of gallons of motor vehicle fuel or aviation fuel refined, manufactured, produced, blended, compounded, imported or acquired during the preceding calendar month.

(b) The number of gallons of motor vehicle fuel or aviation fuel sold or otherwise disposed of by the distributor for use in each of the several counties of this state.

(c) The total number of gallons of motor vehicle fuel included in paragraph 1 that is intended for use in aircraft.

(d) Other information the director requires.

2. In addition to making the statement required in paragraph 1 and if the distributor received an interstate shipment of motor vehicle fuel or if an intercounty delivery of motor vehicle fuel was received during the preceding month, report to the director on forms prescribed and furnished by the director:

(a) The quantity and particular description of the fuel received by interstate shipment and delivered intercounty.

(b) The name of the consignor and consignee.

(c) The date shipped.

(d) The date received.

(e) How it was shipped.

(f) Other information the director requires.

§ 28–5619. Records required; distributors and buyers; violation; classification

A. A distributor shall maintain and keep for three years records of motor vehicle fuel or aviation fuel received, acquired, used, sold and delivered in this state by the distributor, invoices, bills of lading and other pertinent records and papers required by the director for the reasonable administration of this article.

B. A person purchasing motor vehicle fuel taxable under this article or aviation fuel taxable under section 28–8344 from a distributor for the purpose of resale shall maintain and keep for one year a record of motor vehicle fuel or aviation fuel received, the amount of tax paid to the distributor as part of the purchase price, delivery tickets, invoices, bills of lading and other records the director requires.

C. A person who violates this section is guilty of a class 1 misdemeanor.

§ 28–5620. Records and equipment inspections; hearings; use restrictions; violation; costs

A. The director or a deputy, employee or agent authorized by the director may examine during usual business hours records, books, papers, storage tanks and any other equipment of a distributor, purchaser, seller, refund claimant or carrier pertaining to motor vehicle fuel or aviation fuel imported, received, sold, shipped, delivered or used to either:

1. Verify the truth and accuracy of a statement, report, return or claim.

2. Ascertain whether the tax imposed by this article or section 28–8344 has been paid.

3. Determine the financial responsibility of the distributor for the payment of the taxes imposed by this article or section 28–8344.

4. Determine the validity of a refund.

B. In the enforcement of this article, the director may hold hearings, take testimony of persons, issue subpoenas for the purpose of taking testimony, compel attendance of witnesses and conduct investigations the director deems necessary.

C. Except as prescribed in subsection D of this section or except if required to do so by a court, it is unlawful for a person to disclose information acquired by the director or an agent under this section. This subsection does not mean that the information or evidence is privileged if used by this state or an officer of this state in an action for collection of the tax or a prosecution for a violation of this article.

D. Notwithstanding subsection C of this section, the department of transportation shall provide information to the department of weights and measures to determine compliance with title 41, chapter 15, article 7. A gasoline dispensing site shall provide the department of transportation with information the director of the department of transportation requests and in the form that the director of the department of transportation determines is necessary for the purposes of this subsection.

E. The director may prescribe forms for required reports or claims for refund or forms of record to be used by distributors.

F. A distributor may maintain records required by this article in this state. If the records are maintained outside this state and on request of the director, the distributor shall make the records available at a location in this state designated by the director. If the records are maintained outside this state and will not be made available at the location designated by the director, the director may require the

distributor to whom a records request has been made to pay in advance costs reimbursable for subsistence and travel expenses for the director or an agent of the director to conduct the examination of the records.

§ 28–5621. **Failure to report or pay tax; penalties; interest; transmittal date**

A. If a distributor fails to submit the monthly report to the director on or before the twenty-fifth day of the month, fails to submit the data or information required under this article in the monthly report or fails to pay the amount of taxes due when payable, the distributor shall pay interest on the unpaid tax at the rate of twelve per cent per year from the due date until paid and:

1. A penalty of ten per cent shall be added to any tax not paid on or before the day prescribed for the payment of the tax, if the tax is paid within thirty days after becoming due.

2. A penalty of fifteen per cent of the tax shall be added to the ten per cent penalty prescribed in paragraph 1, if the tax is not paid within thirty days after becoming due.

B. In addition to the penalty provided by subsection A, a person who fails to file a report required by this section when due shall pay an additional penalty of twenty-five dollars.

C. If a report or remittance required by this article is transmitted through the United States mail and is not received by the director until after the date on which the report is required to be filed or the payment was required to be made and if the envelope in which the report or remittance is enclosed has a post office cancellation mark dated on or before that date, on receipt of the envelope, the director shall treat the report or remittance as if it had been received on the required date.

§ 28–5622. **Tax estimate**

If a distributor neglects or refuses to make and file a report for any calendar month as required by this article, or files an incorrect or fraudulent report, the director shall determine from information obtainable in the director's office or elsewhere the number of gallons of motor vehicle fuel or aviation fuel with respect to which the distributor has incurred liability under this article or section 28–8344.

§ 28–5623. **Interstate carriers; reports; fuel delivery**

A. A railroad company, street, suburban or interurban railroad company, pipeline company, common carrier and person transporting motor vehicle fuel or aviation fuel by any manner to points in this state from any point outside this state shall report to the director on forms prescribed by the director all deliveries of motor vehicle fuel or aviation fuel so transported.

B. The report shall:

1. Cover monthly periods and shall be submitted monthly within twenty-five days after the close of the month covered by the report.

2. Show the name and address of either:

(a) The person to whom the deliveries of motor vehicle fuel or aviation fuel have in fact been made.

(b) The originally named consignee if the fuel has been delivered to other than the originally named consignee.

3. Show the point of origin, the point of delivery and the date of delivery.

4. Show either:

(a) The number and initials of each tank car and the number of gallons contained in the tank car if shipped by rail.

(b) The license number of each tank truck and the number of gallons contained in the tank truck if transported by truck.

(c) If delivered by other means, the manner in which the delivery is made.

5. Contain other and additional information relative to shipments of motor vehicle fuel or aviation fuel as the director requires.

§ 28–5624. Interstate transportation of fuel by motor vehicle; report; violation; penalties

A. A person transporting motor vehicle fuel or aviation fuel from a point outside this state to a point in this state by means of a motor vehicle operated on a highway of this state shall report to the director on a form prescribed by the director. The person transporting the fuel shall leave a copy of the report with the first highway checking station through which the motor vehicle passes on entering this state or shall mail a copy of the report to the director from the post office located in the first city or town in this state through which the shipment passes. Two copies of the report shall accompany the shipment at all times while the shipment is being transported on the highways of this state.

B. The report shall include:

1. The date of shipment of the fuel.

2. The quantity and particular description of the fuel.

3. The names of the consignor and consignee.

4. The particular description of the motor vehicle in which the fuel is transported, including the license plate or plates assigned to the motor vehicle.

5. Other information as the director requires.

C. A distributor who transports motor vehicle fuel or aviation fuel from a point outside this state to a point in this state and who fails to make the report at the time and in the manner required shall pay to the director a penalty of twenty-five dollars for each shipment not reported in addition to payment of the license tax required by section 28–5606 or the tax prescribed in section 28–8344.

D. A distributor shall maintain a set of manifest forms issued by the department. The distributor shall record the information required under subsections A and B of this section on the manifest forms. If on inspection of the books and records of a distributor any of the manifest forms issued by the department are missing and cannot be accounted for in the books and records of the distributor, the distributor shall pay to the director a penalty of twenty-five dollars for each incomplete set of manifest forms.

§ 28–5625. Interstate carriers; possession by waybills or manifest; inspection

A. A person transporting motor vehicle fuel or aviation fuel in interstate commerce shall possess at all times in the vehicle in which the fuel is transported waybills or a manifest disclosing the consignor, consignee, date of shipment and class and amount of fuel shipped.

B. The director may inspect the waybills or manifest at any time.

§ 28–5626. Distributor license required

It is unlawful for a distributor to import, receive, use, sell or distribute motor vehicle fuel or aviation fuel or to engage in business in this state as a distributor, unless the distributor has an annual license issued by the director to engage in that business.

§ 28–5627. **License application**

A. To obtain a license, a distributor shall file with the director by February 1 of each year an application under oath and in the form the director prescribes including:

1. The name under which the distributor will transact business in this state.

2. The location and address of the distributor's principal office or place of business in this state.

3. The name and complete residence address of either:

(a) The owner.

(b) The partners, if the distributor is a partnership.

(c) The principal officers, if the distributor is a corporation or association.

4. If the distributor is a corporation or association organized under the laws of another state, territory or country, a certified copy of the certificate of license issued by the corporation commission showing that the corporation or association is authorized to transact business in this state.

5. A bond of the character stipulated and in the amount provided for in section 28–5631.

6. A filing fee of fifty dollars.

B. The director shall not issue a license unless the application is accompanied by the required bond or evidence that the bond exists.

C. The director shall keep and file all applications and bonds with an alphabetical index of the applications and bonds and a record of all licensed distributors.

§ 28–5628. **Refusal to issue license**

If an application for a license to transact business as a distributor in this state is filed by a person whose license has previously been cancelled for cause by the director or if the director is of the opinion that the application is not filed in good faith or that the application is filed by some person as a subterfuge for a real person in interest whose license or registration has previously been cancelled for cause by the director, the director may refuse to issue a license to transact business as a distributor in this state. The director shall give the applicant five days' notice in writing of the hearing. The applicant may appear in person or by counsel and present testimony.

§ 28–5629. **License issued**

If the application is in proper form and has been accepted for filing, if the filing fee is paid and if the bond is accepted and approved, the director shall issue to the distributor a license to transact business as a distributor in this state, subject to cancellation as provided by law.

§ 28–5630. **License; assignability; display**

A license issued to a distributor under section 28–5629:

1. Is not assignable.

2. Is valid only for the distributor in whose name it is issued.

3. Shall be displayed conspicuously in the principal place of business of the distributor in this state.

§ 28-5631. **Distributor's bond; amount; failure of security**

A. A distributor shall file a bond with the director on a form approved by the director with a surety company authorized by the corporation commission to transact business in this state as surety on the bond. The distributor shall be the principal obligor, and this state shall be the obligee on the bond. The bond shall be conditioned on the prompt filing of true reports and the payment by the distributor to the director of all motor vehicle fuel taxes or aviation fuel taxes that are levied or imposed by this state, together with all penalties and interest on the taxes, and generally on faithful compliance with this article.

B. The director shall fix the total amount of the bond required of a distributor and may increase or reduce the amount at any time, subject to the limitations provided in this article. In fixing the total amount of the bond required of a distributor, the director shall require a bond of an amount equal to one and one-half times the director's estimate of the distributor's monthly license tax, determined in a manner the director deems proper. Subject to terms and conditions the director prescribes, a distributor may undertake to pay on each Tuesday the license tax accruing on all of the motor vehicle fuel or the tax on all of the aviation fuel refined, manufactured, produced, blended, compounded, imported or acquired during the week ending the preceding Saturday, and if a distributor so binds the director shall fix the distributor's bond in an amount equal to one and one-half times the estimated weekly tax accruing on the motor vehicle fuel or aviation fuel to be refined, manufactured, produced, blended, compounded, imported or acquired by the distributor, determined in a manner the director deems proper. The total amount of the bond required of a distributor shall be at least one thousand but not more than one hundred thousand dollars.

C. If liability on the bond filed by the distributor with the director is discharged or reduced or if in the opinion of the director a surety on the bond given has become unsatisfactory or unacceptable, the director may require the distributor to file a new bond with satisfactory sureties in the same amount. If the distributor fails to file a new bond as required, the director shall cancel the license of the distributor immediately. If the new bond is furnished by the distributor, the director shall cancel and surrender the bond for which the new bond is substituted.

D. If on a hearing, of which the distributor was given five days' notice in writing mailed to the distributor's last known address, the director decides that the amount of the existing bond is insufficient to ensure payment to this state of the amount of the tax, penalties and interest for which the distributor is or may become liable, the distributor, on the written demand of the director, shall immediately file an additional bond in the same manner and form with a surety company on the bond approved by the director in an amount determined by the director as necessary to secure at all times payment by the distributor of all taxes, penalties and interest due under this article. If the distributor fails to file an additional bond as required, the director shall cancel the license of the distributor immediately.

E. A surety on a bond furnished by a distributor shall be released and discharged from all liability to this state accruing on the bond sixty days after the date on which the surety files with the director a written request to be released and discharged. The request does not relieve, release or discharge the surety from liability already accrued or from liability that accrues before the expiration of the sixty day period. On receipt of notice of the request, the director shall promptly notify the distributor who furnished the bond and shall cancel the license of the distributor immediately, unless the distributor, on or before expiration of the sixty day period, files with the director a new bond with a surety company satisfactory to the director in the amount and form provided in this section. If the new bond is furnished by the distributor, the director shall cancel and surrender the bond for which the new bond is substituted.

F. This section does not relieve a distributor of the distributor's duty to file the verified monthly report required by this article.

§ 28–5632. License revocation

If a distributor undertakes to pay the tax in weekly installments as provided in section 28–5631 and fails to pay the full amount of the bond pursuant to the terms and conditions prescribed by the director, the director may revoke the distributor's license immediately unless the distributor complies immediately with the requirements of section 28–5631 relating to the filing of a bond in an amount equal to one and one-half times the director's estimate of the distributor's monthly tax.

§ 28–5633. License cancellation

A. The director may cancel the license of a distributor and notify the distributor in writing of the cancellation by certified mail, mailed to the last known address of the distributor appearing in the files of the department, if the distributor either:

1. Files a false report of data or information required by this article.

2. Fails, refuses or neglects to file a monthly report or any other report required by this article.

3. Fails, refuses or neglects to pay the full amount of the tax required by this article or section 28–8344.

B. The director may cancel a license that is issued to any distributor and that becomes effective sixty days after the date of receipt of the written request of the distributor for the cancellation. The director shall not cancel a license on request of a distributor unless the distributor pays, before the date of the cancellation, all taxes payable under this article or section 28–8344 and all penalties and fines accruing by reason of the distributor's failure to make accurate reports as required by this article or to pay the taxes or penalties.

C. The director may cancel the license of a distributor on investigation and sixty days' notice mailed to the last known address of the distributor if the director determines that the person to whom the license has been issued is no longer engaged in the business of a distributor and has not been engaged in the business of a distributor for six months before the cancellation.

§ 28–5634. Bond cancellation

If the license of a distributor is cancelled by the director pursuant to section 28–5633 and if the distributor has paid all taxes due and payable by the distributor as required by this article or section 28–8344 on the receipt, sale or use of motor vehicle fuel or aviation fuel and has paid all interest and penalties accruing by reason of the distributor's failure to make accurate reports or to pay the tax and interest and penalties, the director shall cancel and surrender the bond filed by the distributor.

§ 28–5635. Discontinuance, sale or transfer of business; violation; classification

A. When a distributor ceases to engage in business as a distributor in this state and discontinues, sells or transfers the business:

1. The distributor shall notify the director in writing at least ten days before the discontinuance, sale or transfer takes effect. The notice shall give:

(a) The date of discontinuance, sale or transfer of the business.

(b) The name and address of the purchaser or transferee of the business.

2. All taxes, penalties and interest not then due and payable under this article or section 28-8344 are due and payable concurrently with the discontinuance, sale or transfer. Concurrent with the discontinuance, sale or transfer, the distributor shall:

(a) Make a report.

(b) Pay all taxes, interest and penalties.

(c) Surrender to the director the license issued to the distributor by the director.

B. Unless the notice is given to the director, the purchaser or transferee is liable to this state for the amount of all taxes, penalties and interest accrued under this article or section 28-8344 against the distributor who is selling or transferring the distributor's business on the date of the sale or transfer but only to the extent of the value of the property and business that is acquired from the distributor.

C. A person who violates this section is guilty of a class 1 misdemeanor.

ARTICLE 2. USE FUEL TAX

§ 28-5701. Definitions

In this article, unless the context otherwise requires:

1. "Certified bulk purchaser" means a person who both:

(a) Consumes more than eighty per cent of the person's total liquid use fuel acquired in this state in a nontaxable manner.

(b) The director has authorized to purchase liquid use fuel in bulk quantities from a licensed distributor without the payment of the liquid use fuel tax at the time of purchase.

2. "Distributor" means a person who refines, manufactures, produces, compounds, blends or imports into or exports from this state liquid use fuel in the original package or container or otherwise, including a person who imports liquid use fuel by a pipeline or in any other manner and who is responsible for the payment of the use fuel tax on all such gallons except those gallons sold to a certified bulk purchaser or another licensed distributor but excluding a person who imports use fuel in the fuel tank of a motor vehicle.

3. "Excise tax" means the tax imposed by this article on use fuel, including any penalties and interest on the tax.

4. "Fuel tank" means a receptacle on a motor vehicle from which fuel is supplied for the propulsion of the vehicle, excluding a cargo tank but including a separate compartment of a cargo tank used as a fuel tank and an auxiliary tank or receptacle of any kind from which fuel is supplied for the propulsion of the vehicle, whether or not the tank or receptacle is directly connected to the fuel supply line of the vehicle.

5. "Gaseous use fuel" includes all nonliquid use fuels, including liquid propane gas, propane, butane or compressed natural gas, that are used or suitable for use to propel vehicles, except gaseous fuels subject to the tax imposed by article 1 of this chapter.

6. "Highway" means any way or place in this state of whatever nature that is maintained by public monies and that is open to the use of the public for purposes of vehicular travel, including a highway under construction.

7. "In this state" means any way or place within the exterior limits of the state of Arizona but excludes all territory within these limits that is owned by or ceded to the United States of America.

8. "License" means a use fuel tax license.

9. "Liquid use fuel" means all liquid fuels, including diesel and kerosene, that are used or suitable for use to propel vehicles, except liquid fuels that are subject to the tax imposed by article 1 of this chapter.

10. "Motor vehicle" means a self-propelled vehicle required to be licensed or subject to licensing for operation on a highway.

11. "Person" means an individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver or syndicate, this state, any county, city, town, district or other subdivision of this state, or any other group or combination acting as a unit.

12. "Restricted vendor" includes a person who places or causes to be placed use fuel for which the person has not paid a tax from bulk storage located in this state into the fuel tank of a motor vehicle owned or operated by the person.

13. "Road tractor" means a motor vehicle that is designed and used for drawing other vehicles and that is not constructed to carry either a load independently or any part of the weight of a vehicle or load so drawn.

14. "Sell" includes a transfer of title or possession, exchange or barter in any manner or by any means.

15. "Service station" means a place operated primarily for the purpose of delivering motor vehicle fuel into the fuel tanks of motor vehicles.

16. "Use" includes the placing of fuel into any receptacle on a motor vehicle from which fuel is supplied for the propulsion of the vehicle unless the operator of the vehicle establishes to the satisfaction of the director that the fuel was consumed for a purpose other than to propel a motor vehicle on a highway of this state and, with respect to fuel brought into this state in any such receptacle on a use class motor vehicle, the consumption of the fuel in this state. A person who places fuel in a receptacle on a motor vehicle of another who holds a valid use fuel tax license is not deemed to have used the fuel.

17. "Use class motor vehicle" means a motor vehicle that uses use fuel on a highway of this state and that is a road tractor, a truck tractor, a truck having a declared gross vehicle weight of more than twenty-six thousand pounds or having more than two axles or a passenger carrying motor vehicle designed to seat more than twenty occupants.

18. "Use fuel" includes all gases and liquids used or suitable for use to propel motor vehicles, except fuels that are subject to the tax imposed by article 1 of this chapter.

19. "User" includes a person who, within the meaning of the term use as defined in this section, uses fuel in a use class motor vehicle.

20. "Vendor" includes a person who sells use fuel in this state and who places the fuel or causes the fuel to be placed into any receptacle on a motor vehicle from which receptacle fuel is supplied for the propulsion, including a service station dealer, a broker and a user who sells use fuel to others.

§ 28-5702. Enforcement powers

A. In the enforcement of this article, the director may:

1. Hold hearings.

2. Take testimony.

3. Issue subpoenas and compel attendance of witnesses for the purpose of taking testimony.

4. Conduct investigations the director deems necessary.

5. Prescribe the forms on which reports are made to the director and other forms and information the director deems necessary.

6. Require periodic submission of information from a person dealing in, transporting or storing use fuel.

B. If a witness fails to appear at the time and place designated in the subpoena by the director, fails to answer questions relating to the subject matter of the inquiry before the director or fails to produce a document directed by the director to be produced, by an affidavit setting forth the facts, the director may apply to the superior court in the county where the hearing is held, and the court shall proceed as though the failure or refusal had occurred in an action pending before it.

C. The director, the director's duly appointed agents and the highway patrol and its officers have authority to enforce this article.

§ 28–5703. **Cooperative agreements; definition**

A. Subject to sections 28–5935 through 28–5938, in lieu of the requirements of this article with respect to licensing, bonding, reporting and auditing, the director may enter into a cooperative agreement with another state or states for the administration of the tax imposed by this article. An agreement, arrangement, declaration or amendment is not effective until stated in writing and filed with the department.

B. The agreement may provide for:

1. Determining the base state for users.

2. Users records requirements.

3. Audit procedures.

4. Exchange of information.

5. Persons eligible for tax licensing.

6. Defining qualified motor vehicles.

7. Determining if bonding is required.

8. Specifying reporting requirements and periods, including defining uniform penalty and interest rates for late reporting.

9. Determining methods for collecting and forwarding motor fuel taxes and penalties to another jurisdiction.

10. Other provisions to facilitate the administration of the agreement.

11. Each state to audit the records of persons based in the state to determine if the motor fuel taxes due each state are properly reported and paid.

C. As required by the agreement, the director may forward to officers of another state any information in the director's possession relative to the manufacture, receipt, sale, use, transportation or shipment of motor fuels by any person. The director may disclose to officers of another state the location of offices, motor vehicles and other real and personal property of users of motor fuels.

D. Each state shall forward the findings of the audits performed on persons based in the state to each state in which the person has taxable use of motor fuels. For persons who are not based in this state and who have taxable use of motor fuel in this state, the director shall serve the audit findings received from another state in the form of an assessment on the person as though an audit was conducted by the director.

E. An agreement entered into under this section does not preclude the director or the director's appointed representatives from auditing the records of a person covered by this article and article 1 of this chapter.

F. The legal remedies for a person served with an order or assessment under this section are as prescribed in sections 28–5723, 28–5729 and 28–5746.

G. If the director enters into an agreement under this section and the provisions set forth in the agreement are in conflict with any rules adopted by the director relating to this article and article 1 of this chapter, the agreement provisions prevail.

If the agreement is in conflict with the requirements for disclosure of information prescribed by sections 28–5935 through 28–5938, sections 28–5935 through 28–5938 prevails.

H. For the purposes of this section, "motor fuels" includes motor vehicle fuel as defined in section 28–101.

§ 28–5704. Cumulative remedies

The remedies of this article are cumulative. An action taken by the director shall not be construed to be an election on the part of the state or its officers to pursue any remedy to the exclusion of any other remedy provided in this article.

§ 28–5705. Vehicle registration; cab card or license requirement

A. Before registering a road tractor, truck tractor, truck having more than two axles or passenger carrying vehicle designed to seat more than twenty occupants and before issuing a license pursuant to chapter 3 of this title, the registering or licensing official shall determine from the applicant whether or not a motor vehicle sought to be registered or in connection with which the license is sought is propelled by a fuel the use of which is subject to the excise tax imposed by this article.

B. If the vehicle is propelled by a fuel the use of which is taxable under this article, the registering or licensing official shall not complete the registration or issue the license until either:

1. The applicant produces a valid cab card.

2. The official has been advised by the director that the applicant has a valid use fuel tax license.

§ 28–5706. Certified bulk purchaser; prohibition

A certified bulk purchaser shall not sell, trade or barter liquid use fuel.

§ 28–5707. Violation; classification

A. Unless another classification is prescribed in this article, a person is guilty of a class 2 misdemeanor who:

1. Refuses to make a report required by this article.

2. Knowingly makes a false statement in a report or in connection with a claim for refund filed under this article.

3. Knowingly collects, attempts to collect or causes to be repaid to the person or to another person a refund of any amount paid to the state under this article without being entitled to the refund.

4. Uses fuel on a highway in violation of this article.

5. Otherwise violates this article.

B. Each day or part of a day during which a person uses fuel on a highway in violation of this article is a separate offense.

§ 28–5708. Use fuel tax; rate

To partially compensate this state for the use of its highways, an excise tax is imposed on use fuel used in the propulsion of a motor vehicle on a highway in this state at the same rate per gallon as the motor vehicle fuel license tax prescribed in section 28–5606, except that the use fuel tax on clean burning fuel is as prescribed by section 28–5709.

§ 28–5709. Clean burning use fuel tax; reports; reimbursement of monies; definition

A. The use fuel tax on clean burning fuel is one cent per gallon.

B. On the fifteenth day of each month, the director shall:

1. Determine the number of gallons of clean burning fuel sold in this state during the preceding month.

2. Calculate the loss of revenues to the highway user revenue fund by multiplying the number of gallons sold for that month by the existing use fuel tax rate.

C. The director of the department of transportation shall notify the department of environmental quality of the amount of the loss of revenues determined pursuant to subsection B, and the department of environmental quality shall allocate and the state treasurer shall reimburse this amount to the highway user revenue fund from the air quality fund established by section 49–551.

D. If the director determines that the amount of monies that would have been generated if clean burning fuel had been subject to the existing use fuel tax equals two hundred fifty thousand dollars for any prior twelve month period or if the amount of these monies equals two hundred thousand dollars for any prior period of less than twelve months, whichever occurs first, the use fuel tax on clean burning fuels is imposed at the following rate beginning on the next January 1 or July 1, whichever occurs first:

1. Five cents per gallon for the balance of the calendar year in which the rate is increased pursuant to this subsection.

2. Ten cents per gallon for the second calendar year.

3. Fifteen cents per gallon for the third calendar year.

4. Seventeen cents per gallon for the fourth and subsequent calendar years.

E. The tax determined pursuant to subsection D of this section:

1. Attaches at the time the clean burning fuel is delivered in this state into the motor vehicle fuel tank.

2. Is payable to the director by either the vendor or restricted vendor with the report required by this article and in accordance with other applicable provisions of this article.

F. If the clean burning use fuel tax is increased pursuant to subsection C of this section, on the fifteenth day of each calendar month the director shall determine the number of gallons of clean burning fuel sold in this state during the preceding month and calculate the loss of revenues to the highway user revenue fund by multiplying the number of gallons sold for that month by the difference between the clean burning use fuel tax then in effect and the use fuel tax then in effect for use fuel other than clean burning use fuel. The director of the department of transportation shall notify the department of environmental quality of this amount of monies, and the department of environmental quality shall allocate and the state treasurer shall reimburse this amount to the highway user revenue fund from the air quality fund, but not to exceed two hundred fifty thousand dollars.

G. For the purposes of this section, "clean burning fuel" means natural gas.

§ 28–5710. Use fuel surcharge; exemption

A. In addition to the use fuel tax imposed by section 28–5708, a use fuel surcharge is imposed at the rate of eight cents per gallon on use fuel used in the propulsion of a use class motor vehicle on a highway in this state.

B. A user shall remit this surcharge to the department as prescribed by this article measured by the volume of use fuel imported into this state or acquired in this state and used in the propulsion of a use class motor vehicle on the highways.

C. Motor vehicles, trailers and semitrailers that are exempt pursuant to section 28–5432 from the weight fee provided in section 28–5433 are exempt from the use fuel surcharge imposed by this section.

§ 28–5711. **In lieu tax**

The excise tax imposed by this chapter is in lieu of the tax imposed by article 1 of this chapter but is not in lieu of any other tax imposed by this state for the use of its highways.

§ 28–5712. **Presumption of use**

A. For the proper administration of this article and to prevent evasion of the excise tax, it is presumed, until the contrary is established by competent proof under rules and procedures the director adopts, that all use fuel received into any receptacle on a motor vehicle from which fuel is supplied to propel the vehicle is consumed in propelling the vehicle on a highway.

B. If a vendor's or restricted vendor's dealings in use fuel primarily involve delivery of use fuel into the fuel tanks of motor vehicles both:

1. It is presumed, until the contrary is established by competent proof under rules and procedures the director adopts, that the vendor's or restricted vendor's total use fuel acquisitions have been delivered into the fuel tanks of motor vehicles for the propulsion of the vehicles on the highways.

2. The vendor or restricted vendor is liable for the excise tax.

§ 28–5713. **Use fuel tax; measurement**

The use fuel tax shall be collected and remitted to this state or paid to this state as follows:

1. By a vendor, measured by the volume of gaseous use fuel sold and delivered into the vehicle fuel tanks of others.

2. By a distributor, measured by the volume of liquid use fuel either:

(a) Delivered by the distributor to anyone other than another licensed distributor or a certified bulk purchaser.

(b) Delivered to a vendor location owned or operated by the distributor.

3. By a restricted vendor, measured by the volume of use fuel for which a tax has not been paid that is delivered into the fuel tank of a motor vehicle that is owned or operated by the restricted vendor.

4. By a user, measured by the volume of use fuel that is imported into this state or acquired without payment of tax to a vendor in this state and that is used in the propulsion of a use class motor vehicle on a highway.

§ 28–5714. **Use fuel tax; attachment; light class motor vehicle**

A. The tax on a light class motor vehicle attaches at the time fuel is delivered in this state into the motor vehicle fuel tank.

B. If a restricted vendor has both highway and off highway consumption in this state, the restricted vendor shall report only highway consumption.

C. With respect to light class motor vehicles, the director shall not:

1. Issue a refund for use fuel purchased in this state and consumed on the highways of another state.

2. Tax use fuel acquired in another state and consumed on the highways of this state.

D. For the purposes of subsection C, "light class motor vehicle" means a motor vehicle that uses use fuel on the highways of this state but excludes a road tractor, a truck tractor, a truck having a declared gross vehicle weight of more than twenty-six thousand pounds or having more than two axles or a passenger carrying motor vehicle designed to seat more than twenty occupants.

§ 28–5715. **Use fuel tax; natural gas**

For the purpose of imposition of the use fuel tax on natural gas if used to propel a motor vehicle, 1.25 therms of natural gas is equivalent to one gallon of motor vehicle fuel.

§ 28–5716. **Exemptions**

A. Except as provided in subsection B, the following are exempt from this article:

1. A farm tractor and implement of husbandry designed primarily for or used in agricultural operations and only incidentally operated or moved on a highway.

2. A road roller or vehicle that is all of the following:

(a) Designed and used primarily for grading, paving, earth moving and other construction work on a highway.

(b) Not designed or used primarily for transportation of persons or property.

(c) Incidentally operated or moved over the highway.

B. The following are not exempt from this article:

1. A vehicle that was originally designed for the transportation of persons or property to which machinery is attached or on which machinery or other property may be transported.

2. A dump truck.

3. A truck mounted transit mixer.

4. A truck or trailer mounted crane.

5. A shovel.

§ 28–5717. **Use fuel tax; attachment; fuel user**

A. Concerning fuel acquired by a fuel user in any manner into a fuel tank of a motor vehicle, the tax attaches at the time of consumption of the fuel in the propulsion of a motor vehicle on a highway.

B. The fuel user shall:

1. Pay the tax to the director.

2. Submit the required report.

3. Comply with other applicable provisions of this article.

§ 28–5718. **Collection of tax by vendor; receipt**

A. A vendor of fuel, the use of which is taxable under this article, who sells and delivers the fuel into a fuel tank shall give the user a receipt for the fuel in the manner and form prescribed in section 28–5731.

B. A vendor shall sell and deliver use fuel to a person who operates a use class motor vehicle only if the person either:

1. Has a valid use fuel tax license or a valid single trip use fuel tax permit.

2. Is exempt from this article.

C. A person who is the owner of use fuel that is contained in bulk storage and who permits the fuel to be delivered into the fuel tank of a motor vehicle for which the person is not the licensed user as defined in this article:

1. Is presumed to be a vendor of use fuel.

2. Shall comply with the requirements in this article for vendors of use fuel.

§ 28–5719. Tax payment date

A person shall pay to the director the excise tax accrued in a calendar month on or before the twenty-fifth day of the next succeeding month.

§ 28–5720. Tax and surcharge computation and payment

A licensee shall submit with each report required under section 28–5732 a remittance payable to the department for the amount of excise tax and use fuel surcharge due that are computed as follows:

1. As to a distributor, the gallonage imported or purchased from another distributor tax free and sold or delivered into fuel tanks of motor vehicles that are not owned or operated by the distributor multiplied by the rate per gallon as provided in section 28–5708.

2. As to a vendor of gaseous use fuel only, the gallonage imported or purchased from a distributor tax free and sold or delivered into fuel tanks of motor vehicles that are not owned or operated by the vendor multiplied by the rate per gallon as set forth in section 28–5708.

3. As to a distributor and certified bulk purchaser who is a restricted vendor, the gallonage purchased or received tax free and delivered into fuel tanks of motor vehicles multiplied by the rate per gallon as set forth in sections 28–5708 and 28–5710.

4. As to a user of use fuel on which the tax imposed by this article has not been paid, the number of gallons of use fuel used in use class motor vehicles that are operated by the user multiplied by the rate per gallon as set forth in sections 28–5708 and 28–5710. The taxable gallonage shall be computed on the basis of miles traveled in this state as compared to total miles traveled in and outside this state, and the director shall prescribe the actual method of computation. If operations in more than one state are involved, the licensee may compute the taxable gallonage in the prescribed manner based on one or more operating divisions involved in travel in this state, in lieu of reporting and computing the taxable gallonage on overall operations. The vehicles to be accounted for on every report shall be determined by the vehicles for which cab cards have been secured pursuant to section 28–5742. From the amount of tax due, the tax on use fuel purchased in this state on which the tax has been previously paid shall be deducted, if the tax paid purchases are supported by copies of the sales invoices. If the computation shows additional tax is due, it shall be remitted with the report required under section 28–5732.

5. If a remittance to cover payment of taxes due as shown by any report required by this article to be made is sent through the United States mail properly addressed, it is deemed received by the director, for purposes of avoiding penalty and interest only, on the date shown by the postmark stamped on the envelope containing the report. If a mailing date is affixed to the envelope by a machine owned or under the control of the person submitting the report and the United States post office has corrected or changed the date stamped on the envelope by causing the official United States post office postmark to also be imprinted on the envelope, the date shown by the official United States post office postmark shall be the accepted date, if different from the original postmark.

§ 28–5721. **Additional assessment; penalty**

A. If the director is not satisfied with a report filed or the amount of excise tax or use fuel surcharge paid by a licensee, the director may make an additional assessment of excise taxes due from the licensee based on any information available to the director.

B. A penalty of twenty-five per cent of the additional excise tax assessed shall be added to the tax with interest at the rate of twelve per cent per year on the unpaid tax from the twenty-fifth day after the end of the month for which the additional assessment is made until paid.

C. The director shall give written notice to the licensee of the additional assessment served personally or by mail addressed to the licensee at the licensee's address of record in the office of the director.

§ 28–5722. **Additional assessment; time limit**

A. Except in the case of a fraudulent report or failure to make a report, a notice of additional use fuel tax proposed to be assessed shall be served on the licensee within four years after the alleged erroneous report was filed or the report was not made.

B. If a licensee fails or refuses to provide records or access to records demanded for auditing purposes, the time limit prescribed in this section is tolled until the records demanded are provided. Successive failures to adequately respond to a demand for records relate back to the first demand.

§ 28–5723. **Report or payment failure; penalties; interest**

A. A person who fails to file a report when due shall pay a penalty of twenty-five dollars.

B. In addition to the penalty prescribed in subsection A of this section, a person who fails to pay an excise tax or use fuel surcharge when due, except taxes assessed pursuant to sections 28–5721 and 28–5724, shall pay in addition to the excise tax or use fuel surcharge a penalty of:

1. Ten per cent of the amount of the tax or surcharge, if the excise tax or use fuel surcharge is paid within thirty days after it is due.

2. Fifteen per cent of the excise tax or use fuel surcharge, if the tax or surcharge is not paid within thirty days after it is due.

C. In addition to the penalty imposed by subsection B of this section, the department shall assess interest at the rate of twelve per cent per year against the excise tax or use fuel surcharge due if the tax or surcharge is not paid when due.

§ 28–5724. **Failure to file report; estimated tax; assessment; interest**

A. If a licensee neglects or refuses to make a report required by this article, the director shall:

1. Make an estimate for the month for which the licensee failed to make the report based on any information available to the director.

2. On the basis of the estimate, assess the excise tax due from the licensee and add to the amount determined a penalty equal to twenty-five per cent of the excise tax due.

B. The assessment bears interest at the rate of twelve per cent per year from the twenty-fifth day after the end of the month for which the assessment is made until paid.

C. The director shall give the licensee written notice of the assessment served personally or by mail addressed to the licensee at the licensee's address of record in the office of the director.

§ 28–5725. Assessment; hearing

A. Within fifteen days after service on a licensee of notice of the original assessment, a licensee against whom an assessment is made pursuant to section 28–5721 or 28–5724 may make a written request for a hearing to the director to show cause why the original assessment is in error or to present any other facts or testimony related to the amount of the original assessment or the manner in which it was drawn.

B. The hearing may be continued from time to time.

C. If the licensee or the licensee's agent does not request a hearing within the fifteen days, the assessment is final. The order of the director after consideration of the evidence presented at the hearing is final fifteen days after serving notice.

§ 28–5726. Refund; erroneous collection

A. Unless appropriate adjustment has been made with respect to the computation of tax under section 28–5720, a person who purchases tax paid use fuel and exports it from this state in other than a motor vehicle fuel tank or uses it in this state for purposes other than to propel a motor vehicle on a highway shall be reimbursed, on application, the amount of the tax paid.

B. The person shall:

1. File an application with the director within six months after the date of sale.

2. Show the purpose for which the use fuel was used.

3. Submit satisfactory proof of the tax paid purchase.

4. Submit other information the director requires.

C. The director shall:

1. Pay the refund from current excise tax receipts.

2. Deduct the refund from the monthly excise tax receipts before the deposit pursuant to section 28–5730 is made.

3. Not pay a refund on any one claim unless the aggregate total of all excise taxes paid and for which a refund is claimed equals ten dollars or more.

D. Except as provided in subsection E of this section, if the director determines that an excise tax, a penalty, interest or a fee required by this article has been overpaid, paid more than once or illegally or erroneously collected or computed, the director shall:

1. State that fact in the director's records.

2. Credit the excess on any amount then due to the department or for its account from the licensee.

3. Refund the balance to the licensee or the licensee's successors, administrators, executors or assigns.

E. The director shall not allow a credit or refund after three years from the date of overpayment unless the licensee files with the director a written claim for credit or refund within three years. The claim shall state the specific grounds on which it is based. Any refund resulting from the claim is subject to the same limitations and shall be refunded in the same manner as prescribed in subsections A, B and C of this section.

F. If a tax credit or credits resulting from the tax computation pursuant to section 28-5720 accrues, the licensee may apply to the director in a manner the director prescribes for a refund of the accumulated credit if both:

1. The total amount of credit refundable is not less than ten dollars.

2. The licensee does not receive a tax credit refund more than one time in each quarter of a calendar year.

§ 28-5727. Erroneous assessment; cancellation in records

If an amount has been illegally or erroneously assessed against a licensee, the director shall cancel that amount on the director's records if a written claim for the amount is made within three years after the illegal or erroneous assessment is made.

§ 28-5728. Use fuel tax credit

A. A person who files a report under this article is entitled to a credit against the excise tax imposed under this chapter, in addition to any other credit provided by this article, if the person has done all of the following:

1. Paid the excise tax imposed by this article on use fuel purchased in this state.

2. Consumed the use fuel outside this state.

3. Paid a tax with respect to the use fuel in one or more other states or jurisdictions.

B. The amount of the use fuel tax credit provided by subsection A of this section is one cent for each gallon of use fuel that is purchased in this state and that is consumed outside this state.

C. To qualify for the credit under this section, the person shall submit any evidence required by the department. The director may authorize the person to submit the evidence required under this section with the report required by section 28-5732.

§ 28-5729. Legal remedies

A. An injunction, a writ of mandamus or any other legal or equitable process shall not issue in an action or proceeding in any court against this state or against any officer of this state to prevent or enjoin the collection of any excise tax, fee, penalty or interest required by this article to be collected.

B. After payment of the excise tax or other amount under protest that is verified, that sets forth the grounds of objection to the legality of the tax or other amount and that is filed with the director at the time of payment of the amount protested, the licensee making the payment may bring an action against the director in superior court in Maricopa county for recovery of the amount paid under protest. The licensee shall institute the action within ninety days after payment under protest. Failure to bring an action within ninety days is a waiver of all demands against this state on account of the protested payment. The court shall not consider a ground of illegality other than as set forth in the protest filed at the time of payment.

C. If judgment is rendered for the plaintiff, the amount of the judgment shall first be credited on any excise tax or other amount due from the plaintiff under this article, and the balance shall be refunded to the plaintiff.

D. Judgment shall not be rendered in favor of the plaintiff in an action brought against the director to recover an amount paid under this article if the action is brought by or in the name of an assignee of the licensee who paid the amount.

§ 28–5730. Use fuel tax; distribution

A. The director shall transmit the use fuel taxes to the state treasurer who shall deposit them in the Arizona highway user revenue fund.

B. The director shall transmit all fees imposed by this article and received by the director to the state treasurer who shall deposit them in the Arizona highway user revenue fund.

§ 28–5731. Record requirements

A. A licensee under this article shall make and retain for at least three years records as prescribed and in the manner required by the director as reasonably necessary to substantiate reports required by this article, including inventories, receipts and disbursements.

B. The director may examine the books, papers, records and equipment of any licensee or other person dealing in, transporting or storing fuel to determine whether the excise taxes due under this article are properly reported and paid.

C. Each sale or transfer of use fuel shall be recorded on a preprinted invoice. On issuance, a sales invoice is a receipt for the amount of use fuel tax collected by the vendor. The purchaser and the seller shall retain a copy of the sales invoice for at least three years. A sales invoice shall contain the following information:

1. The name and address of the seller.

2. The name and use fuel tax license number of the purchaser.

3. The date of sale.

4. The number of gallons of use fuel sold.

5. Other information as prescribed by the director.

D. A licensee from whom the director has requested records may:

1. Make the records available at the office designated by the director.

2. If the place of business where records may be audited is located in this state, request the director to audit the records at the licensee's place of business.

E. If the licensee does not make records available at the office designated by the director and the place of business where records may be audited is located outside this state, the director may require the licensee to pay the department in advance for the cost of reimbursing employee subsistence and travel expenses.

F. Each distributor and vendor shall maintain and keep for three years the following:

1. Records of use fuel received, sold or delivered in this state by the distributor or vendor.

2. Invoices, bills of lading and other pertinent records and papers required by the director for the reasonable administration of this article.

G. The director may require distributors to file information as to sales or deliveries to vendors or users of use fuel at the times and in the form as the director requires.

§ 28–5732. Report requirements; exemption

A. Except a vendor that sells only liquid use fuel, on or before the twenty-fifth day of the month following the close of a licensee's reporting period, a person licensed under this article shall file with the director on forms prescribed by the director a report stating:

1. The amount of use fuel sold, delivered or used by the distributor, vendor or user during the period for which a report is required.

2. Other information the director requires.

B. The report shall:

1. Not be under oath.

2. Contain or be accompanied by a written declaration that it is made under penalties of perjury.

3. Be filed with the director for each reporting period for the reporting period, even if no fuel was used or tax is due.

C. The director may require other information from a distributor or vendor in order to enforce this article.

D. Failure to receive the authorized report forms does not relieve a licensee from the obligation of submitting a report to the director, but the licensee may make a written report to the director setting forth all information required on the prescribed form. On or before the due date, the licensee shall file such a report, and the remittance payable to the department for the amount of tax, penalty, interest or other fees due, and the director shall accept the report in lieu of a report on the prescribed form.

E. The reporting period for a distributor or vendor is for calendar monthly periods. If the director deems it necessary in order to ensure payment of the tax imposed by this article or to facilitate the administration of this article, the director may require reports and payment of the tax to be made for other than and in addition to monthly periods.

F. A distributor or vendor may apply to the director for approval to file reports and pay taxes on a weekly basis, and notwithstanding section 28–5736, the director may establish the amount of surety bond required in the sum of approximately six times the highest weekly tax estimated by the director to become due from the distributor or vendor.

G. To facilitate administration of this article, the director may permit a licensed user or restricted vendor to file reports and pay taxes for a combination of calendar months. The reporting periods shall be at least one calendar month and shall not exceed twelve calendar months. A reporting period shall not include partial calendar months. The amount of surety bond required in section 28–5736 may be increased proportionately with the increased liability accrued by the user.

H. In lieu of a surety bond, the director may allow the prepayment of taxes based on the preceding reporting period's liability accrued by the user or restricted vendor.

I. The director may exempt a user from the reporting requirement prescribed in this section if the user meets all of the following requirements:

1. Holds a valid fuel tax license.

2. Establishes to the satisfaction of the director that the user's operations are exclusively intrastate.

3. Is exempt from the use fuel surcharge imposed by section 28–5710.

4. Is not a user of use fuel for which a tax has not been paid.

J. An exemption granted pursuant to subsection I of this section remains in effect until such time as any condition of the exemption no longer prevails.

K. The director may require a user who has been granted an exemption pursuant to subsection I of this section to purchase a single trip use fuel tax permit on the user's reentry into this state. The fees for a single trip use fuel tax permit shall be computed in the same manner as prescribed in section 28–5739 for an unlicensed interstate user.

§ 28–5733. **Use fuel license requirement**

A. Except as provided in section 28–5739 it is unlawful for a person to act as a distributor, vendor, restricted vendor or user without being licensed as a distributor, vendor, restricted vendor or user.

B. A distributor who sells use fuel for delivery directly into a vehicle fuel tank shall also be licensed as a vendor and shall maintain separate business records.

§ 28–5734. **Name of licensee**

A. A person registering a use class motor vehicle under chapter 3, articles 7 and 8 of this title shall obtain a use fuel license in the name of the motor vehicle registrant, except that, at the rental company's option, a rental company receiving approval for consolidated tax filing from the director may be the licensee in lieu of the vehicle registrant.

B. A person registering a use class motor vehicle under chapter 3 of this title shall obtain a use fuel license in the name of the vehicle registrant. If the registrant leases the motor vehicle to a lessee who has a use fuel license issued under this article and there is a written agreement so providing, the registrant may permit the lessee to include the vehicle under the lessee's license for purposes of this article. A written lease agreement shall specify which party to the lease agreement is responsible for obtaining the use fuel tax license.

C. If subsection A or B do not apply, the use class motor vehicle operator shall obtain a use fuel license.

§ 28–5735. **License application; fee**

A. An applicant for a license required by this article shall file with the director both:

1. An application that:

(a) Is in the form and submitted in the manner that the director prescribes.

(b) States the name and address of the applicant and other information as required by this article or by the director.

(c) Is not under oath but contains or is accompanied by a written declaration that it is made under penalties of perjury.

2. A ten dollar filing fee.

B. If a licensee acts in a capacity other than that for which a license has been issued, the licensee shall both:

1. Apply for an additional license in accordance with this section.

2. Submit with each application a filing fee in accordance with this section and section 28–5741.

§ 28–5736. **Bond requirement; exception**

A. Except as provided in subsection G of this section, the director shall not issue a license required by this article until the applicant has filed with the director a surety bond:

1. On which the applicant is the principal obligor and the state is the obligee.

2. Except as provided in section 28–5732, that is in the sum of approximately three times the highest monthly tax estimated by the director to become due by the licensee or five hundred dollars, whichever is more.

B. The surety shall be approved by the director, and the bond shall be conditioned on the licensee faithfully complying with the provisions of this article and the prompt filing of true reports and payment by the licensee of all excise taxes and

fees due under this article, together with all penalties and interest on the taxes and fees. The director may accept cash in lieu of surety.

C. The director shall fix the total amount of bonds required of a licensee and may increase or decrease the amount at any time subject to the limitations imposed by this article and article 1 of this chapter. In the case of an interstate user whose purchases of fuel are limited to tax paid purchases from a licensed vendor, the director may waive the minimum bond requirement provided in subsection A of this section.

D. The director may waive the bond requirements for intrastate users if the director is satisfied by the evidence presented to the director that the user has been relieved of the reporting requirement under section 28–5732, and if the director is satisfied that the user has complied with this article and the rules related to this article. The waiver of the bond requirement remains in effect until any condition of the waiver no longer prevails or until the director determines from information available to the director that the collection of the excise tax would be impaired without the security of a bond required by this section.

E. If the liability on a bond filed by a licensee with the director becomes discharged or reduced, whether by judgment rendered, payment made or otherwise, or if in the opinion of the director, any surety on a bond has become unsatisfactory or unacceptable, the director shall require the licensee to file a new bond with satisfactory sureties in the same amount. On failure to file a new bond, the director shall immediately revoke the license of that licensee.

F. If a licensee fails or refuses to furnish an additional bond as required by the director within thirty days after written notice is mailed to the licensee's address of record in the office of the director, the license shall be revoked immediately.

G. At the request of a licensee who is also required to file a motor carrier bond pursuant to section 28–5871, the director may permit the licensee to furnish a single bond in an amount sufficient to cover both liabilities.

H. On good cause, the director may reduce the bond amount or waive the bond required by this section.

I. A licensed vendor of use fuel who does not sell gaseous use fuel is not subject to this section.

§ 28–5737. Discharge of surety

A. On written request to the director, a surety on a bond furnished by a licensee pursuant to this article shall be discharged from any liability to the state accruing on the bond after the expiration of sixty days from the date of filing the request but not from liability already accrued or accruing before the expiration of the sixty day period. On receipt of such a request, the director shall promptly notify the licensee who furnished the bond in question.

B. Unless the licensee files a new bond satisfactory to the director before the expiration of the sixty day period, the director shall revoke the licensee's license.

§ 28–5738. License denial

The director may deny a license if the application:

1. Is filed by a person whose license at any time has been revoked for cause by the director.

2. Contains a misrepresentation, misstatement or omission of material information required by the application.

3. Is filed by some person as a subterfuge for the real person in interest whose license or registration has been revoked for cause by the director.

4. Is filed by a person who is delinquent in the payment of any fee, tax, penalty or other amount due the department or for its account as determined by the director after granting the applicant a hearing of which the applicant is given ten days' notice in writing and in which the applicant has the right to appear in person or by counsel and present testimony.

§ 28–5739. Single trip use fuel tax permit

A. If a use class motor vehicle is propelled by use fuel and is operated in this state in the course of interstate traffic by an unlicensed user, the department may issue, in lieu of a use fuel license, a special single trip use fuel tax permit authorizing operation of the vehicle for a single trip through this state or from a point on the Arizona border to a point in this state and return to the border.

B. The fee for the single trip permit is based on the excise tax due at the rate of forty-nine dollars for more than fifty miles traveled on the highways of this state and twelve dollars for fifty miles or less traveled on the highways of this state. In addition to the fee based on miles traveled in this state, a fee of one dollar is required for each single trip use fuel tax permit issued.

C. The single trip use fuel tax permit:

1. Is valid for ninety-six hours.

2. Allows the purchase of use fuel as provided by section 28–5718.

D. The department:

1. Shall issue a single trip use fuel tax permit in duplicate to an unlicensed user.

2. May issue a single trip use fuel tax permit for a vehicle entering this state at Teec Nos Pos and exiting at Black Rock or entering this state at Black Rock and exiting at Teec Nos Pos even if the vehicle exits and reenters this state during the trip.

3. May issue a special thirty day use fuel tax permit for a use class motor vehicle if all of the following conditions are met:

(a) The vehicle is not in the commercial transportation business.

(b) The vehicle is in this state for a limited period of time.

(c) The vehicle will make limited use of this state's highways.

(d) The applicant pays a fee of ninety-eight dollars.

D. The director may authorize third parties to issue fuel tax permits pursuant to this section in accordance with rules adopted by the director.

§ 28–5740. License issuance; duration

A. The director shall issue a license to an applicant if:

1. The application is in proper form and has been accepted for filing.

2. Any other conditions and requirements of this article have been met.

B. A license is valid until cancelled, surrendered or revoked pursuant to this article.

§ 28–5741. License display; duplicates

A. The director may require a license issued under this article to be conspicuously displayed in the established place of business of the licensee.

B. The licensee shall obtain a duplicate license for each established branch office or location for a fee of five dollars and shall display the duplicate license in the same manner as the original license displayed at the main place of business.

§ 28–5742. Cab cards

A. A licensee who operates a motor vehicle that uses fuel on a highway shall apply for cab cards for all vehicles in the form prescribed by the director.

B. The director shall:

1. Issue only a tax paid cab card.

2. Not issue a cab card until the licensee certifies the existence of financial responsibility as required by section 28–4034.

C. A cab card shall be:

1. Carried at all times in the cab of the vehicles operated by the licensee.

2. Displayed to the director, the director's authorized agents or any other law enforcement officer in this state on demand.

3. In the course of interstate operation of a motor vehicle that is propelled by use fuel, displayed to any agent of the director at any port of entry or exit as required.

D. If a properly issued cab card is not displayed, whether through loss or theft or for any other reason, the operator of the vehicle may be required to purchase a special single trip use fuel tax permit pursuant to section 28–5739.

E. A cab card is valid for the period of time prescribed by the director.

F. A licensee is liable for any use fuel tax that accrues to each issued cab card.

G. If a cab card is lost, stolen or destroyed, the licensee's liability for use of that cab card is relieved twenty-four hours after the director receives written notification from the licensee that the cab card has been lost, stolen or destroyed.

§ 28–5743. Discontinuance of business

A. If a person ceases to be a licensee by reason of discontinuance, sale or transfer of the person's business at any location:

1. The person shall:

(a) Notify the director in writing at the time the discontinuance, sale or transfer takes effect.

(b) Give the director the date of discontinuance.

(c) If there is a sale or transfer of the business, give the director the name and address of the purchaser or transferee.

2. All taxes, penalties and interest not yet due and payable under this article, notwithstanding such provisions, are due and payable concurrently with the discontinuance, sale or transfer.

3. The licensee shall:

(a) Make a report.

(b) Pay all taxes, fees, penalties and interest.

(c) Surrender to the director the license certificate issued to the licensee, all duplicates and all issued cab cards.

B. Unless the notice prescribed in subsection A has been given to the director, the seller and the seller's surety are liable for the tax, fees, penalties and interest accruing against the transferee, but only to the extent of the value of the property transferred.

§ 28–5744. Disposal of vehicle

If a motor vehicle that is subject to this article and for which a licensee has obtained a cab card pursuant to section 28–5742 is sold, transferred or otherwise disposed of by the licensee, the licensee shall immediately notify the director of both:

1. The name and address of the purchaser, transferee or other person gaining control of the motor vehicle.

2. Other information the director requires.

§ 28–5745. License revocation; hearing

A. The director may revoke the license of a person who refuses or neglects to comply with any provision of this article or any rule relating to this article.

B. Before revoking the license, the director shall send notice by certified mail to the licensee at the licensee's address of record ordering the licensee to appear in the office of the director on a date at least ten days after mailing the notice and to show cause why the licensee's license should not be revoked.

§ 28–5746. Appeal

If a license is refused, cancelled or revoked pursuant to this article, the licensee may seek judicial review in superior court in Maricopa county pursuant to title 12, chapter 7, article 6.

ARTICLE 3. VEHICLE LICENSE TAX

§ 28–5801. Vehicle license tax rate

A. Except as provided in sections 28–5802, 28–5803 and 28–5808, at the time of application for and before registration each year of a vehicle, the registering officer shall:

1. Collect the vehicle license tax imposed by article IX, section 11, Constitution of Arizona.

2. Deposit the tax with the county treasurer of the county in which the vehicle is registered.

B. The vehicle license tax is four dollars on each one hundred dollars in value. During the first twelve months of the life of the vehicle as determined by its initial registration, the value of the vehicle is sixty per cent of the manufacturer's base retail price of the vehicle. During each succeeding twelve month period, the value of the vehicle is fifteen per cent less than the value for the preceding twelve month period.

C. The minimum amount of the vehicle license tax computed under this section is ten dollars per year for each vehicle that is subject to the tax.

§ 28–5802. Vehicle license tax exemption; veterans

A. Notwithstanding section 28–5801, the registering officer shall not collect a vehicle license tax from:

1. A veteran residing in this state for a vehicle or any replacement of the vehicle acquired by financial aid from the veterans' administration pursuant to P.L. 79–663, 85–56, 85–857, 90–77, 91–666 and 93–538; 38 United States Code part 1901, et seq.

2. A veteran for a personally owned vehicle.

3. A veteran and another party owning a vehicle if the veteran is certified by the veterans' administration to be one hundred per cent disabled and drawing compensation on that basis. If a veteran is certified pursuant to this paragraph, on the registration of the vehicle or on the replacement of the vehicle with a personally owned vehicle or a vehicle owned by the veteran and another party, the veteran shall only present a signed, sworn notarized statement affirming that the veteran is eligible to receive the exemption granted by this paragraph.

B. A veteran claiming an exemption under this section shall present satisfactory proof of the veterans' administration financial aid or government compensation and certificate on determination of one hundred per cent disability, as applicable. The veteran may claim and be granted an exemption during each twelve month period for only one vehicle or any replacement of the vehicle owned by the veteran.

§ 28–5803. Vehicle license tax exemption; disabled individuals

A. Notwithstanding section 28–5801, the registering officer shall not collect a vehicle license tax for a vehicle owned by a resident who is a recipient of public monies as a disabled individual under title 16 of the social security act.

B. A resident claiming the exemption under this section shall present satisfactory proof of the assistance as provided in subsection A of this section.

C. A disabled resident may claim only one vehicle for exemption under this section.

§ 28–5804. Privately owned motor vehicle used as school bus; classification; vehicle license tax

A. A separate classification of motor vehicles is established for purposes of taxation pursuant to article IX, section 11, Constitution of Arizona, that consists of privately owned motor vehicles that are exclusively operated as school buses.

B. Notwithstanding section 28–5801, the registering officer shall collect at the time of application for and before registration of the motor vehicle classified under this section an annual vehicle license tax of four dollars for each one hundred dollars in value. During the first twelve months of the life of the vehicle as determined by its initial registration, the value is one per cent of the manufacturer's base retail price of the vehicle. During each succeeding twelve month period the value of the vehicle is fifteen per cent less than the value of the preceding twelve month period.

C. The minimum amount of the license tax computed under this section is five dollars per year for each vehicle subject to the tax.

D. Except as specifically provided in this section, the vehicle license tax on a vehicle classified under this section is governed by this article.

E. If a school bus is temporarily operated for purposes other than those prescribed by section 28–101, the registering officer shall:

1. Assess and collect monthly a vehicle license tax equal to one-tenth of the annual vehicle license tax provided in section 28–5801 for each calendar month that the motor vehicle is so operated in this state.

2. Not apportion the vehicle license tax for any fraction of a calendar month.

§ 28–5805. Motor vehicle powered by alternative fuels; classification; vehicle license tax; definitions

A. A separate classification of motor vehicles is established for purposes of taxation pursuant to article IX, section 11, Constitution of Arizona, that consists of motor vehicles powered by alternative fuels.

B. Notwithstanding section 28–5801, the registering officer shall collect at the time of application for and before registration of the motor vehicle classified under this section an annual license tax of four dollars for each one hundred dollars in value. During the first twelve months of the life of the vehicle as determined by its initial registration, the value is one per cent of the manufacturer's base retail price of the vehicle. During each succeeding twelve month period the value of the vehicle is fifteen per cent less than the value of the preceding twelve month period.

C. The minimum amount of the license tax computed under this section is five dollars per year for each vehicle subject to the tax.

D. Except as specifically provided in this section, the vehicle license tax on a vehicle classified under this section is governed by this article.

E. The owner of a vehicle claiming the special annual license tax rate provided by this section shall provide proof at the time of application and before registration of the vehicle each year as follows:

1. The owner of a vehicle that is purchased new shall provide a certificate from the manufacturer indicating that the vehicle is powered by an alternative fuel.

2. The owner of a vehicle that is not purchased new, that is a converted vehicle or that is assembled by the owner shall provide either:

(a) A certificate issued by the department of environmental quality indicating that the vehicle is powered by liquefied petroleum gas, compressed natural gas, hydrogen or alcohol fuels that contain not less than eighty-five per cent alcohol by volume.

(b) A certificate issued by the department of transportation indicating that the vehicle is powered by either electricity or solar energy.

F. For purposes of this section:

1. "Alternative fuels" means liquefied petroleum gas, compressed natural gas, hydrogen, alcohol fuels that contain not less than eighty-five per cent alcohol by volume, electricity or solar energy.

2. "Motor vehicle" means a vehicle that meets the safety standards of the national highway traffic safety administration.

§ 28–5806. Privately owned motor vehicle used for ambulance or fire fighting services; classification; vehicle license tax; definition

A. A separate classification of motor vehicles is established for purposes of taxation pursuant to article IX, section 11, Constitution of Arizona, that consists of privately owned motor vehicles that are used solely for the purpose of providing ambulance or fire fighting services.

B. Notwithstanding section 28–5801, at the time of application for and before registration of the motor vehicle classified pursuant to subsection A of this section the registering officer shall collect an annual license tax at the rate of four dollars for each one hundred dollars in value. During the first twelve months of the life of the vehicle as determined by its initial registration, the value is one per cent of the manufacturer's base retail price of the vehicle. During each succeeding twelve month period the value of the vehicle is fifteen per cent less than the value of the preceding twelve month period.

C. The minimum amount of the license tax computed under this section is five dollars per year for each vehicle subject to the tax.

D. Except as specifically provided in this section, the vehicle license tax on vehicles classified pursuant to subsection A of this section shall be governed by this article.

E. If a vehicle is temporarily operated for purposes other than providing ambulance or fire fighting services, the registering officer shall:

1. Assess and collect monthly a vehicle license tax equal to one-tenth of the annual vehicle license tax provided for by section 28–5801 for each calendar month that the motor vehicle is so operated in this state.

2. Not apportion the vehicle license tax for any fraction of a calendar month.

F. For purposes of this section, "ambulance" means a vehicle for which a certificate of registration has been issued pursuant to title 36, chapter 21.1.

§ 28–5807. **Registration period; proration; retroactive collection**

A. The director shall initially register a vehicle with a registration expiration of twelve months from the last day of the month in which the vehicle was initially purchased.

B. The director may register or reregister a vehicle for less than twelve months and prorate the annual vehicle license tax if the director determines proration tends to fulfill the purpose of the monthly registration system.

C. The director shall not collect a vehicle license tax retroactively for any period that the vehicle was not registered if the current owner of the vehicle was not the owner of the vehicle during any part of the period in which the vehicle was not registered.

§ 28–5808. **Vehicle license tax distribution**

A. On the first and the fifteenth calendar day of each month, the county treasurer shall distribute thirty-one and one-half per cent of the monies deposited pursuant to section 28–5801, except monies deposited in the state general fund, to the state treasurer for deposit in the highway user revenue fund. On the first calendar day, the amount distributed shall include all monies received from the first through the fifteenth calendar day of the preceding month. On the fifteenth calendar day:

1. The amount distributed shall include all monies received from the sixteenth through the last day of the preceding month.

2. The county treasurer shall distribute or deposit the remaining monies received pursuant to section 28–5801 during the entire preceding month as follows:

(a) Twenty per cent to the state treasurer for deposit in the state general fund for general purposes.

(b) Twenty-five per cent to the county general fund.

(c) Twenty-five per cent to the state treasurer for deposit in the state general fund to aid in school financial assistance.

(d) Twenty-five per cent to the incorporated cities and towns of the county, apportioned in proportion to the population of each as shown by the most recent United States census.

(e) Five per cent either:

(i) To the county assessor for deposit in the special fund established pursuant to section 28–705.

(ii) If the county has entered into an agreement pursuant to section 28–706, in the department's special registration fund pursuant to section 28–707.

B. If an incorporated city or town has had no federal enumeration, the supervisors shall both:

1. Appoint a qualified person to take an accurate census of the incorporated city or town.

2. Certify the results to the county treasurer, and the incorporated city or town shall share in the distribution as provided by this section.

C. On the first and the fifteenth calendar day of each month, the director shall distribute thirty-one and one-half per cent of the monies collected by the director pursuant to section 28–5801, except monies deposited in the state general fund, to the state treasurer for deposit in the highway user revenue fund. On the first calendar day, the amount distributed shall include all monies received from the first through the fifteenth calendar day of the preceding month. On the fifteenth calendar day:

1. The amount distributed shall include all monies received from the sixteenth through the last day of the preceding month.

2. The director shall distribute or deposit the remaining monies received pursuant to section 28–5801 during the entire preceding month as follows:

(a) Twenty per cent to the state treasurer for deposit in the state general fund for general purposes.

(b) Twenty-five per cent to the county general fund.

(c) Twenty-five per cent to the state treasurer for deposit in the state general fund to aid school financial assistance.

(d) Twenty-five per cent to the county treasurer to be distributed to the incorporated cities and towns of the county apportioned in proportion to the population of each as shown by the most recent United States census.

(e) Five per cent in the special registration fund established pursuant to section 28–707.

§ 28–5809. Record examination

At any time the department of administration may examine the books and records of a county assessor or county treasurer pertaining to the collection and distribution of monies collected pursuant to section 28–5801.

§ 28–5810. Rental vehicle surcharge; reimbursement; definition

A. A person engaged in the business of renting motor vehicles without drivers shall collect, at the time the rental vehicle is rented, a five per cent surcharge on each rental contract that is for a period of one hundred eighty days or less.

B. The surcharge:

1. Shall be computed on the total amount stated in the rental contract, less any taxes and fees imposed by title 42, chapter 8, article 1 and title 48, chapter 26, article 2.

2. Is not subject to the taxes imposed by title 42, chapter 8, article 1 and title 48, chapter 26, article 2.

3. Shall be noted on the rental contract and collected pursuant to the contract.

4. Shall be retained by the vehicle owner or person engaged in the business of renting rental vehicles.

5. Shall be used only for reimbursement of the amount of vehicle license tax imposed on the rental vehicle pursuant to section 28–5801 and paid by the rental vehicle owner or person engaged in the business of renting rental vehicles at the time of vehicle registration.

C. On February 15 of each year, a person who is engaged in the business of renting rental vehicles and who collects a surcharge pursuant to this section shall file a report with the director stating:

1. The total amount of vehicle license tax paid the previous year.

2. The total amount of vehicle rental revenues for the previous year.

3. The amount by which the surcharge exceeds the amount of vehicle license tax.

D. Surcharges collected in excess of the amount of vehicle license tax paid shall be remitted, deposited and distributed pursuant to section 28–5808.

E. The report to the director required by this section shall be a sworn statement subject to penalty of perjury for mispresenting the amount of vehicle license tax paid or the amount of surcharge collected.

F. The director shall adopt rules prescribing auditing procedures, records maintenance and other requirements necessary to administer this section.

G. This section does not apply to a pickup truck or utility trailer that is rented primarily for purposes of hauling property and that is subject to proportional registration pursuant to a proportional registration agreement.

H. For the purposes of this section, "rental vehicle" means a passenger vehicle that is designed to transport fifteen or fewer passengers and that is rented without a driver.

ARTICLE 4. MOTOR CARRIER TAX

§ 28–5851. Definitions

In this article, unless the context otherwise requires:

1. "Declared gross weight" has the same meaning prescribed in section 28–5431. If a declaration has not been made, declared gross weight means gross weight.

2. "Gross weight" has the same meaning prescribed in section 28–5431.

3. "Lightweight motor vehicle" means a self-propelled motor driven vehicle that has a declared gross vehicle weight of more than twelve thousand pounds but less than twenty-six thousand one pounds and that is subject to vehicle registration before lawful operation on the highways in this state, excluding a lightweight motor vehicle that is exempt from gross weight fees pursuant to section 28–5432.

4. "Motor carrier" means a person who operates or causes to be operated a motor vehicle on a highway.

5. "Motor vehicle" means a self-propelled motor driven vehicle that has a declared gross vehicle weight of more than twenty-six thousand pounds and that is subject to vehicle registration before lawful operation on the highways in this state, excluding a motor vehicle that is exempt from gross weight fees pursuant to section 28–5432.

6. "Highway" means any way or place in this state that is constructed or maintained with public monies and that is open to use by the public as a matter of right for the purpose of vehicular travel, including a highway under construction.

§ 28–5852. Motor carrier tax imposed

Except as otherwise provided in this article, there is imposed against each motor vehicle and each lightweight motor vehicle a motor carrier tax for the use of the highways for highway and street purposes as provided in article IX, section 14, Constitution of Arizona.

§ 28–5853. Motor carrier tax exemptions

A. The tax imposed by section 28–5852 does not apply to either:

1. A school bus.

2. A motor vehicle that is used in the production of:

(a) Motion pictures, including films to be shown in theaters and on television.

(b) Industrial, training and educational films.

(c) Commercials for television.

(d) Video discs.

(e) Videotapes.

B. The department shall establish administrative procedures for determining which motor vehicles are eligible for the exemptions provided in this section.

§ 28–5854. **Motor vehicle; motor carrier tax rate**

A. Except as otherwise provided in this article, there is imposed against each motor vehicle of a licensed motor carrier a motor carrier tax based on its weight pursuant to section 28–5433 and the miles traveled on the highways in this state.

B. Except as provided in subsection C of this section, the director shall determine the motor carrier tax owed by multiplying the miles driven by the motor vehicle in this state by the applicable motor carrier tax rate for that motor vehicle's weight class pursuant to the following table:

Vehicle weight	Tax rate
26,001 – 28,000	$.01002
28,001 – 30,000	.01074
30,001 – 32,000	.01145
32,001 – 36,000	.01288
36,001 – 40,000	.01431
40,001 – 45,000	.01610
45,001 – 50,000	.01789
50,001 – 55,000	.01968
55,001 – 60,000	.02147
60,001 – 65,000	.03486
65,001 – 70,000	.03755
70,001 – 75,000	.05701
75,001 – 80,000	.06080

C. The director shall compute a motor carrier tax that is one cent per mile less than the tax rate prescribed in subsection B of this section for a vehicle combination in the vehicle weight category of 75,001–80,000 pounds if all of the following apply:

1. The owner or operator of the vehicle combination provides proof satisfactory to the director that the vehicle combination has at least six axles, not including a variable load axle.

2. The owner or operator of the vehicle combination provides proof satisfactory to the director that if the vehicle combination has a set of tridem axles, the set of tridem axles has at least ten wheels.

3. The owner or operator of the vehicle combination has established use fuel and motor carrier tax accounts with the department.

4. The vehicle combination is not a triple trailer configuration.

5. The vehicle combination is not being operated or moved at a size or weight exceeding the maximum specified in chapter 7, article 11 of this title or otherwise not in conformity with chapter 7 of this title, with or without a special permit.

§ 28–5855. **Lightweight motor vehicle; motor carrier tax rate**

A. The director shall determine the annual motor carrier tax owed for each lightweight motor vehicle registered in this state pursuant to the following table:

Vehicle weight	Tax rate
12,001 – 14,000	$64.00
14,001 – 16,000	73.00
16,001 – 18,000	82.00
18,001 – 20,000	91.00
20,001 – 22,000	101.00
22,001 – 24,000	110.00
24,001 – 26,000	119.00

B. The motor carrier tax imposed by this section shall be added to the gross weight fee imposed by section 28–5433 and is payable at the time the lightweight motor vehicle is registered. The director shall consolidate the motor carrier tax imposed by this section with the gross weight fee imposed by section 28–5433 for the purpose of reducing administrative activities of owners and operators of lightweight motor vehicles and the department. The director shall prepare appropriate forms to perform the consolidation.

§ 28–5856. Motor carrier tax reduction; fuel purchases; definitions

A. On April 1 of each year the director shall compute the difference between the amount determined in subsection B of this section and the amount determined in subsection C of this section. If the amount determined in subsection C of this section exceeds the amount determined in subsection B of this section, a use fuel collection shortfall exists.

B. Beginning January 1, 1994 and every year thereafter, the director shall determine the number of gallons of use fuel that is purchased and used in this state in the preceding calendar year.

C. The director shall determine the number of gallons of use fuel that is purchased and used in this state in fiscal year 1991–1992 and increase this amount annually by a growth factor of 3.1 per cent.

D. If the amount determined in subsection B of this section exceeds the amount determined in subsection C of this section, the director shall revise proportionally each motor carrier tax rate prescribed in section 28–5854 in an amount that provides that the total amount of the reduction of all of the tax rates equals the amount determined in subsection A of this section multiplied by twenty-six cents. The revised rates are effective from and after April 30 of the year the computations are made.

E. The director shall provide all computations and determinations under this section to the use fuel advisory council for its review.

F. For the purposes of this section:

1. "Use fuel" has the same meaning prescribed in section 28–5701.

2. "Use fuel advisory council" means the council established by section 28–5827.

§ 28–5857. Use fuel advisory council

A. A use fuel advisory council is established. The director of the department of transportation shall appoint the members to the council as follows:

1. One member who represents the department of transportation.

2. One member who represents the department of environmental quality.

3. One member who represents oil marketers.

4. One member who represents use fuel vendors.

5. One member who represents motor carriers.

B. Members appointed pursuant to subsection A, paragraphs 1 and 2 of this section serve at the pleasure of the director. Members appointed pursuant to subsection A, paragraphs 3, 4 and 5 of this section serve for staggered terms of three years.

C. Members of the council are not eligible to receive compensation, but the members who are appointed pursuant to subsection A, paragraphs 3, 4 and 5 of this section are eligible to receive reimbursement of expenses by the department pursuant to title 38, chapter 4, article 2.

D. The council shall review the determinations made by the director pursuant to section 28–5856.

E. The department shall provide staff support for the council.

§ 28–5858. Motor vehicle; reduced motor carrier tax; load restrictions

The director shall compute a reduced motor carrier tax that is seven-tenths of the full rate for a motor vehicle or fleet of motor vehicles of the same weight registered class if:

1. The owner or operator of the motor vehicle has done all of the following:

(a) Applied to the department to be classified under this section.

(b) Given the information required by the director to determine the eligibility of the fleet to be classified under this section, including approval of the proposed record keeping.

(c) Received approval to be classified under this section.

2. Forty-five per cent or more of the mileage reported on the motor vehicle or the fleet of motor vehicles of the same weight registered class for a reporting period is mileage that is traveled without a load or with any of the following:

(a) Equipment that makes a motor vehicle ready for the road.

(b) Restraining equipment that makes the load safe.

(c) Equipment normally carried with the motor vehicle and used for the loading or unloading of the motor vehicle.

(d) Empty containers, empty returnable containers and empty boxes that are being returned to the point of shipment.

(e) Goods or commodities that are being returned to the point of shipment as a result of spoilage, damage, misfills, consignee rejection or consignee return.

3. Records to substantiate eligibility for the reduced motor carrier tax rate demonstrate the number of miles traveled by the motor vehicle during the reporting period and the number of miles the motor vehicle traveled without a load during the reporting period. The records may include the following for each reporting period:

(a) A daily trip log for each vehicle that includes the beginning and ending odometer readings, the odometer reading when the vehicle was loaded and unloaded, the total vehicle miles traveled, the vehicle identification number and the date of each trip.

(b) Bills of lading showing origin and destination.

(c) Routes of travel.

(d) A monthly summary of miles with and without the load.

(e) Any other records that will substantiate the reduced rate qualification.

§ 28–5859. Lightweight motor vehicle; reduced motor carrier tax; load restrictions

The director shall compute a reduced motor carrier tax that is seven-tenths of the full rate for a lightweight motor vehicle if:

1. The owner or operator of the lightweight motor vehicle has prequalified for the reduced motor carrier tax with the department before registration of each lightweight motor vehicle by doing all of the following:

(a) Applying for the reduced tax status.

(b) Signing an affidavit declaring information required by the director to determine the eligibility of the vehicle to be classified as a lightweight motor vehicle pursuant to this section.

(c) Agreeing to the record keeping requirements prescribed by the director.

(d) Agreeing to be classified as a lightweight motor vehicle.

2. Forty-five per cent or more of the mileage during the registration year is traveled without a load or with any of the following:

(a) Equipment that makes a lightweight motor vehicle ready for the road.

(b) Restraining equipment that makes the load safe.

(c) Equipment normally carried with the lightweight motor vehicle and used for the loading or unloading of the lightweight motor vehicle.

(d) Empty containers, empty returnable containers and empty boxes that are being returned to the point of shipment.

(e) Goods or commodities that are being returned to the point of shipment as a result of spoilage, damage, misfills, consignee rejection or consignee return.

§ 28-5860. Motor vehicle; reduced motor carrier tax; less than full load capacity

The director shall compute a reduced motor carrier tax that is seven-tenths of the full rate for a motor vehicle if all of the following apply:

1. The owner or operator of the motor vehicle has done all of the following:

(a) Applied to the department to be classified under this section.

(b) Given the information required by the director to determine the eligibility of the fleet to be classified under this section, including approval of the proposed record keeping.

(c) Received approval.

2. The vehicle begins and ends a qualifying trip at the same point without having added to its load any items other than those listed in section 28-5858, paragraph 2.

3. At the midway point in a qualifying trip, the load is less than forty-five per cent of the full load capacity of the vehicle. For purposes of this paragraph, "full load capacity" means the registered gross weight of the vehicle minus the weight of the vehicle without a load.

§ 28-5861. Motor vehicle; reduced motor carrier tax; agricultural products; definition

A. The director shall compute a reduced motor carrier tax that is seven-tenths of the full rate for a motor vehicle that is used only for transporting agricultural products or a lightweight motor vehicle that is used only for transporting agricultural products if the motor carrier or the owner or operator of the lightweight motor vehicle has done all of the following:

1. Applied to the department to be classified under this section for a registration year.

2. Given the information required by the director to determine the eligibility of the vehicle to be classified under this section.

3. Received approval to be classified under this section.

B. A motor carrier who is applying for a reduced motor carrier tax under this section shall maintain a record of total miles traveled during a reporting period.

C. In determining the full rate of motor carrier tax under this section, the director shall compute the motor carrier tax based on all miles traveled on and off a highway.

D. To qualify a lightweight motor vehicle for the reduced motor carrier tax under this section, the owner or operator of a lightweight motor vehicle shall prequalify for the reduced motor carrier tax with the department before registration

of each lightweight motor vehicle by signing an affidavit declaring information required by the director to determine the eligibility of the vehicle to be classified as a vehicle transporting agricultural products pursuant to this section.

E. A motor carrier or owner or operator of a lightweight motor vehicle who pays a reduced motor carrier tax under this section may not apply for a reduced motor carrier tax provided for under section 28–5858.

F. For the purposes of this section, "agricultural products" means either:

1. Crops, livestock or supplies used or produced in farming operations.

2. Products, crops or livestock in their unmanufactured or unprocessed states.

§ 28–5862. **Gross vehicle weight change**

A. A motor carrier declaring an increased or decreased gross vehicle weight for a motor vehicle operated by the motor carrier pursuant to section 28–5435 establishes a new gross vehicle weight for motor carrier tax purposes.

B. The effective date of the new weight for motor carrier tax purposes is the first day of the next month immediately after the effective date of the registration change.

C. A reduced gross vehicle weight is not allowed for motor carrier tax purposes unless the motor carrier makes available to the director a copy of the new motor vehicle registration showing the new reduced weight.

D. If the reregistration of a motor vehicle pursuant to section 28–5435 results in a higher motor carrier tax rate, the director shall apply the new rate to all miles traveled by the motor vehicle in this state since the effective date of the current registration.

§ 28–5863. **Additional assessments; definition**

A. The director may make an additional assessment of motor carrier taxes due from the motor carrier based on any information available to the director as follows:

1. On the failure of a motor carrier to file a report required by section 28–5876.

2. If the director is not satisfied with the correctness of a report filed or the amount of single trip permits purchased.

3. The evidence indicates that the declared gross weight ascribed to a motor vehicle or lightweight motor vehicle is less than the actual gross weight of that vehicle.

B. The director shall add to the tax a penalty of twenty-five per cent of the additional motor carrier tax assessed, together with interest at the rate of twelve per cent per year from the twenty-fifth day after the end of the month for which the additional assessment is made until paid.

C. The director shall give written notice to the motor carrier of the additional assessment. The notice shall be served personally or by mail addressed to the motor carrier at the motor carrier's address of record as filed with the office of the director.

D. Except in the case of a fraudulent report or failure to make a report, the director shall serve a notice of any additional motor carrier tax proposed to be assessed on the licensee within four years after the alleged erroneous report was filed.

E. Failure to provide records demanded for the purpose of audit tolls the statute of limitations until the records are provided. Successive failures to adequately respond to a demand for records relate back to the first demand.

F. For the purposes of this section, "motor carrier" includes an owner or operator of a lightweight motor vehicle claiming a reduced rate under section 28-5858.

§ 28-5864. **Refunds**

A. If the director determines that a motor carrier tax, penalty, fee or interest has been overpaid, the director shall:

1. State that fact in the director's records.

2. Either credit the excess on any amount then due from the motor carrier or make a refund to the motor carrier or the motor carrier's successors, administrators, executors or assignees.

B. The director shall not allow a credit or refund after three years from the date of overpayment unless the motor carrier files with the director a written claim for credit or refund within the three years.

C. The motor carrier shall state the specified grounds on which a claim is based.

D. The director may pay the refund from any motor carrier tax receipts in the possession of the director before disposition of the receipts.

§ 28-5865. **Transaction privilege tax exemption**

A. Payment of the motor carrier tax by a motor carrier or a person who operates a lightweight motor vehicle exempts the motor carrier or lightweight motor vehicle operator from transaction privilege tax or any similar tax imposed by any taxing authority in this state.

B. Except as provided in this article, any other taxing authority in this state shall not impose a transaction privilege tax or any similar tax based on the gross proceeds of sales or gross income from sales derived from any of the following:

1. A motor carrier's use on the highways under section 42-1310.02, subsection A, paragraph 1.

2. A person's use of a lightweight motor vehicle on the highways under section 42-1310.02, subsection A, paragraph 1.

3. Leasing a motor vehicle or lightweight motor vehicle under section 42-1310.02, subsection B, paragraph 4.

§ 28-5866. **Motor carrier tax license; requirement**

A. Except as provided in section 28-5873, a person registering in this state or accorded proportional registration or registration reciprocity with this state for a motor vehicle shall both:

1. Obtain a motor carrier tax license before operating on a highway.

2. Comply with this article.

§ 28-5867. **Motor carrier tax license; application; fee**

A. A person who applies for a motor carrier tax license shall obtain the license in the name of either:

1. The motor vehicle registrant, if registering a motor vehicle under chapter 3 of this title, except that:

(a) A rental company that has approval for consolidated tax filings from the director may be the licensee in lieu of the motor vehicle registrant, at the rental company's option.

(b) If the motor vehicle registrant leases the motor vehicle to a lessee who has a motor carrier tax license issued under this article and if there is a written lease

agreement so providing, the registrant may permit the lessee to include the vehicle under the lessee's license for purposes of this article. A written lease agreement shall specify which party to the lease agreement is responsible for obtaining the motor carrier tax license.

2. The motor vehicle operator, if the person is not covered by paragraph 1.

B. An applicant for a motor carrier tax license shall file with the director an application in the form and manner as the director prescribes, stating the name and address of the applicant and other information as required by this article or by the director. The application shall not be made under oath but shall contain or be accompanied by a written declaration that it is made under penalty of perjury.

C. A filing fee of ten dollars is required with an application for a motor carrier tax license.

§ 28–5868. Motor carrier tax license; issuance; validity

A. The director shall issue a motor carrier tax license to an applicant if the application is in proper form and if the applicant has complied with the other requirements of this article.

B. The motor carrier tax license is valid until cancelled, surrendered or revoked as provided in this article.

§ 28–5869. License denial

The director may deny a license if the application:

1. Contains a misrepresentation, misstatement or omission of material information required by the application.

2. Is filed by a person as a subterfuge for the real party in interest whose license or registration has previously been revoked by the director.

3. Is filed by a person who is delinquent in the payment of any fee, tax, penalty or other amount due the department for its account.

§ 28–5870. License revocation; registration cancellation

The director may revoke a motor carrier tax license of a motor carrier and cancel the registrations of any vehicles operated by the motor carrier who refuses or neglects to comply with this article, any rule adopted under this article or any other law of this state that relates to highway transportation and that is enforced by the department.

§ 28–5871. Bond requirement; revocation of license

A. Except as provided in section 28–5873 and subsections F and G of this section, the director shall require a motor carrier to furnish a bond on forms approved by the director. The bond shall be:

1. With a surety company authorized to transact business in this state as surety on the bond, on which the motor carrier is the principal obligor and this state is the obligee.

2. Conditioned on the payment by the motor carrier to the director of all motor carrier taxes before delinquency imposed under this chapter, together with all penalties and interest on the taxes and generally on faithful compliance with this article.

B. The director:

1. Shall fix the amount of the bond required of a motor carrier proportionately with the tax liability accrued by the motor carrier and the record of compliance with the requirements of this article.

2. Shall adopt rules stating criteria for determining bond amount requirements for each reporting period.

3. May review and change the total amount of the bond required of a motor carrier.

C. A surety on a bond furnished by a motor carrier is released and discharged of all liability to this state accruing on the bond at the expiration of sixty days from the date on which the surety files with the director a written request to be released and discharged. The request does not operate to relieve, release or discharge the surety from any liability already accrued or that will accrue before expiration of the sixty day period.

D. If a bond furnished by a motor carrier is insufficient or if the surety on the bond requests to be released and discharged as provided in this section, the motor carrier shall immediately give an additional or another bond as required by the director. If the motor carrier fails to furnish an additional bond as required by the director within thirty days after written notice mailed to the licensee's address of record in the office of the director, the director may revoke the motor carrier tax license.

E. Instead of giving the bond required by this section, a motor carrier may deposit with the director money of the United States in the total amount of the bond directed to be furnished.

F. At the request of a motor carrier who is also required to file a use fuel tax bond pursuant to section 28-5736, the director may permit the motor carrier to furnish a single bond in an amount sufficient to cover both liabilities.

G. On good cause, the director may reduce the bond amount or waive the bond required by this section.

§ 28-5872. Cab cards

A. In addition to the motor carrier tax license, a motor carrier shall apply for cab cards for all motor vehicles operated in this state, except as provided by section 28-5873.

B. The director shall not issue a cab card until the licensee certifies the existence of financial responsibility as required by section 28-4034. The director shall prescribe the form of the cab card.

C. The motor carrier shall carry the cab card at all times in the cab of the motor vehicles operated by the motor carrier. The motor carrier shall display the cab card to the director, the director's authorized agents or any other law enforcement officer in this state on demand. In the course of interstate operation of a motor vehicle, a motor carrier shall display the cab card to any agent of the director at any port of entry or exit as required. If a properly issued cab card is not displayed, whether through loss or theft or for any other reason, the director may require the operator of the motor vehicle to purchase a special single trip motor carrier tax trip permit.

D. A cab card is valid for the period of time prescribed by the director.

E. A licensee is liable for any motor carrier tax that accrues to each issued cab card. If a cab card is lost, stolen or destroyed, the licensee is not liable for use of that cab card twenty-four hours after the director receives written notification from the licensee that the cab card has been lost, stolen or destroyed.

§ 28-5873. Trip permit

A nonresident motor carrier or nonresident person who operates a motor vehicle or lightweight motor vehicle in this state may purchase a motor carrier tax trip permit for each trip in this state instead of obtaining a motor carrier tax license,

filing a report pursuant to section 28–5876 and filing a bond pursuant to section 28–5871.

§ 28–5874. **Single trip motor carrier tax trip permit; tax; expiration**

A. There is imposed against each motor vehicle and each lightweight motor vehicle for a single trip motor carrier tax trip permit a motor carrier tax of either:

1. Twelve dollars for fifty miles or less to be traveled on the highways of this state.

2. Forty-eight dollars for more than fifty miles to be traveled on the highways of this state.

B. A single trip motor carrier tax trip permit:

1. Expires on the completion of the specific trip for which it is issued and applies only for a period of ninety-six hours from the time of issuance unless an extension of time is authorized by the director.

2. Is valid for a single trip for vehicles entering this state at Black Rock and exiting at Teec Nos Pos or entering this state at Teec Nos Pos and exiting at Black Rock even if the vehicles exit and reenter this state during the trip.

C. The director may authorize third parties to issue single trip motor carrier tax trip permits pursuant to this section in accordance with rules adopted by the director.

§ 28–5875. **Special thirty day motor carrier tax permit; fee**

A. The department may issue a special thirty day motor carrier tax permit for a motor vehicle or lightweight motor vehicle if the vehicle is not in the commercial transportation business, is in this state for a limited period of time and will make limited use of this state's highways.

B. The motor carrier tax for a special thirty day permit is ninety-six dollars.

C. The director may authorize third parties to issue special thirty day motor carrier tax trip permits pursuant to this section in accordance with rules adopted by the director.

§ 28–5876. **Reports; tax payment; penalties; interest**

A. On or before the twenty-fifth day of the month immediately following the close of a licensee's reporting period, the licensee regulated by this article shall file with the director on forms prescribed by the director a report that:

1. States the amount of motor carrier tax due.

2. Includes the payment for motor carrier taxes and penalties, if any, that are due.

B. The report shall not be under oath but shall contain or be accompanied by a written declaration that it is made under penalties of perjury.

C. The director shall establish reporting periods that are for at least one calendar month and that do not exceed twelve calendar months. The frequency of reporting for a licensee shall be related to the amount of motor carrier tax liability and the record of compliance with the requirements of this article.

D. A motor carrier shall file a report with the director by the due date, even if no tax is due for the reporting period. Failure to receive the authorized report form does not relieve a licensee from the obligation of submitting a report to the director, but the licensee may make a written report to the director stating all of the information required on the prescribed form. On or before the due date the motor carrier shall file the report and the remittance with the director payable to the department for the amount of tax, penalty, interest or other fees due.

E. If a motor carrier pays any tax due through the United States mail, for purposes of determining any interest or penalty owed, the report is deemed received by the director on the date shown by the postmark stamped on the envelope containing the report. If a mailing date is affixed to the envelope by a machine owned or under the control of the person submitting the report and the United States post office has corrected or changed the date stamped on the envelope by causing the official United States postmark to also be imprinted on the envelope, the date the report is deemed received by the director is the date shown by the official United States postmark.

F. The director shall add a penalty of:

1. Ten per cent to the motor carrier tax, except additional taxes assessed pursuant to section 28-5863, not paid on or before the day prescribed for the payment of the motor carrier tax, if the motor carrier tax is paid within thirty days after the day prescribed for the payment of the motor carrier tax.

2. Fifteen per cent of the tax to the motor carrier tax if the motor carrier tax is not paid within thirty days after the day prescribed for the payment of the motor carrier tax.

G. In addition to the penalty provided by subsection F of this section:

1. A person who fails to file a report required by this section when due shall pay an administrative penalty of twenty-five dollars.

2. The department shall assess interest at the rate of twelve per cent per year against the motor carrier tax due, if the tax is not paid on or before the day prescribed for the payment of the tax.

§ 28-5877. Record requirements; inspection; cooperative agreement; definition

A. A motor carrier shall:

1. Maintain books, records and other data the director requires.

2. Preserve the records for at least three years except as provided in section 28-5863.

3. On request, make records covering operations for the three years before the date of the request available to the director at the motor carrier's principal place of business if the records are located in this state and during normal business hours at that location.

B. If the records are located outside this state and are not made available at the director's designated location, the director may require the motor carrier to pay in advance subsistence and travel expenses for an audit by the director's appointed representatives. If more than one motor carrier is audited by the director's appointed representative on the same trip, the director may apportion the travel expense of the representative among the motor carriers.

C. To verify the truth and accuracy of a statement, report or return or to ascertain that the tax imposed by this article has been paid, the director or any deputy, employee or agent authorized by the director may during usual business hours examine any records, books or other data required to be kept by a motor carrier under this article.

D. Subject to sections 28-5935 through 28-5938, the director may enter into a cooperative agreement with another state or states for the exchange of information and auditing of motor carriers who operate motor vehicles interstate. An agreement, arrangement, declaration or amendment is not effective until stated in writing and filed with the department. The agreement may provide for determining which motor carriers each state will audit, motor carrier records requirements, audit procedures, exchange of motor carrier information and other provisions that facili-

tate the administration of the agreement. Each state shall forward the findings of the audits to the other state as stipulated in the agreement. The director may serve the findings of audits conducted by another state of motor carriers operating in this state on the motor carrier in the form of an assessment as though the audit was conducted by the director.

E. For the purposes of this section, "motor carrier" includes an owner or operator of a lightweight motor vehicle claiming a reduced rate under section 28–5858.

§ 28–5878. **Hearing; rehearing**

A. A motor carrier aggrieved by an assessment, decision or order of the director under this article may make a written request for a hearing in the office of the director within fifteen days after service of the notice to show cause why the assessment, decision or order is in error or to present any other facts or testimony that is relevant. The hearing may be continued from time to time.

B. If the motor carrier or its agent does not request a hearing within fifteen days, the decision or order is final or the assessment is due. The assessment is delinquent if it is not paid within fifteen days after it is due.

C. After consideration of the evidence presented at the hearing, the director shall serve notice in writing to the motor carrier of the director's finding and order. Within ten days after service of the notice of the finding and order of the hearing, the motor carrier may request in writing a rehearing on the matter. The director may grant a request for a rehearing based on rules relating to conditions for rehearings.

D. If the motor carrier or its agent does not request a rehearing or if the director denies the request for a rehearing, the order is final or the assessment is due ten days after the notice. The assessment is delinquent unless it is paid within fifteen days after it is due.

§ 28–5879. **Legal remedies**

A. An injunction, a writ of mandamus or any other legal or equitable process shall not issue in an action or proceeding in any court against this state or against any officer of this state to prevent or enjoin the collection of the motor carrier tax, fee, penalty or interest required by this article to be collected.

B. A motor carrier making a payment may bring an action against the director in the superior court in Maricopa county for recovery of the amount paid if the motor carrier:

1. Pays the amount stating it is paid under protest.

2. Verifies and states the grounds for objection to the legality of the payment.

3. Pays the amount within three months after it becomes due.

C. The motor carrier shall institute the action provided in subsection B within one year after payment under protest. Failure to bring an action within one year constitutes a waiver of all demands against this state on account of the protested payment. A court shall not consider a ground for illegality other than that stated in the protest filed at the time of payment.

D. If judgment is rendered for the plaintiff, the director shall both:

1. Credit the amount of the judgment on any motor carrier tax or other amount due from the plaintiff under this article.

2. Refund the balance to the plaintiff.

E. A court shall not render judgment in favor of the plaintiff in an action brought against the director to recover any amount paid under this article if an

action is brought by or in the name of an assignee of the motor carrier who paid the amount.

F. Within thirty days after the date of a decision or order of the director pursuant to this article, the motor carrier may appeal to the superior court in Maricopa county from the decision or order. The court shall only consider evidence that was presented at the original hearing. The order of refusal, cancellation or revocation shall not be suspended during the pendency of an appeal.

ARTICLE 5. TAX COLLECTION

§ 28-5931. Definitions

In this article, unless the context otherwise requires:

1. "Confidential information":

(a) Includes:

(i) Reports and other statements filed with the director concerning the taxes, fees, penalties and interest imposed by this chapter.

(ii) Applications for a license required under this chapter.

(iii) Information discovered pursuant to this chapter concerning a person's business affairs, operation, taxes, fees and receipts by the director whether or not by compulsory process.

(iv) Information relating to taxes obtained from the department of revenue.

(v) Information supplied at the special request of the director by a taxpayer that the taxpayer requests to be held in confidence.

(b) Does not include information that is otherwise a public record.

2. "Levy" includes the power of distraint and seizure by any means.

3. "Tax" means any tax, fee, penalty or interest imposed by this title.

4. "Tax administration" includes the levy and assessment, collection, investigation, litigation, statistical gathering, enforcement, policymaking and management functions of the director in connection with this chapter.

5. "Taxpayer" means a person liable for a tax.

§ 28-5932. Jeopardy assessment; definition

A. If a taxpayer has not been licensed or has failed to make a tax report as required by this chapter and the director believes that the collection of a tax, fee assessment or deficiency under this chapter will be jeopardized by delay, whether or not the time otherwise prescribed for making a return and paying the tax has expired and notwithstanding any other provision of this chapter:

1. The director shall immediately assess the tax, with interest, additional amounts and additions to the tax as provided by law.

2. The tax, additions to the tax and interest are then immediately due and payable.

3. The director shall immediately issue a notice and demand for their payment.

B. The belief of the director is for all purposes presumptive evidence that the assessment or collection was in jeopardy. A certificate of mailing notice is presumptive evidence that notice was issued.

C. The taxpayer may stay collection and prevent the assessment from becoming final by filing both of the following within ten days after the date of the assessment:

1. A protest to the assessment.

2. A bond or any other security in amounts that the director deems necessary but not exceeding the amount of the assessment.

D. On filing a protest and posting bond as required, the assessment shall be reviewed as provided for other assessments made under this article. If the taxpayer fails to protest or post the required bond, the assessment is final.

E. For the purposes of this section, "reports" includes forms prescribed by the director and supporting schedules, attachments, lists and other documents.

§ 28–5933. **Contingent fee collection contracts**

A. In the administration and enforcement of this chapter, the department may enter into contingent fee contracts to collect delinquent taxes, penalties and interest due under this chapter, consistent with the requirements of sections 28–5935 through 28–5938.

B. The department shall not contract for the collection of delinquent taxes that exceed one thousand dollars for an individual, corporation or partnership.

§ 28–5934. **Abatement of uncollectible taxes, penalties and fees**

A. With the approval of the attorney general, the department may abate all or part of and purge from its records any uncollectible tax, penalty or administrative fee imposed by this chapter if the director determines that administrative costs for collection exceed the amount owed to the department.

B. The department shall abate the full amount of any penalty that is assessed in conjunction with a tax or fee imposed under this chapter and that is directly attributable to erroneous written advice furnished to a person by an employee of the department acting in the employee's official capacity if the person reasonably relied on the written advice, unless the penalty results from the failure of the person to provide adequate or accurate information.

C. The director may abate all or part of any penalty assessed in conjunction with a tax or fee imposed under this chapter if the director believes that reasonable cause exists for the failure of the person to comply with the applicable law. For purposes of this subsection, "reasonable cause" means a reasonable basis for the person to believe that the tax or fee did not apply to the person.

§ 28–5935. **Confidential information; disclosure prohibited**

A. A person, including a former employee or agent of the department or a person who previously had an administrative duty for the department, who has received confidential information while an employee or agent of the department, while performing an administrative duty for the department or pursuant to an exception under section 28–5936, subsection A, paragraph 2 shall not disclose the information except as provided in this article.

B. Confidential information shall not be disclosed if either:

1. The director determines that disclosure would seriously impair a civil or criminal tax investigation.

2. The disclosure would be contrary to the United States internal revenue code, part 6103(d), 6103(p)(8), 7213 or 7217.

§ 28–5936. **Confidential information; disclosure allowed**

A. A person may disclose confidential information as follows:

1. Confidential information relating to:

(a) A taxpayer may be disclosed to the taxpayer, the taxpayor's successor in interest or a designee of the taxpayer who is authorized in writing by the taxpayer.

(b) A corporate taxpayer may be disclosed to a principal officer of the corporation.

(c) A partnership may be disclosed to a partner of the partnership, excluding disclosure of confidential information of a particular partner unless otherwise authorized.

(d) An estate may be disclosed to the personal representative of the estate and to an heir, next of kin or beneficiary under the will of the decedent if the director finds that the heir, next of kin or beneficiary has a material interest that will be affected by the confidential information.

(e) A trust may be disclosed to the trustee or trustees, jointly or separately, and to the grantor or any beneficiary of the trust if the director finds that the grantor or beneficiary has a material interest that will be affected by the confidential information.

(f) A taxpayer may be disclosed if the taxpayer has waived any rights to confidentiality either in writing or on the record in any administrative or judicial proceeding.

2. Confidential information may be disclosed to:

(a) An employee of the department whose official duties involve tax administration.

(b) The office of the attorney general or the office of a county attorney authorized in writing by the attorney general solely for its use in preparation for, or an investigation that may result in, a proceeding involving tax administration before the director, department or other agency or board of this state or before a grand jury or a state or federal court.

(c) Other state tax officials of this state whose official duties require the disclosure for proper tax administration purposes if the information is sought in connection with any investigation or other proceeding conducted by the tax official, except that a disclosure is limited to information of a taxpayer who is being investigated or who is a party to a proceeding conducted by the tax official.

(d) The United States internal revenue service or state tax officials of other states pursuant to statute and a written agreement between the director and the internal revenue service or other state, if the internal revenue service or the other state grants substantially similar privileges to the director for the type of information being sought.

(e) The auditor general if in connection with an audit of the department subject to the restrictions in section 28–5935, subsection B.

(f) Any person to the extent necessary for effective tax administration in connection with the processing, storage, transmission and reproduction of the information and the programming, maintenance, repair, testing and procurement of equipment for purposes of tax administration.

3. Confidential information may be disclosed in a state or federal judicial or administrative proceeding pertaining to tax administration if:

(a) The taxpayer is a party to the proceeding.

(b) The treatment of an item reflected in the information is directly related to the resolution of an issue in the proceeding.

(c) The information directly relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer that directly affects the resolution of an issue in the proceeding.

4. Identity information may be disclosed for purposes of notifying persons entitled to tax refunds if the director is unable to locate the persons after reasonable effort.

5. If necessary to effect collection of a delinquent tax, penalties or interest, the outstanding obligation and information obtained in the collection investigation may be disclosed.

6. The director may disclose statistical information gathered from confidential information if the disclosure does not include confidential information attributable to any one taxpayer.

7. Confidential information may be disclosed to law enforcement agencies for law enforcement purposes.

B. Except as provided in section 28–5935, subsection B, a court may order the director to disclose confidential information pertaining to a party to an action. The court shall make an order only on a showing of good cause and that the party seeking the information has made demand on the taxpayer for the information.

C. This article does not prevent the director from disclosing to a person any aggregate statistical information gathered from confidential information regarding the distribution of gasoline sales by a distributor in each of the several counties of this state. The director shall provide this gasoline sales distribution information to a person pursuant to section 39–121.

§ 28–5937. **Fee**

If the director is required or permitted to disclose confidential information, the director may charge the person or agency requesting the information a fee for the reasonable cost of disclosure.

§ 28–5938. **Violation; classification**

A. A disclosure of confidential information in violation of this article is a class 1 misdemeanor.

B. A knowing disclosure of confidential information is a class 6 felony.

§ 28–5939. **Lien**

A. If a tax, fee, interest or penalty that the director or registering officer is required to collect is not paid by a taxpayer when due, the unpaid amount is a lien from the date the amount became due on all property and rights to property, whether real or personal, belonging to the taxpayer or acquired by the taxpayer after the amount became due.

B. The director may accept voluntary liens on real or personal property pledged by a person as security for a tax that the director is required to collect and that is not paid by a taxpayer when due. A voluntary lien shall be perfected and treated in the same manner as any other lien under this article.

§ 28–5940. **Perfection of lien**

A. The director may perfect the lien imposed by section 28–5939 against the taxpayer's real property located in any county by recording a notice of lien in the form prescribed by subsection D of this section in the office of the county recorder.

B. The director may perfect the lien imposed by section 28–5939 against the taxpayer's personal property or rights to personal property located in this state by recording a notice of lien in the form prescribed by subsection D of this section in the office of the secretary of state.

C. From the time of perfecting the lien imposed by section 28–5939 in the manner provided by this section, the lien, with accruing interest, is superior to all other liens and encumbrances perfected thereafter.

D. A notice of lien recorded under this section shall specify the nature of the tax, amount of tax, interest and penalty due, taxable periods for which the amounts are due and the name and last known address of the taxpayer liable for the amounts.

§ 28–5941. **Release of lien**

A. At any time, the director may release all or any portion of the property subject to the lien from the lien or subordinate the lien to other liens if the director determines that the taxes are sufficiently secured by a lien on other property of the taxpayer or that the release or subordination of the lien will not endanger or jeopardize the collection of the taxes. A certificate by the director to the effect that any property has been released from the lien or that the lien has been subordinated to other liens is conclusive evidence that the property has been released or that the lien has been subordinated as provided in the certificate.

B. If any lien imposed by section 28–5939 has been satisfied and a notice of the lien had been recorded pursuant to section 28–5940, the director shall issue a release of the lien to the person against whom the lien was claimed. The director shall record the lien release in any county where the original lien was recorded and in the office of the secretary of state, if applicable.

§ 28–5942. **Priority of tax claim**

A. The amount required to be collected by the director with interest and penalties shall be satisfied first in any of the following cases:

1. If the person is insolvent.

2. If the person makes a voluntary assignment of the person's assets.

3. If the estate of the person in the hands of executors, administrators or heirs is insufficient to pay all debts due from the deceased.

4. If the estate and effects of an absconding, concealed or absent person required to pay any amount under this title are levied on by process of law.

B. This section does not give this state a preference over any recorded lien that was recorded before the time the director recorded a notice of lien pursuant to section 28–5940.

§ 28–5943. **Transfer of vehicle subject to lien**

A. If ownership of a motor vehicle that is subject to the lien provided by section 28–5939 is transferred by operation of law or otherwise, a certificate of registration or certificate of title with respect to that vehicle shall not be issued to the transferee or any other person until the director certifies that the lien has been removed.

B. A license under chapter 3 of this title with respect to a motor vehicle that becomes subject to the lien provided for by section 28–5939 shall not be issued or transferred until the director certifies that the lien has been removed.

§ 28–5944. **Levy and distraint**

If a person liable to pay any tax neglects or refuses to pay the tax, the director may collect the tax and other amounts sufficient to cover the expenses of the levy by levy on all property and rights to property belonging to the person, except property that is exempt under section 28–5949, or on which there is a lien as provided in this article for the payment of the tax.

§ 28–5945. **Levy; salary; wages**

A. Levy may be made on the accrued salary or wages of any officer, employee or elected official of this state or its political subdivisions or any agency or instrumen-

tality of this state or its political subdivisions by serving a notice of levy on the state treasurer in the case of state wages or salaries and on the chief disbursing officer of political subdivisions in the case of wages or salaries paid by political subdivisions.

B. Concerning a levy on salary or wages payable to or received by a taxpayer:

1. The effect is continuous from the date the levy is first made until the liability out of which the levy arose is satisfied or becomes unenforceable.

2. The director shall promptly:

(a) Release the levy when the liability out of which the levy arose is satisfied or becomes unenforceable.

(b) Notify the person on whom the levy was made that the levy has been released.

§ 28–5946. **Levy; property; seizure**

A. Except as otherwise provided in section 28–5945, subsection B, a levy extends only to property possessed and obligations existing at the time of the levy.

B. In any case in which the director may levy on property or rights to property, the director may seize and sell the property or rights to property, whether real or personal, tangible or intangible.

C. If any property or right to property on which a levy has been made under section 28–5945, subsection A is not sufficient to satisfy the claim of the director for which the levy is made, the director may proceed as often as is necessary to levy in like manner on any other property liable to levy of the person against whom the claim exists, until the amount due, together with all expenses, is fully paid.

§ 28–5947. **Property surrender; definition**

A. Except as otherwise provided in subsection B of this section, on demand of the director, a person in possession of or obligated with respect to property or rights to property subject to levy on which a levy has been made shall surrender the property or rights to property or discharge the obligation to the director, except the part of the property or rights to property as is, at the time of the demand, subject to an attachment or execution under any judicial process.

B. A levy on an organization with respect to a life insurance or endowment contract issued by the organization, without necessity for the surrender of the contract document, is a demand by the director for payment of the amount described in this subsection and the exercise of the right of the person against whom the tax is assessed to the advance of the amount. The organization shall pay the amount within ninety days after service of the notice of levy. The notice shall include a certification by the director that a copy of the notice has been mailed to the person against whom the tax is assessed at the person's last known address. The levy is deemed to be satisfied if the organization pays to the director the amount that the person against whom the tax is assessed could have had advanced to the person by the organization on the date prescribed in this subsection for the satisfaction of the levy plus the amount of any advance, including contractual interest, made to the person on or after the date the organization had actual notice or knowledge of the existence of the lien with respect to which the levy is made, other than an advance, including contractual interest, made automatically to maintain the contract in force under an agreement entered into before the organization has the notice or knowledge. The satisfaction of a levy under this subsection is without prejudice to any civil action for the enforcement of a lien imposed by this article with respect to the contract.

C. On demand of the director, a person who fails or refuses to surrender any property or rights to property that are subject to levy is personally liable and the person's estate is liable to this state in an amount that is equal to the value of the property or rights to property that are not surrendered, but not exceeding the

amount of taxes for the collection of which the levy has been made, with costs and interest on the amount at an annual rate of twelve per cent from the date of the levy or, in the case of a levy described in section 28–5945, subsection B, from the date the person would otherwise have been obligated to pay the amount to the taxpayer. Any amount, other than costs, recovered under this subsection shall be credited against the tax liability for the collection of which the levy was made.

D. A person in possession of or obligated with respect to property or rights to property subject to levy on which a levy has been made who, on demand by the director, surrenders the property or rights to property or discharges the obligation to the director or who pays a liability under subsection C of this section is discharged from any obligation or liability to the delinquent taxpayer with respect to the property or rights to property arising from the surrender or payment. In the case of a levy that is satisfied pursuant to subsection B of this section, the organization is also discharged from any obligation or liability to a beneficiary arising from such surrender or payment.

E. As used in this section, "person" includes an officer or employee of a corporation, an officer, employee or elected official of this state or its political subdivisions, any agency or instrumentality of this state or its political subdivisions, or a member or employee of a partnership who as such officer, employee, elected official or member is under a duty to surrender the property or rights to property, or to discharge the obligation.

§ 28–5948. Production of books

If a levy has been made or is about to be made on any property or any right to property, a person with custody or control of books or records containing evidence or statements relating to the property or right to property subject to levy shall exhibit the books or records to the director on demand of the director.

§ 28–5949. Levy; exempt property

A. Notwithstanding any other law, property or rights to property are not exempt from the levy provided in this article unless the property is specifically exempt pursuant to subsection B of this section.

B. The following property is exempt from levy:

1. Wearing apparel and school books that are necessary for the taxpayer or members of the taxpayer's family.

2. Fuel, provisions, furniture, personal effects, arms for personal use, livestock and poultry of the taxpayer that are not in excess of a fair market value of five thousand dollars.

3. Books and tools that are necessary for the trade, business or profession of the taxpayer and that are not in excess of a fair market value of two thousand five hundred dollars.

4. Mail that is addressed to any person and that has not been delivered to the addressee.

5. If the taxpayer is required by judgment of a court of competent jurisdiction that was entered before the date of the levy to contribute to the support of the taxpayer's minor children, salary, wages or other income of the taxpayer that is necessary to comply with the judgment.

6. An amount during any period that is payable to or received by an individual as wages or salary for personal services or as income derived from other sources to the extent that the total of the amount payable to or received by the taxpayer during the period does not exceed the applicable exempt amount determined as follows:

(a) In the case of an individual who is paid or receives all of the individual's wages, salary and other income on a weekly basis, the amount of the compensation received by the individual during any week that is exempt from levy are the amounts required by law to be withheld by the payor, one hundred fifty dollars plus twenty-five dollars for each individual who is specified in a written statement that is submitted to the person on whom notice of levy is served and that is verified in the manner that the director prescribes by rule and:

(i) Over one-half of whose support for the payroll period was received from the taxpayer.

(ii) Who is the spouse of the taxpayer or who bears a relationship to the taxpayer specified in section 43–1001, paragraph 3.

(iii) Who is not a minor child of the taxpayer with respect to whom amounts are exempt from levy under paragraph 5 for the payroll period.

(b) In the case of any individual who is not described in paragraph 1, the amount of the wages, salary and other income that is payable to or received by the individual during any applicable pay period or other fiscal period as determined by rules prescribed by the director and that is exempt from levy under paragraph 5 is an amount that is determined by rules and that as nearly as possible will result in the same total exemption from levy for the individual over a period of time as the individual would have under paragraph 1 if the individual were paid or received the wages, salary and other income on a regular weekly basis during that period of time.

7. A homestead exempt from attachment, execution and forced sale to the extent exempt pursuant to title 33, chapter 8.

§ 28–5950. Appraisal

A. The officer seizing property described in section 28–5949 shall appraise and set aside to the owner the amount of the property declared to be exempt.

B. If the taxpayer objects at the time of the seizure to the valuation fixed by the officer making the seizure, the director shall have three disinterested individuals make the valuation.

§ 28–5951. Seized property; notice and sale

A. Except as otherwise provided in this section, the notice of sale and the sale of property seized by the director under this article shall be conducted in the manner and the time provided in title 12, chapter 9, article 7, relating to the sale of property under execution.

B. Real property may be redeemed in the manner provided by title 12, chapter 8, article 11.

C. The director shall notify the taxpayer of the date, time and location of the sale of the taxpayer's property or right to property with a description of the property or right to property to be sold. The notice shall be given in person, left at the dwelling or usual place of business of the taxpayer or sent by first class mail to the taxpayer's last known address, not less than ten days before the day of the sale. If the property or right to property is perishable, the director shall give notice of the sale to the taxpayer in the manner and within the time limits as are reasonable considering the character and condition of the property.

§ 28–5952. Levy release; property return

A. Pursuant to rules, the director may release the levy on all or part of the property or rights to property levied on if the director determines the release will facilitate the collection of the liability. The release does not prevent a subsequent levy.

B. If the director determines that property has been wrongfully levied on, the director may return:

1. The specific property levied on.

2. An amount of money equal to the amount of money levied on.

3. An amount of money equal to the amount of money received by this state from a sale of the property.

C. Property may be returned at any time. An amount equal to the amount of money levied on or received from the sale may be returned at any time before the expiration of nine months from the date of the levy.

ARTICLE 6. UNDERGROUND STORAGE TANK TAX

§ 28–6001. Underground storage tank tax; payments

A. A person who is liable for the motor vehicle fuel tax imposed by section 28–5606 or the aviation fuel tax imposed by section 28–8344 shall make periodic payments of the underground storage tank tax imposed by title 49, chapter 6, article 2 to the director of the department of transportation.

B. A person who refines, manufactures, produces, compounds, blends or imports diesel shall register with the department of transportation on a form prescribed by the department of transportation and shall make periodic payments of the underground storage tank tax imposed by title 49, chapter 6, article 2 to the director. For purposes of this subsection, "diesel" means a liquid petroleum product that meets the specifications in ASTM D-975–88.

§ 28–6002. Collection agent

For the purposes of section 28–6001, the director of the department of transportation acts only as a collecting agent for the director of the department of environmental quality and assumes no responsibility for the underlying tax liability other than that described in this article.

§ 28–6003. Payment procedure; return form

A. A person shall:

1. Make the payments to the director of the department of transportation that are required by section 28–6001 at the same time and in the same manner as the motor vehicle fuel tax.

2. Include a return form prescribed by the director of the department of environmental quality indicating:

(a) The time period to which the return applies.

(b) The quantity of fuel used to measure the tax, less exclusions for exports, shrinkage, loss and other exclusions as the director of the department of environmental quality may allow by rule.

(c) The amount of the underground storage tank tax payment.

(d) The amount of any deductions taken pursuant to section 28–6004.

(e) Any other information required by the director of the department of environmental quality.

B. A taxpayer is not required to obtain a separate license for tax payments under this article.

§ 28–6004. **Payment deduction**

A person who is required to make the periodic payments required by section 28–6001 may deduct from the required periodic payments an amount equal to the product obtained by multiplying the tax rate specified in section 49–1031, subsection A by the number of gallons of fuel that the person certifies have been delivered to a tank that is not subject to the underground storage tank tax imposed by title 49, chapter 6, article 2 and from which no further bulk distribution of the fuel will be made.

§ 28–6005. **Refund; credit**

If a person required to make payments under this article is the assignee of a refund claim assigned pursuant to section 49–1031, the refund shall be given by means of a credit taken on the return required to be filed under this article.

§ 28–6006. **Administration same as for motor vehicle fuel tax**

A. Section 28–5607, subsection B, section 28–5624, subsection D, sections 28–5602, 28–5603, 28–5605, 28–5613, 28–5614, 28–5619, 28–5620, 28–5621, 28–5622, 28–5625 and article 5 of this chapter apply to the persons from whom the underground storage tank tax is collected pursuant to section 28–6001 so that the underground storage tank tax is administered in the same manner as the motor vehicle fuel tax.

B. Penalties, late filing fees and interest collected by the department of transportation shall be remitted to the director of the department of environmental quality in the same manner as the tax collected pursuant to this article.

§ 28–6007. **Underground storage tank tax clearing account**

A. A special underground storage tank tax clearing account is established consisting of monies received by the director under this article.

B. On notice from the director, the state treasurer shall invest and divest monies in the account as provided by section 35–313. The state treasurer shall credit monies earned from these investments to the special underground storage tank tax clearing account.

§ 28–6008. **Distribution; administration costs**

A. By the twentieth day of each month, the director of the department of transportation shall distribute to the director of the department of environmental quality amounts collected and information from return forms received during the preceding calendar month.

B. The director of the department of transportation shall withhold an amount equal to the costs incurred by the department of transportation in administering this article that is determined pursuant to an intergovernmental agreement with the department of environmental quality under title 11, chapter 7, article 3. The amount withheld shall be deposited in a revolving fund to be used by the director of the department of transportation for administering the underground storage tank tax as described in this article.

C. The director of the department of environmental quality shall dispose of the monies transmitted according to section 49–1036.

CHAPTER 17

TRANSPORTATION EXCISE TAX DISTRIBUTION

ARTICLE 1. TRANSPORTATION EXCISE TAX DISTRIBUTION IN HIGHLY POPULATED COUNTIES

§ 28–6301. Definitions

In this article, unless the context otherwise requires:

1. "Bond related expenses" means:

(a) Printing, publication or advertising expenses with respect to the sale and issuance of any bonds.

(b) Fees, expenses and costs of registrars, paying agents and transfer agents retained by the board.

(c) Fees, expenses and costs of attorneys, accountants, actuaries, feasibility consultants, computer programmers or other experts employed to aid in the sale and issuance of the bonds.

(d) Other costs, fees and expenses incurred or reasonably related to the issuance, sale and administration of the bonds.

2. "Bond related obligation" means any agreement or contractual relationship between the board and any bank, trust company, insurance company, surety bonding company, pension fund or other financial institution providing increased credit on, or security for, the bonds or liquidity for secondary market transactions.

3. "Bonds" means any bonds that are payable from the regional area road fund as provided in chapter 21, article 2 of this title.

4. "Controlled access highway" has the same meaning prescribed in section 28–2001.

5. "Population" means the population determined in the most recent United States decennial census or the most recent special census as provided in section 28–6532 and revisions to the decennial or special census certified by the United States bureau of the census.

§ 28–6302. Transportation excise tax distribution; counties with one million two hundred thousand or more persons; regional area road fund

A. In a county with a population of one million two hundred thousand or more persons, the officer collecting transportation excise tax monies pursuant to sections 42–1482 and 42–1482.01 that are designated for deposit in the regional area road fund shall immediately transfer the monies to the state treasurer. The state treasurer shall deposit the monies in a fund designated for the county as the regional area road fund. The state treasurer shall hold monies in the regional area road fund as a trustee for the county.

B. Except as provided in this section, the county in which the transportation excise taxes are levied has the beneficial interest in the regional area road fund. This state has no beneficial interest in the regional area road fund except as an obligee for reimbursement of state monies that are advanced as salaries or expenses by this state or the department and that are to be repaid by the regional area road fund.

C. Monies and investments within the regional area road fund may be used and spent only as provided in this article or in section 42–1482.01. An appropriation of any nature shall not be required before the expenditure of monies from the regional area road fund. Monies in the bond proceeds account or construction account of a regional area road fund may be obligated for payment in future years for the purpose of right-of-way acquisition subject to the limitations prescribed in sections

28–7001 and 28–7002. Except as provided in section 42–1482.01, the state treasurer shall make payments from the regional area road fund by check, and a warrant or voucher is not necessary. Subject to the powers granted to the board in chapter 21, article 2 of this title, the director shall administer monies deposited in the regional area road fund.

§ 28–6303. **Regional area road fund; separate accounts**

A. The regional area road fund is divided into three separate accounts designated as the bond account, the construction account and the bond proceeds account.

B. The state treasurer shall:

1. Account separately for each account.

2. Make transfers between accounts only as provided in this article or chapter 21, article 2 of this title.

3. Before any bonds are issued, deposit transportation excise tax revenues transferred to the state treasurer in the construction account. These revenues shall be expended as provided in this article or section 42–1482.01.

4. After any bonds are issued, deposit transportation excise tax revenues transferred to the state treasurer in the bond account first until the bond account contains monies sufficient to meet all principal, interest or redemption requirements for the current period as required by any resolution of the board pertaining to the issuance of bonds.

5. After all current period requirements for all of the bonds are deposited in the bond account, deposit the balance of transportation excise tax revenues transferred to the state treasurer for the current period in the construction account.

C. The state treasurer may:

1. Invest monies in any account of the regional area road fund in any securities or obligations authorized by title 35, chapter 2, article 2.

2. For the purpose of investments, commingle monies within the regional area road fund with state monies if all interest earned on the monies in the regional area road fund of a county is credited to the respective account of the regional area road fund in which the investment was made.

§ 28–6304. **Bond account; expenditures**

A. The state treasurer shall:

1. Hold monies in the bond account in trust for the owners of the bonds.

2. Pay monies in the bond account to the county, to paying agents or to the owners of the bonds directly in accordance with section 42–1482.01 and with a resolution of the board authorizing the issuance of the bonds.

B. Monies in the bond account may be used:

1. To pay bond related expenses or recurring expenses pertaining to administration and payment of the bonds.

2. For funding reserves for the payment of the bonds.

3. For payment of fees, charges and expenses incurred with respect to bond related obligations.

C. Monies in the bond proceeds account may be obligated or spent as directed by the board for the:

1. Payment of all bond related expenses.

2. Establishment and funding of reserve monies or to pay interest on bonds during the expected period of construction.

3. Payment of fees, charges and expenses incurred with respect to bond related obligations.

4. Design, right-of-way purchase or construction of controlled access highways that are included in the regional transportation plan of the county and that are accepted into the state highway system either as a state route or as a state highway or related grade separations of controlled access highways that are included in the regional transportation plan of the county.

5. Design and construction of interim roadways within the adopted corridors of the regional transportation plan of the county pursuant to section 28–6309.

6. Right-of-way costs associated with the construction of interim roadways pursuant to section 28–6310.

7. Payment of principal and interest on the bonds.

8. Payment of fees and costs incurred for an election called for the purposes of section 42–1482.01, if the election is held in conjunction with a regularly scheduled state primary or general election, a county primary or general election or a primary or general election conducted by the largest city in the county.

§ 28–6305. Construction account; expenditures; construction contracts

A. Except as provided in subsection C of this section, monies in the construction account of the regional area road fund shall be spent, pledged or accumulated for the purposes provided in section 28–6304, subsection B, paragraph 4 or 8.

B. The state treasurer shall pay all fees and costs related to elections under and subject to the conditions of section 28–6304, subsection B, paragraph 8 if the county officer in charge of the election submits a claim or voucher for the fees and costs.

C. Of the monies deposited in the construction account of the regional area road fund under section 28–6303, the state treasurer shall:

1. In each fiscal year, distribute five million dollars to the public transportation fund established in that county under section 48–5103.

2. Beginning with fiscal year 1987–1988, adjust the monies distributed under paragraph 1 by the annual percentage change for the previous calendar year in the GDP price deflator as defined in section 41–563.

D. The monies distributed under subsection C of this section shall only be spent for the purposes prescribed in section 48–5141.

E. The director may enter into construction contracts or contracts incidental to construction contracts payable from monies in either the bond proceeds account or the construction account or both the bond proceeds and construction accounts.

§ 28–6306. Account expenditures; elections

A. Except as provided in subsection B, monies from any account in the regional area road fund shall not be spent to:

1. Promote or advocate a position, alternative or outcome of an election.

2. Influence public opinion.

3. Pay or contract for consultants or advisors to influence public opinion with respect to an election regarding taxes or other sources of revenue for the fund or regarding the regional transportation plan.

B. Monies from any account in the regional area road fund may be spent:

1. As authorized by this article to determine public opinion before the election is called.

2. To print, publish and distribute publicity pamphlets as required by law containing arguments favoring and opposing issues presented in the election.

§ 28–6307. **Regional area road fund; plan**

The director shall develop and annually update as a component of the five year transportation facilities construction program provided in chapter 20, article 3 of this title a plan for the use of monies expected to be deposited in the county's regional area road fund as provided in this article.

§ 28–6308. **Regional transportation plan; transportation corridor priority list**

A. Through their regional planning agency, the county, cities and towns in the county shall list transportation corridors by priority in the regional transportation plan.

B. The regional transportation plan may also provide a suggested construction schedule for the transportation corridors contained in the plan.

C. The regional transportation plan may be annually updated to introduce new controlled access highways and related grade separations or to modify the existing plan.

§ 28–6309. **Interim roadway pursuant to agreement**

A. In addition to the authority provided in section 28–6310, subsections A, B and C, a city or town may enter into an intergovernmental agreement with the department for the design and construction of an interim roadway within a transportation corridor that is listed in the regional transportation plan of the county in which the city or town is located for temporary use pending construction of a controlled access highway.

B. The interim roadway authorized by this section shall be a controlled access roadway to which access is limited in the manner prescribed in the intergovernmental agreement.

C. The intergovernmental agreement may provide that the city or town shall indemnify and hold the state harmless for all costs and liabilities incurred during the construction of an interim roadway and resulting from the operation of an interim roadway constructed by a city or town pursuant to this subsection.

D. The intergovernmental agreement shall specify the following:

1. That the interim roadway shall be designed and constructed to mitigate any adverse environmental impact of the interim roadway on the surrounding area.

2. That the design and construction shall conform with standards determined by the director.

3. The manner in which access is limited to the interim roadway.

4. That the department shall reimburse the city or town from the regional area road fund or from state highway fund monies provided by section 28–6538, subsection B, paragraph 1 for the costs of the components of the interim roadway constructed pursuant to this section that are necessary for the construction of the controlled access highway pursuant to a date or reimbursement schedule mutually agreed on in writing by the board, the regional planning agency and the city or town.

5. The standards determined by the department pursuant to paragraph 2.

6. That the regional planning agency and the board have approved in writing the design and construction of the interim roadway.

7. That public hearings shall be conducted to receive public comment on the proposed design and construction of the interim roadway.

§ 28–6310. **Interim roadway by city or town**

A. After receiving approval from the director and the regional planning agency, a city or town may design and construct an interim roadway within a transportation corridor that is listed in the regional transportation plan of the county in which the city or town is located for temporary use pending construction of a controlled access highway without complying with section 28–6309.

B. If a city or town proposes to design and construct an interim roadway pursuant to this section, the city or town shall:

1. Finance the design and construction of the interim roadway by using any manner of financing that a city or town is authorized by law to use to finance transportation projects.

2. Conduct public hearings to receive public comment on the proposed design and construction of the interim roadway.

C. The interim roadway shall be designed and constructed to reasonably mitigate any adverse environmental impact of the interim roadway on the surrounding area.

D. Except as provided by subsection E of this section, monies in the regional area road fund and the state highway fund shall not be used to pay or reimburse the cost of an interim roadway constructed pursuant to this section.

E. If a city or town acquires a right-of-way for an interim roadway under this section:

1. The city or town shall pay for the right-of-way.

2. Regional area road fund monies and state highway fund monies shall not be used to pay or reimburse the right-of-way costs unless payment or reimbursement is approved by a written intergovernmental agreement entered into by the city or town and the department.

F. A city or town shall indemnify and hold the state harmless for all costs and liability resulting from an interim roadway constructed by a city or town pursuant to this section.

§ 28–6311. **Construction contract**

A. The department may contract with cities and towns in the county and with the county to allow the cities and towns and the county to construct the controlled access highways or related grade separations of controlled access highways prescribed in sections 28–6304 and 28–6305.

B. This article does not limit existing intergovernmental agreements or letters of intent between the department and a city or town.

§ 28–6312. **Roadway and highway maintenance**

On completion of construction:

1. The city or town that constructed an interim roadway pursuant to section 28–6310 shall maintain the interim roadway.

2. The department shall maintain a controlled access highway prescribed in this article.

ARTICLE 2. CONTROLLED ACCESS HIGHWAY SYSTEM

§ 28–6351. **Definitions**

In this article, unless the context otherwise requires:

1. "Controlled access highway" has the same meaning prescribed in section 28–2001.

2. "Enhancement" means an addition that exceeds generally accepted engineering or design standards for the specific type of facility.

3. "System" means the controlled access highways and related grade separations of controlled access highways that are eligible for regional area road fund monies pursuant to article 1 of this chapter.

§ 28–6352. Controlled access highway system; budget process

The department shall adopt a budget process that ensures the estimated cost of the system, including corridors and corridor segments, does not exceed the total amount of revenues estimated to be available for the system.

§ 28–6353. System changes

A. The regional planning agency in the county shall approve any change in the priorities of the corridors or corridor segments in the system.

B. Requests for changes to facilities in the system that would materially increase costs shall be submitted to the regional planning agency for approval and submitted by the regional planning agency to the board for approval.

C. If a local authority requests an enhancement to the system, the local authority shall pay all costs associated with the enhancement.

§ 28–6354. Annual report; hearing; priority criteria

A. The regional planning agency shall issue an annual report on the status of the system and shall hold a public hearing in the county within thirty days after the report is issued. The report and the hearing shall address the following topics:

1. The status of the system.

2. Proposed changes to the regional transportation plan.

3. Proposed changes in corridor and corridor segment priorities.

4. Project financing and project options.

5. The criteria used to establish priorities as required by subsection B of this section.

B. The regional planning agency shall develop criteria to establish the priority of corridors and corridor segments, including:

1. The extent of local public and private funding participation.

2. The social and community impact.

3. The establishment of a complete freeway system for the region as rapidly as is practicable.

4. The construction of segments to serve regional transportation needs.

5. The construction of segments that provide connectivity with other elements of the freeway system.

6. Other relevant criteria developed by the regional planning agency.

§ 28–6355. Documentation; regional area road fund reimbursement

A. The department shall document the acquisition of rights-of-way for the system, including any negotiations and agreements for acquisition of rights-of-way.

B. The department shall reimburse the regional area road fund established by section 28–6302 or the highway user revenue fund established by section 28–6533 if the department uses property for administrative purposes that is acquired for the system with monies from the regional area road fund or monies distributed from the highway user revenue fund pursuant to section 28–6538, subsection B, paragraph 1.

The department shall determine the amount of the reimbursement according to the fair rental value of the property based on an independent appraisal. The department shall allocate and the state treasurer shall reimburse the amount to the fund from which the monies were taken.

§ 28-6356. Citizens transportation oversight committee; definition

A. A citizens transportation oversight committee is established in counties with a population of one million two hundred thousand or more persons according to the most recent United States decennial census and consists of the following members who are not elected officials of or employed by this state or any county, city or town in this state:

1. One member from each city or town that is located in the county who is appointed by the city's or town's governing body.

2. One member from the tribal governing body of each Indian reservation that is located in the county who is appointed by the governing body.

3. Five members who are appointed by the county board of supervisors.

B. Members shall be appointed for a term of three years to begin and end on July 1.

C. In addition to the members appointed under subsection A of this section, the governor shall appoint a chairman of the citizens transportation oversight committee for a term of three years. The chairman shall also serve as a nonvoting member of the departmental committee established pursuant to section 28-6951 and may appoint a designee to attend meetings of the departmental committee.

D. The citizens transportation oversight committee shall meet at least once each quarter.

E. The citizens transportation oversight committee shall:

1. Review and advise the board, the governor, the director and the governing body of the regional planning agency on matters relating to the regional freeway system.

2. Review and advise the governing body of the regional planning agency on any proposed action of the governing body of the regional planning agency relating to the regional transportation plan and amendments to the regional transportation plan.

3. Review and advise the governing body of the regional planning agency on the regional transportation improvement program before its annual adoption.

4. Annually review and comment on the criteria established pursuant to section 28-6354.

5. Hold public hearings and issue public reports as it deems appropriate.

6. Annually contract with an outside auditor who is a certified public accountant to review the expenditures from the regional area road fund to determine if the regional area road fund monies are being spent as prescribed by statute and shall receive the auditor's report.

F. If the citizens transportation oversight committee fails to act it does not bar the governing body of the regional planning agency from taking action.

G. For the purposes of this section, "regional freeway system" means the controlled access highways in counties in which transportation excise tax monies are collected pursuant to section 42-1482 or 42-1482.01.

§ 28-6357. Special assistant for the regional freeway system; definition

A. The director shall appoint a special assistant for the regional freeway system to provide coordination among the department of transportation, the regional

planning agency and the local entities that are members of the regional planning agency on the regional freeway system.

B. The duties of the special assistant for the regional freeway system include:

1. Providing life cycle management for the funding and programming of the regional freeway system, including ombudsman services and oversight of gathering, analyzing, reporting, forecasting, coordinating, monitoring and executing information and programs related to the regional freeway system.

2. Staffing and coordinating the activities of the citizens transportation oversight committee established pursuant to section 28–6356.

3. Preparing and disseminating reports on the status and the progress of the regional freeway system to the citizens transportation oversight committee, the governor, the speaker of the house of representatives, the president of the senate, the regional planning agency and other interested governmental agencies and citizens.

4. Coordinating public hearings of the citizens oversight committee on the regional freeway system.

C. The special assistant for the regional freeway system is eligible to receive compensation pursuant to section 38–611. Notwithstanding the limitations imposed in section 28–6305, the compensation shall be paid from the regional area road fund.

D. For the purposes of this section, "regional freeway system" means the controlled access highways and related grade separations of controlled access highways that are eligible for regional area road fund monies pursuant to article 1 of this chapter.

ARTICLE 3. TRANSPORTATION EXCISE TAX DISTRIBUTION IN LESS POPULATED COUNTIES

§ 28–6391. Transportation excise tax distribution in counties with four hundred thousand persons or less; county regional area road fund

A. In a county with a population of four hundred thousand persons or less, the officer collecting transportation excise tax monies pursuant to section 42–1484 shall immediately transfer the monies to the state treasurer. The state treasurer shall deposit the monies in a fund designated for the county as the county's regional area road fund. The state treasurer shall hold monies in the county's regional area road fund as a trustee for the county and the cities and towns in the county.

B. The county and the cities and towns in the county that receive the transportation excise tax monies have the beneficial interests in the fund.

§ 28–6392. County regional area road fund; distribution; investment

A. Each month the state treasurer shall distribute the monies in the county's regional area road fund to the individual county and to the individual cities and towns in the county in the manner that is determined by the board of supervisors before the election and that is described in the publicity pamphlet for the election.

B. The jurisdiction receiving the revenues may only use the revenues for street and highway purposes or for transportation projects included in the regional transportation plan of the county as prepared by the county regional planning agency.

C. The state treasurer shall invest monies in the county's regional area road fund and shall credit all interest earned to the county's fund.

CHAPTER 18

DISTRIBUTION OF HIGHWAY USER REVENUES

ARTICLE 1. GENERAL PROVISIONS

§ 28-6501. Definition of highway user revenues

In this article, unless the context otherwise requires or except as otherwise provided by statute, "highway user revenues" means all monies received in this state from licenses, taxes, penalties, interest and fees authorized by the following:

1. Chapters 3, 4 and 5 of this title, except for:

(a) The special plate administration fees prescribed in sections 28-1104, 28-1112, 28-1113 and 28-1114.

(b) The annual donations prescribed in sections 28-1112, 28-1113 and 28-1114.

2. Chapters 10 and 11 of this title.

3. Chapter 16, articles 1, 2 and 4 of this title, except for sections 28-5616 and 28-5617.

§ 28-6502. Record of highway user revenues; minimum dollar distribution

A. The director shall file with the secretary of state a permanent record that contains a list of all highway user revenues collected, received or retained in this state in the fiscal year ending June 30, 1970. The list shall separately identify all sources of highway user revenues, including the number of dollars and cents that were distributed to, retained by or received by this state, by any county and by all of the cities and towns of any county cumulatively.

B. If the total highway user revenues derived equal or exceed the total derived in the fiscal year ending June 30, 1970, the state and any county shall not receive from these revenues for the use of each and for distribution to cities and towns fewer dollars than were received and distributed in the fiscal year ending June 30, 1970.

C. Statutory formulas existing on July 1, 1970 for the distribution of highway user revenues to the state, counties, cities or towns shall not be altered until highway user tax rates are raised and revenues are increased. New formulas adopted shall be based on the highway, road and street needs of the state, counties, cities and towns.

§ 28-6503. Technical advisory committee

A. A technical advisory committee is established. The committee consists of:

1. Two representatives of the department.

2. Two representatives of the counties as selected by the Arizona association of counties, with no more than one representative from any one county.

3. Two representatives of the cities and towns as selected by an entity representing cities and towns in this state, with no more than one representative from any one city or town.

4. Three representatives selected by the president of the senate and the speaker of the house of representatives as follows:

(a) One representative of the road building industry who is not active in the road building industry.

(b) One representative from the financial sector.

(c) One representative from general business.

B. The technical advisory committee shall:

1. Establish standards for use in determining transportation needs.

2. Establish criteria for measuring the status of state, city, town and county transportation systems.

3. Advise the department during the preparation of the statewide transportation status and needs report prescribed in article 2 of this chapter.

4. Review and approve the statewide transportation status and needs report prescribed in article 2 of this chapter before it is presented to the legislature by the department.

ARTICLE 2. SPECIFIC DISTRIBUTIONS

§ 28–6531. Definitions

In this article, unless the context otherwise requires:

1. "Arterial street or highway" means a street or highway used primarily for through traffic in such manner that vehicular traffic from intersecting streets and highways is required by law to stop or yield before entering or crossing the street or highway.

2. "Controlled access highway" has the same meaning prescribed in section 28–2001.

3. "Population" means the population determined in the most recent United States decennial census or the most recent special census as provided in section 28–6532 and revisions to the decennial or special census certified by the United States bureau of the census.

4. "State highway fund" means the state highway fund established by section 28–6991.

§ 28–6532. Population determination; decennial or special census

A. The population as shown by the decennial census as certified by the United States bureau of the census shall be used as the basis for the apportionment of monies pursuant to this article on July 1 in the year after the decennial census.

B. During the fifth year after the decennial census, a county, city or town may request the United States bureau of the census to take a special census of the population of the county, city or town. The results of the special census shall be certified to the state treasurer and shall be used on July 1 in the year after the special census as the basis for the apportionment of monies pursuant to this article.

C. Notwithstanding any other law, a city or town that is initially incorporated after the decennial census or July 1 of the fifth year after the decennial census and that has caused a special census of the population within the city or town limits to be taken by the United States bureau of the census may cause the result of the special census to be certified to the state treasurer. Beginning on July 1 after the completion of the special census, the special census shall be used as the basis of the apportionment of monies pursuant to this article in determining the amount payable to the city or town until the next United States decennial census or special census as provided in subsection B of this section.

D. A county may request and utilize a special census for the purposes of subsection B of this section even if one or more incorporated cities or towns in the county do not request a special census. The county special census shall include only those persons residing in unincorporated areas of the county.

§ 28–6533. Arizona highway user revenue fund created

A. The officer collecting all highway user revenues, as defined in section 28–6501 and in article IX, section 14, Constitution of Arizona, and all taxes, fees and fines collected under sections 28–3412, 28–3414 and 28–3722 and chapter 3, article 7 and

chapter 15, article 3 of this title shall transfer the revenues to the department. After the deduction of all exemptions and refunds, the department shall immediately transfer the revenues to the state treasurer. The state treasurer shall deposit the revenues in a fund designated as the Arizona highway user revenue fund.

B. The revenues in the Arizona highway user revenue fund shall only be spent for the purposes prescribed in article IX, section 14, Constitution of Arizona.

C. If there is any default, the department shall deduct all amounts required by law or any resolution authorizing the issuance of bonds of the board to be placed in the principal funds, interest funds, reserve funds or sinking funds or any other funds established to service bonds issued or to be issued by the board before the revenues are deposited in the Arizona highway user revenue fund.

§ 28–6534. Arizona highway user revenue fund distribution; economic strength project fund

No later than June 15 of each fiscal year, the department shall allocate and the state treasurer shall distribute one million dollars from revenues of the Arizona highway user revenue fund to the economic strength project fund pursuant to section 28–7282.

§ 28–6535. Arizona highway user revenue fund distribution; fuel taxes

No later than June 15 of each fiscal year, the department shall allocate and the state treasurer shall distribute revenues in the Arizona highway user revenue fund that are derived from the license tax for each gallon of motor vehicle fuel and use fuel collected pursuant to sections 28–5606 and 28–5708 as follows:

1. One cent to the state highway fund.

2. Three cents as follows:

(a) Sixty-four per cent to the state highway fund.

(b) Fourteen per cent to counties with a population of one million two hundred thousand or more persons to be distributed to the county and to each individual city or town in the county on the basis that the unincorporated population of the county and the incorporated population of each city or town bear to the total population in the county.

(c) Eight and one-half per cent to counties with a population of more than four hundred thousand but less than one million two hundred thousand persons to be distributed to the county and to each individual city or town in the county on the basis that the unincorporated population of the county and the incorporated population of each city or town bear to the total population in the county.

(d) Eight per cent to counties with a population of four hundred thousand persons or less to be distributed to each individual county on the basis that the unincorporated population of each county bears to the total unincorporated population of all counties with a population of four hundred thousand persons or less.

(e) Five and one-half per cent to the incorporated cities and towns in counties with a population of four hundred thousand persons or less to be distributed to each individual city or town on the basis that the incorporated population of each city or town bears to the total incorporated population of all cities and towns located in counties with a population of four hundred thousand persons or less.

§ 28–6536. Additional distribution; fuel taxes

In addition to the distribution provided for in section 28–6535, for each fiscal year the department shall allocate and the state treasurer shall distribute revenues derived from one cent of the license tax for each gallon of motor vehicle fuel or use fuel collected pursuant to sections 28–5606 and 28–5708 to the state highway fund.

§ 28–6537. Arizona highway user revenue fund distribution; highway patrol costs

For each fiscal year, the department of transportation shall allocate and the state treasurer shall distribute monies in the Arizona highway user revenue fund to the department of public safety for funding a portion of highway patrol costs in eight installments in each of the first eight months of a fiscal year that do not exceed:

1. For the 1994–1995 fiscal year, twenty million dollars.

2. For the 1995–1996 fiscal year, seventeen million five hundred thousand dollars.

3. For the 1996–1997 fiscal year, fifteen million dollars.

4. For the 1997–1998 fiscal year, twelve million five hundred thousand dollars.

5. For the 1998–1999 fiscal year and for all subsequent fiscal years, ten million dollars.

§ 28–6538. Arizona highway user revenue fund distribution; remaining monies; highway fund distribution; contract authorization; regional transportation plan requirements

A. Each fiscal year the department shall allocate and the state treasurer shall distribute revenues of the Arizona highway user revenue fund remaining after the distribution provided in sections 28–6534, 28–6535 and 28–6537 as follows:

1. To the state highway fund, fifty per cent.

2. To the counties, twenty per cent.

3. To the incorporated cities and towns, thirty per cent.

B. At least fifteen per cent of the revenues allocated each year to the state highway fund pursuant to subsection A of this section shall be further distributed in the following proportions and for the following purposes:

1. Seventy-five per cent of the revenues shall be spent, pledged or accumulated in counties with a population of one million two hundred thousand or more persons for the design, right-of-way purchase or construction of controlled access highways that are included in the regional transportation plan of the county and that are accepted into the state highway system either as a state route or as a state highway.

2. Twenty-five per cent of the revenues shall be spent, pledged or accumulated in counties with a population of more than four hundred thousand but less than one million two hundred thousand persons for:

(a) The design, right-of-way purchase or construction of controlled access highways that are included in the regional transportation plan of the county and that are accepted into the state highway system either as a state route or as a state highway or related grade separations of controlled access highways that are included in the regional transportation plan of the county.

(b) Notwithstanding section 28–6995, the design, right-of-way purchase, construction, standard and reduced clearance grade separation, extension and widening of arterial streets and highways that are included in the regional transportation plan of the county.

C. Of the monies allocated to the state highway fund pursuant to subsection A of this section, not more than five million dollars annually shall be spent for the acquisition, construction or improvement of entry roads to state parks or roads in state parks.

D. Expenditures for state matching monies for the federal interstate system shall be in addition to the amount provided in subsection B of this section.

E. The department may contract with a county, city or town to allow the county, city or town to construct the streets or highways prescribed in subsection B of this section.

F. A county described in subsection B of this section and the cities and towns in the county, through their regional planning agency, shall list transportation corridors by priority in the regional transportation plan. The regional transportation plan may also provide a suggested construction schedule for the transportation corridors contained in the plan.

§ 28-6539. Arizona highway user revenue fund distribution; state highway fund allocation; use fuel collection shortfall

A. If a use fuel collection shortfall exists under section 28-5856, subsection A, each fiscal year the department shall allocate and the state treasurer shall distribute from the Arizona highway user revenue fund an amount from revenues allocated to the state highway fund equal to the difference in gallons determined by section 28-5856, subsection A multiplied by eight cents.

B. The amount determined pursuant to subsection A of this section shall be distributed as follows:

1. Forty per cent to the counties.

2. Sixty per cent to the incorporated cities and towns.

§ 28-6540. Arizona highway user fund distribution; state highway fund; county, city and town proportions

Each month the state treasurer shall distribute all revenues credited to the Arizona highway user revenue fund pursuant to the proportions prescribed in section 28-6538, subsection A and section 28-6539 as follows:

1. Revenues allocated to the state highway fund shall be further distributed as follows:

(a) Seven per cent shall be apportioned among cities with a population of more than three hundred thousand persons, the distribution to which was not restricted pursuant to section 28-6543, subsection A, for the acquisition of rights-of-way or construction of streets or highways other than controlled access highways, on the basis of population.

(b) Ninety-three per cent shall be apportioned to the state highway fund.

2. Revenues allocated to the counties shall be further distributed to each individual county, the distribution to which was not restricted pursuant to section 28-6543, subsection A, based on the proportion that the sale of motor vehicle fuel and the estimated consumption of use fuel in the county bear to the total sales of motor vehicle fuel and the estimated consumption of use fuel throughout this state during the preceding calendar month.

3. Revenues allocated to the incorporated cities and towns shall be distributed on the basis of the following apportionments:

(a) One-half shall be apportioned to each city or town, the distribution to which was not restricted pursuant to section 28-6543, subsection A, on the basis that the population of each bears to the population of all cities and towns in this state.

(b) Subject to section 28-6543, subsection A, the remaining one-half shall be apportioned first on the basis of the county origin of sales of motor vehicle fuels in this state, which amount shall be further apportioned among the several incorporated cities and towns in each county in the proportion that the population of each city or town bears to the total population of all cities and towns in the county.

§ 28-6541. Arizona highway user revenue fund distribution; limitations

The percentages, proportions, allocations and distributions prescribed by this article are subject to the following limitations:

1. If the total highway user revenues derived and credited to the Arizona highway user revenue fund equal or exceed the total highway user revenues derived in the fiscal year ending June 30, 1973, the state and any county shall not receive from these revenues for the use of each and for distribution to cities and towns fewer dollars than were received and distributed in the fiscal year ending June 30, 1973.

2. If the total highway user revenues derived and credited to the Arizona highway user revenue fund do not equal or exceed the total highway user revenues derived in the fiscal year ending June 30, 1973, the state and any county shall receive from these revenues for the use of each and for distribution to cities and towns their pro rata allocation based on the percentages as provided in section 28–6538, subsection A.

§ 28–6542. Incorrect distributions; adjustments

A. If the department determines that any of the amounts allocated and distributed as provided in this article during the preceding twenty-four months are incorrect, the department shall adjust future monthly allocations to correct any overages or shortages as provided in this section. The state treasurer shall distribute revenues in accordance with the adjusted allocations determined pursuant to this section.

B. An adjustment to the amount allocated and distributed shall not be initiated pursuant to this section more than twenty-four months after the original distribution.

C. The department shall adjust the allocations as follows:

1. In the case of overages, the department shall reduce the subsequent monthly allocation by the amount of the overage, if the remaining allocation is at least fifty per cent of the amount that would otherwise have been allocated to the recipient. If the entire amount of the required adjustment cannot be made in a single month, the department shall repeat the procedure in subsequent months until the overage is corrected.

2. In the case of shortages, the department shall increase the subsequent monthly allocation by the amount of the shortage, if the total amount of all of the increases in any single month does not exceed the total amount of all of the reductions made pursuant to paragraph 1 in that month. If the total of all reductions in a month is less than the amount of increases, the department shall proportionally reduce the increases.

§ 28–6543. Local revenues; requirements

A. Each fiscal year a county with a population of more than four hundred thousand persons or an incorporated city or town with a population of more than thirty thousand persons that is located in such a county shall:

1. Budget and spend local revenues as defined in article IX, section 20, Constitution of Arizona, for street and highway purposes in an amount at least equal to the average amount of local revenues budgeted and spent for these purposes in any four of the five fiscal years during the period beginning with fiscal year 1981–1982 and ending with fiscal year 1985–1986.

2. Through its chief financial officer, certify in writing to the state treasurer whether or not the county, city or town has complied with the requirements of paragraph 1 of this subsection.

3. File the certification on or before December 31 after the completion of each fiscal year.

B. Failure to certify as required by subsection A, paragraph 2 is a failure to comply with subsection A, paragraph 1.

C. In determining the amount of local revenues budgeted and spent for street and highway purposes during a fiscal year pursuant to subsection A, a county or incorporated city or town shall not consider any of the following:

1. Monies distributed from the Arizona highway user revenue fund.

2. Monies distributed from the local transportation assistance fund established by section 28-8101.

3. Monies spent by the county or incorporated city or town for street and highway purposes directly needed by an emergency declared by the governor.

§ 28-6544. County, city and town distribution reduction

A. If a county or incorporated city or town that is subject to the requirements of section 28-6543, subsection A fails to meet those requirements, beginning in April of the fiscal year following the fiscal year in which the requirements were not met, the state treasurer shall reduce the next twelve monthly distributions computed pursuant to this article by one-twelfth of the amount computed in subsection C, paragraph 3 of this section.

B. The reduction shall be deposited in the Arizona highway user revenue fund and distributed in the following month according to the provisions of this article.

C. The state treasurer shall compute the total amount of the reduction as follows:

1. Determine the amount distributed to the county, city or town in the year the county, city or town failed to meet the requirements of section 28-6543, subsection A.

2. Determine the amount distributed to the county, city or town in fiscal year 1969-1970.

3. Subtract the amount determined in paragraph 2 from the amount determined in paragraph 1.

D. The state treasurer shall deduct the amount determined in subsection C, paragraph 3 of this section from future distributions.

§ 28-6545. Statewide transportation status and needs report; procedural guidelines; revenue withholding

A. Every five years the department shall present a report to the legislature that:

1. Evaluates the status and condition of the state, county, city and town transportation systems.

2. Analyzes all modes of transportation needs of the state, counties, cities and towns and projects the needs for five and ten years.

B. All counties, cities and towns shall submit needs data and information concerning the status of transportation systems for all modes to the department for use in the preparation of the statewide transportation status and needs report pursuant to procedural guidelines established by the department and standards established by the technical advisory committee established by section 28-6503.

C. The technical advisory committee shall:

1. Determine if a county, city or town is not in compliance with the procedural guidelines established under this section.

2. Notify the jurisdiction of the noncompliance.

3. Advise the director to request the state treasurer to withhold the noncomplying jurisdiction's revenues, as distributed under this article, except that the jurisdiction is entitled to receive these revenues as guaranteed pursuant to article IX, section 14, Constitution of Arizona.

D. The jurisdiction has thirty days to appeal to the technical advisory committee. The committee shall notify the director of its finding on hearing the appeal or the expiration of forty-five days.

E. On receipt of a finding of noncompliance, the director shall request the state treasurer to withhold revenues as distributed under this article until the technical advisory committee notifies the director that the jurisdiction is in compliance, except that the jurisdiction is entitled to receive revenues as guaranteed pursuant to article IX, section 14, Constitution of Arizona.

§ 28–6546. Arizona highway user revenue fund; investment

The state treasurer:

1. May invest inactive deposits in the Arizona highway user revenue fund in United States government bonds or interest bearing notes and other interest bearing obligations of the United States for which the full faith and credit of the United States are pledged.

2. Shall credit all interest earned on monies in the highway user revenue fund to the Arizona highway user revenue fund.

CHAPTER 19

COUNTY HIGHWAYS

ARTICLE 1. COUNTY HIGHWAY CONSTRUCTION, MAINTENANCE AND ABANDONMENT

§ 28–6701. Establishing, altering or abandoning local highway

A. The board of supervisors may establish, alter or abandon a highway in the county and other legal subdivisions and acquire real property for these purposes by purchase, donation, dedication, condemnation or other lawful means.

B. A highway in the county or any other legal subdivision may be established or altered by presentation of a petition that is signed by ten or more resident taxpayers of the county to the board of supervisors or to the board of supervisors by the governing body of a legal subdivision, that requests that a highway be established or altered and that gives the highway's beginning, end, general course and direction. The board of supervisors may either reject the petition or act on the petition as prescribed by this article. The board of supervisors may abandon or vacate these highways by resolution as provided in chapter 20, article 8 of this title.

§ 28–6702. Proposed highway survey; notice of hearing

A. On filing the petition prescribed in section 28–6701, the board of supervisors shall:

1. Direct the county engineer to make a survey of the proposed highway and to file with the board a report of the proposed highway and a map as surveyed that shows the legal subdivision of the lands traversed by the survey. If a survey and maps have already been made for any purpose, these data and maps may be used instead of conducting a survey pursuant to this section.

2. Set a date for a public hearing on the petition.

3. Give notice to the public of the hearing by advertising once a week for two consecutive weeks in a newspaper of general circulation in the county. The notice shall state:

(a) The purpose and the date of the hearing.

(b) That persons who object to the action requested in the petition may file with the board of supervisors a statement in writing setting forth their objection or opposition and, on filing the petition, shall show cause why the petition should not be granted.

§ 28–6703. **Hearing**

A. At the hearing provided for in section 28–6702, the board of supervisors:

1. Shall consider the feasibility, advantages and necessity of the highway sought to be established.

2. If the board determines the proposed highway is a public necessity, may approve the establishment of the highway by resolution and may accept any right-of-way or property donated to this state or the county.

B. An affected landowner or party may execute a written waiver or release of all compensation or any part of the compensation or may grant any easement or other conveyance of property for the purpose of establishing a highway.

§ 28–6704. **Condemnation; federal-county highway; exception**

A. The county attorney of the county in which a highway is to be established shall file in superior court in the county in which the land is located a condemnation action pursuant to section 12–1116 in the name of the county if all of the following conditions exist:

1. The board of supervisors enters into an agreement with the United States acting through its duly authorized officers or agents and pursuant to an act of Congress for acquiring a right-of-way for a highway in the county.

2. The United States has constructed part of the highway described in the agreement.

3. The board of supervisors has been unable to acquire a right-of-way pursuant to sections 28–6701 and 28–6702 that is necessary for completion of the highway.

4. An agent of the United States that is in charge of the work to be done by the United States under the agreement makes a demand to the county attorney.

5. The board of supervisors directs the county attorney to file the action.

B. The county treasurer shall make the deposit required by the court as provided by section 12–1116 and on final judgment by the court assessing the value of the lands sought to be condemned and the damages, if any, to pay the amount due. If the monies deposited or paid by the treasurer have not been appropriated or set aside for that purpose by the board of supervisors, the board of supervisors shall provide for the amount in its next budget and shall levy a tax for that purpose.

C. This section does not apply to a highway designated as a national highway, state highway or state route.

§ 28–6705. **Public road and street maintenance**

A. The board of supervisors may spend public monies for maintenance of public roads and streets other than legally designated state and county highways located without the limits of an incorporated city or town. Before spending public monies under this section, the roads or streets shall be both:

1. Laid out, opened and constructed without cost to the county.

2. Completed pursuant to a plat approved pursuant to sections 11–802 and 11–806.01 and pursuant to standard engineering road specifications adopted by the board of supervisors to ensure uniform compliance.

B. The board of supervisors may spend public monies for maintenance of public roads and streets laid out, constructed and opened before June 13, 1975 even if the

roads and streets were not constructed in accordance with subsection A of this section.

C. Maintenance of a public road or street does not include purchasing or laying cement or petroleum product materials, except that maintenance of a public road or street that is paved with cement or petroleum product materials may include seal coating and patching. To reduce long-term maintenance costs for maintenance authorized by this section, the board of supervisors may spend monies to add rock products, gravel and processed materials to the base of the roads and streets.

§ 28–6706. Primitive roads

A. The board of supervisors may designate a public road within its jurisdiction as a primitive road as prescribed in this section.

B. Neither a county nor its employees are liable for damages or injuries resulting from the use of a primitive road designated under this section except for intentional injuries or gross negligence caused by an employee acting within the scope of the employee's employment.

C. The board of supervisors shall not designate a road as a primitive road unless it was opened before June 13, 1975 and was not constructed in accordance with county standards.

D. The county shall place signs on every road designated as a primitive road in locations adequate to warn the public. These signs shall state "primitive road, caution, use at your own risk. This surface is not regularly maintained."

E. A board of supervisors shall not designate a state or county highway as a primitive road.

§ 28–6707. Highway improvement within city or town limit

A. The part of a highway located in an incorporated city or town may be constructed, improved or maintained through cooperation under this article in the same manner as if it were located outside an incorporated city or town.

B. As part of the cooperation, the board of supervisors may enter into an agreement with the governing body of a city or town for the lease of:

1. County equipment used to construct, improve or maintain highways located in the boundaries of the city or town.

2. City or town equipment used to construct, improve or maintain highways located in the boundaries of the county.

§ 28–6708. Jurisdiction of streets; unincorporated town

The streets of an unincorporated town are considered public highways and are under the control of the board of supervisors of the county in which the town is located. The board may designate which streets in the unincorporated towns are considered public highways and may give appropriate names to them.

§ 28–6709. Street and alley abandonment

The board of supervisors may vacate and abandon streets, alleys and avenues located outside the boundaries of incorporated cities and towns shown on recorded plats as dedicated to the public or to which the public or county may have received title by deed, in the same manner and under the same procedure for abandoning county highways.

§ 28-6710. Cattle guard construction

A. If deemed necessary, the board of supervisors may install and construct cattle guards on county roads or may authorize private persons who own or who are in possession of real estate located adjacent to county roads to install and construct cattle guards on county roads.

B. The board of supervisors shall prescribe the specifications and type of material for use in the installation and construction of cattle guards. The specifications and type of material shall be reasonably uniform throughout the county. On the installation and construction of a cattle guard on a county road, the county shall maintain and repair the cattle guard.

C. The county is not required to maintain a cattle guard that was installed before June 12, 1937 on a county road and that does not substantially comply with the type of material and specifications prescribed by the board of supervisors unless the board of supervisors otherwise orders and a copy of the order is entered in the minutes of the board of supervisors.

§ 28-6711. Railroad construction along improved highway; exception

A. A railroad or street railway shall not be constructed along or on any portion of a highway improved under this article, except a crossing authorized by the board of supervisors. The board of supervisors shall not grant a franchise for the construction of a railroad or street railway along or on an improved portion of the highway, except for a crossing.

B. If such a highway or portion of a highway, after having been improved, is included in the boundaries of an incorporated city or town, the municipal authorities may grant the franchise within the boundaries of the city or town on the express condition that the grantee shall pay to the county for the benefit of the county general fund an amount equal to the cost of the improvement of that portion of the improved highway that will be occupied by the track of the railroad or street railway.

§ 28-6712. Tax levies for county roads

A. For road purposes the board of supervisors may levy a real and personal property tax of not more than twenty-five cents per one hundred dollars of property in the county as valued for tax purposes. The board of supervisors shall levy and collect the tax at the same time and in the same manner as other primary property taxes are levied and collected.

B. The monies shall be paid into the county treasury for the benefit of the highways in the county and shall be spent by the board with other monies received for purposes of improvement of county roads.

C. Notwithstanding any other law, in counties with an assessed valuation of two hundred million dollars or more, an amount of not more than twenty-five cents per one hundred dollars assessed valuation may be budgeted, levied, collected and spent for road purposes independently of and in addition to any other amounts lawfully available for road purposes. This levy is in lieu of the levy permitted under subsection A.

§ 28-6713. Bids for construction, reconstruction, equipment or supplies; procedure; bond; exception

A. Except as provided in subsection F of this section, in a county with a population of one hundred fifty thousand persons or more as determined by the most recent United States decennial census or the most recent special census as provided in section 28-6532, bids for all items of construction or reconstruction involving an expenditure equal to or greater than the amount determined pursuant to subsection

B of this section, all purchases or other acquisition of equipment involving an expenditure of more than five thousand dollars and all purchases of supplies and materials involving an expenditure of two thousand five hundred dollars or more shall be called for by advertising in a newspaper of general circulation in the county for two consecutive publications if it is a weekly newspaper, or for two publications of at least six but not more than ten days apart, if it is a daily newspaper. The advertisement shall state specifically the character of the work to be done and the kind and quality of materials or supplies to be furnished.

B. Bids shall be called pursuant to subsection A of this section for all items of construction or reconstruction involving an expenditure of:

1. In fiscal year 1985–1986, thirty-five thousand dollars.

2. In fiscal year 1986–1987 and each fiscal year thereafter, the amount provided in paragraph 1 of this subsection adjusted by the annual percentage change in the GDP price deflator as defined in section 41–563, subsection E.

C. If the board of supervisors receives a satisfactory bid, it shall contract with the lowest responsible bidder after the contractor or supplier gives any bond required by title 34, chapter 2, article 2. The board may reject any or all bids and readvertise.

D. The board of supervisors, a member of the board of supervisors or any other official or agent of a county affected by this section shall not segregate or divide into separate units a contiguous or continuous portion of highway construction or reconstruction or divide into separate portions an item of equipment or generally recognized unit of supplies or material to avoid the restrictions imposed by subsection A of this section.

E. After a contract has been awarded, the board of supervisors' authorized representative may authorize change orders to the contract if necessary pursuant to guidelines set by the board of supervisors. This authority does not permit the board of supervisors' authorized representative to act independently to award new contracts.

F. A building, structure, addition or alteration may be constructed without complying with the bidding requirements of this section if the construction, including construction of buildings or structures on public or private property, is required as a condition of development of private property and is authorized by section 9–463.01 or 11–806.01. For the purposes of this subsection, building does not include any police, fire, school, library or other public building.

ARTICLE 2. BONDS AND COUNTY HIGHWAY COMMISSION

§ 28–6741. Bonds; authorization

The bonds of a county that are authorized and issued for construction or improvement of public highways may be issued by complying with this article. The board of supervisors may, and on the petition of fifteen per cent of the qualified electors of the county, the board of supervisors shall, order an election by the real property taxpayers who are qualified electors of the county to determine whether the indebtedness shall be authorized.

§ 28–6742. County highway commission

A. If the contemplated bond issue is two million dollars or more, the board of supervisors shall appoint a county highway commission consisting of three members. If the contemplated bond issue is less than two million dollars, the board of supervisors shall be ex officio county highway commissioners and shall have all of the powers and duties of the county highway commission.

B. The commissioners:

1. Shall be residents and freeholders in the county of their appointment for the previous three years.

2. Shall be appointed for a term of two years.

3. Are subject to removal by the board for cause.

C. If the proposition to issue the bonds fails, when the improvements are completed or when the monies arising from the sale of the bonds voted at the election have been spent, the term of office of the commissioners ends.

D. The salary of each commissioner is ten dollars for each day actually and necessarily engaged in the duties of the office. In addition to regular compensation, each supervisor shall receive three dollars for each day actually and necessarily engaged as a commissioner.

E. Each commissioner shall give a bond to the county that is for an amount the board of supervisors requires and that is approved by the board. If the board of supervisors acts as the county highway commission, each member shall give an additional bond to the county of five thousand dollars that is conditioned and approved as official bonds of the board of supervisors.

§ 28–6743. County highway commission powers and duties

A. The county highway commission shall:

1. Investigate and determine if public necessity and convenience require highways to be constructed or improved.

2. Prepare a map of the highways that shows the location of, condition of, connections of and other information about the highways.

3. Determine which of the public highways should be improved with monies derived from the sale of the bonds to be authorized and sold.

4. Determine the kind of improvements that should be made.

5. Procure an estimate of the cost of the improvement.

B. The county highway commission may employ an engineer. At least twenty days before the day appointed for the election, the county highway commission shall report to the board of supervisors. At least two weeks before the election the board of supervisors shall publish the report six times in a daily newspaper or twice in a weekly newspaper in the county.

C. The call for the election shall be limited to the construction and improvement of the public highways that are included in the report and maps prepared by the county highway commission.

§ 28–6744. Semiannual report; publication

A. At least once every six months, the commission shall make and file with the board a detailed statement showing:

1. The amount of monies in the highway improvement fund at the time of its last statement.

2. The amount of monies received since its last statement and the purpose for which the monies were deposited.

3. The amount of monies spent since its last statement and the purpose for which the monies were spent.

4. The balance remaining.

5. The contracts entered into or completed since its last statement and the condition of the work under each contract.

B. The board of supervisors shall publish the statement. The cost of publication shall be paid from the highway improvement fund.

§ 28–6745. **Commission expenses**

The county treasurer shall pay from the general fund of the county the traveling and other incidental expenses of county highway commission members that are actually and necessarily incurred and all other expenses incurred either by the board of supervisors or by the county highway commission under this article until there are sufficient monies in the highway improvement fund derived from the sale of bonds with which to pay the expenses. The county treasurer shall reimburse the general fund of the county from the highway improvement fund. After there are sufficient monies to pay for the expenses, all expenses shall be paid from the highway improvement fund.

§ 28–6746. **Road bond election precincts; election**

A. In conducting the election called under section 28–6743, the board of supervisors may form road bond election precincts by consolidating not more than six general election precincts into one road bond election precinct. The board of supervisors shall appoint one inspector, two judges and one clerk for each road bond election precinct.

B. The election shall be conducted as other county bond elections, but notice of the election and the ballots prepared for the election shall state whether the proceeds of the bonds proposed to be sold are to be used in the improvement of the roads of the county generally or only on those roads that are specifically described in the notice of election and on the ballots prepared for use at the election.

§ 28–6747. **Sale of bonds; highway improvement fund; disposition of proceeds; use of surplus monies**

A. The board of supervisors shall:

1. Sell bonds issued under this article in the same manner as other county bonds.

2. Deposit the proceeds in the highway improvement fund to be paid out by the county treasurer only on order of the county highway commission and to be used only for the purpose for which they were authorized at the election.

B. Any surplus remaining in the fund after completion of the improvement for which the bonds were voted shall be transferred to the general road fund of the county and the board of supervisors may spend the surplus either for repair of county roads or for construction of state highways or roads connecting with state highways.

C. If the county highway commission determines that a surplus of more than one hundred thousand dollars remains in the fund after completion of all work under the contract, it may report that fact in writing to the board. The board of supervisors shall direct the county highway commission to spend the surplus on designated state highways or roads connecting with state highways without waiting for completion of the work on the improvement of the highways for which the bonds were voted. The county highway commission shall direct the expenditure of this surplus.

§ 28–6748. **Work contracts**

A. The county highway commission shall supervise and direct the work for which the bonds are issued under this article.

B. As soon as the proceeds of the bond sale are deposited in the treasury, the county highway commission shall:

1. Prepare plans, specifications and profiles for the work.

2. Advertise for bids for the work or any part of the work by publishing a notice calling for bids on the work.

C. A contract for doing any part of the work shall be let after advertisement to the lowest and best responsible bidder who will give any bond required by title 34, chapter 2, article 2, except that the county highway commission may:

1. Contract for any part of the work that does not cost more than one thousand dollars without calling for bids.

2. Reject any and all bids received and readvertise.

§ 28-6749. Cooperative contracts with federal government

A. The county highway commission may enter into cooperative contracts and agreements for construction of roads with the United States or any of its departments or agencies pursuant to an act of Congress.

B. The provisions of law relating to methods of spending monies derived from the sale of the bonds do not apply to these cooperative contracts. On order of the county highway commission, the county treasurer shall deposit any monies in the county treasury that are subject to the disposition or control of the county highway commission required under a cooperative contract in a United States depository designated by the officer of the United States authorized by law to enter into the contract to the credit of and to be spent by this officer under the terms of the contract.

ARTICLE 3. COUNTY BRIDGES

§ 28-6771. County bridge construction

The board of supervisors may construct and maintain bridges across streams whether wholly or partly within or outside the corporate limits of an incorporated city or town.

§ 28-6772. Bridge joint use; railroad; petition; contract limitations

A. On filing a petition signed by a majority of the taxpayers of the county, the board of supervisors may contract for the county with a railroad company for the construction and maintenance of bridges across streams to be used jointly by the railroad company and the public. The board of supervisors shall not contract to pay or be liable to pay more than one-third of the cost of construction and maintenance of a bridge.

B. The petition shall state the total cost of the bridge and the amount to be paid by the county. The board of supervisors shall give notice by publishing the time of the hearing on the petition.

ARTICLE 4. TOLL ROADS, FERRIES AND BRIDGES

§ 28-6801. Definition of toll road

For the purposes of this article, "toll road" includes trails for the passage of saddle and pack animals and foot passengers, as well as roads designed for the passage of vehicles, if the trails have been built in mountainous or precipitous places or in other places where the building of roads for the passage of vehicles would be impracticable.

§ 28-6802. Toll road construction; notice; application; hearing

A. A person who desires to construct a toll road, bridge or ferry within one or more counties shall publish a notice in a newspaper that is published in each county, once each week for six successive weeks. The notice shall state:

1. The type and character of the road.

2. The terminals.

3. The general route and each city, town or village through which construction is proposed.

4. The time when the application required by this section shall be made, which shall not be more than ten days after the last publication of the notice.

B. On the day specified in the notice, written application shall be made to the respective boards of supervisors of the counties for authority to take the necessary land and construct the road described in the notice. The application shall be in triplicate, and each copy shall be accompanied by:

1. An engineer's plat of the route of the proposed road showing the proposed centerline and right-of-way lines and giving engineer's stations and ties to legal subdivision lines of the regions traversed.

2. Proposed construction plans and details.

3. Estimates of cost.

C. When the application is filed with the clerk of the board of supervisors, the clerk shall:

1. Immediately set the application for a hearing before the board of supervisors at least fifteen but not more than thirty days after the application is filed.

2. Forward a copy of the application, accompanying papers, instruments and documents and notice of the date of the hearing by certified mail to the highway commission.

3. Publish notice of the hearing one time at least ten days before the day of the hearing in the same newspaper in which notice of the application was published.

D. At the hearing, all persons interested may appear and be heard. The board of supervisors may take testimony and adjourn the hearing.

§ 28–6803. Application approval or rejection; effective date; franchise term and reversion

A. If it appears to the board of supervisors that the public interest will be promoted by the application provided in section 28–6802, it may grant the application in whole or in part or as revised.

B. The board of supervisors shall not grant an application if either:

1. The highway commission files with the board of supervisors a written statement that the proposed toll road will interfere with an existing or proposed state highway or state route.

2. The proposed toll road will interfere with an existing or contemplated county highway.

C. An order granting an application is not effective until a copy of the order and an engineer's plat of the road approved in writing by the board of supervisors is filed with the county recorder within thirty days after the date the order is made.

D. A franchise for a toll road shall not be granted for a term of more than ten years, subject to the right of extension for one additional period of not more than ten years.

E. On expiration or forfeiture of a toll road franchise:

1. The ownership and all rights and privileges appurtenant to the ownership vest in the county or counties in which it is located.

2. The board of supervisors may declare it a free highway or collect tolls.

§ 28-6804. **Toll road; interference prohibited**

A toll road shall not interfere with a highway in general use by the traveling public. If a toll road is established or if the prior right to maintain it has been acquired, another toll road shall not be constructed or maintained within one mile of either side of the road.

§ 28-6805. **Toll road; condemnation; construction; guideposts**

A. Lands necessary for the construction of a toll road or appurtenances to a toll road may be acquired by condemnation.

B. A toll road shall be laid out at least fifty feet wide. If the road is a plank road, the track shall be constructed eighteen feet wide of timber, plank or other hard material. If the toll road is a turnpike, the track shall be bedded with stone, gravel or other hard material found on the line of the track to the width of eighteen feet and faced with broken stone or gravel. A common wagon road shall be graded at least twelve feet in width and constructed with necessary turnouts to permit vehicles to pass conveniently. The roads shall:

1. Be ditched on the sides if practicable.

2. Have proper and necessary drainage.

3. Be constructed so that vehicles may pass on and off the track at intersections of roads.

C. Any tollgate, tollhouse or other building shall not be erected within one hundred sixty-five feet of the front of any dwelling house, barn or outhouse without the written consent of the owner. A toll road shall not be constructed:

1. Within the limits of an incorporated city or town.

2. Through an orchard at least four years old so as to injure the fruit trees.

3. Through a garden that has been cultivated at least four years.

4. Through a dwelling house or yard or enclosure necessary to a dwelling house without written consent of the owner.

D. There shall be a guidepost at every intersection of the toll road and a public road. The guidepost shall indicate the name and direction of the place to which the public road leads. The owner shall keep the guidepost in good condition at all times, and if the owner fails to do so:

1. The owner's franchise may be forfeited on information in the nature of quo warranto.

2. The owner is liable for damages sustained by parties passing over the road.

§ 28-6806. **Toll road construction and completion**

A. Construction of the toll road shall begin within thirty days after the date of the order approving the application and shall continue with all reasonable dispatch until completed.

B. When the road is completed, the owner of the franchise shall file with the county recorder a certificate that the road is completed and conforms to the requirements of law.

§ 28-6807. **Toll rates; violation; classification**

A. When the certificate of completion is filed, tollgates may be erected and tolls may be collected.

B. The board of supervisors shall fix and regulate the rates of tolls for franchises granted under this article within the limits of its county, giving due regard to the cost of construction, magnitude of the structure and expenses incidental to the toll

road and maintenance. The rates may be changed after notice to the owners and the public given by posting notice on the property and after a hearing. The rates of tolls shall be printed or painted in a plain and legible manner on a bulletin board posted at each tollgate on the road.

C. A person who knowingly demands or collects a higher rate of toll than fixed by the board is guilty of a class 2 misdemeanor.

D. If a person traveling on a toll road attempts to run by or go around a tollgate established on a toll road with the intention of avoiding the payment of the toll, the person is guilty of a petty offense.

§ 28–6808. State tax

The owner shall:

1. Keep an accurate account of the gross receipts and expenditures of the road.

2. Make a quarterly report of the gross receipts and expenditures under oath to the department of administration accompanied by two per cent of the gross proceeds from the road that are transmitted to the state treasurer for deposit in the state general fund.

CHAPTER 20

STATE HIGHWAYS AND ROUTES

ARTICLE 1. GENERAL PROVISIONS

§ 28–6901. Definitions

In this chapter, unless the context otherwise requires:

1. "Budget" means the annual highway program prepared by the department.

2. "Division" means the highway division of the department of transportation.

3. "State engineer" means the assistant director for the division.

ARTICLE 2. HIGHWAY DIVISION

§ 28–6921. Assistant director; state engineer; qualifications; compensation

A. The director shall appoint a state engineer to administer the division.

B. The state engineer shall be both:

1. A civil engineer registered to practice in this state.

2. Familiar with the theory of and experienced in the practice of highway construction, maintenance, design or engineering.

C. The state engineer:

1. Shall have a thorough knowledge of modern business methods or shall have at least ten years of experience in a business or profession of which at least four years was in a responsible administrative capacity. All or part of the experience may have been with the United States government, a state or a political subdivision of a state.

2. Shall devote full time to the duties of the office.

3. Shall not engage directly or indirectly in an occupation that conflicts with the state engineer's duties.

4. Is the executive and administrative officer of the division.

5. Has charge of the administration of all highway affairs as authorized by the director.

6. Is eligible to receive compensation pursuant to section 38–611.

§ 28-6922. **Director; powers and duties**

A. The director of the department of transportation or the director's authorized and bonded agent shall administer all highway and maintenance work and has the following powers and duties:

1. Direct the preparation of all plans and specifications for work on state highways or state routes.

2. Advertise for competitive bids for work on state highways or state routes and, on authorization of the transportation board, award and enter into contracts for the work.

3. Direct the supervision of all construction work on state highways and state routes and is in charge of maintenance and upkeep of these highways and routes.

4. Approve payment for work done by the state on or in connection with state highways or state routes, except that the director of the department of administration shall not allow a claim for work without the approval of the director of the department of transportation or the director's authorized and bonded agent.

5. Negotiate and award contracts to private consulting engineers or consulting engineering firms if deemed in the public interest by the director and the transportation board for the performance of engineering work that is required to formulate and complete highway construction contracts.

B. The director of the department of transportation shall:

1. Direct the organization of the division.

2. Appoint, suspend, discharge and fix the duties of employees.

3. Adopt rules for the conduct of employees.

4. Make monthly reports to the transportation board of all expenditures of the division, of the work accomplished under the director and other matters that the director deems proper.

5. On request of the transportation board, assign clerks or other employees to the board.

6. Prescribe procedures for the use of division personnel, facilities, equipment, supplies and other resources in assisting search or rescue operations by request of the director of the division of emergency management of the department of emergency and military affairs.

7. Exercise other powers necessary to carry out the work of the division and perform other duties prescribed by law for the division.

§ 28-6923. **Bid requirements; procedure; bond**

A. All items of construction or reconstruction of department facilities involving an expenditure of fifty thousand dollars or more shall be called for by advertising in a newspaper of general circulation published in this state for either:

1. Two consecutive publications if it is a weekly newspaper.

2. Two publications at least six but not more than ten days apart if it is a daily newspaper.

B. The advertisement shall state specifically the character of the work to be done and where a person may obtain copies of the plans, specifications and complete information as to the proposed work.

C. The bidding information provided shall state specifically the character of the work to be performed and the kind, quantity and quality of materials or supplies to be furnished. The plans and specifications:

1. Shall be sufficiently complete, definite and explicit to permit informed, free, open and competitive bidding on a common basis.

2. May require performance on the basis of either means and methods specifications or end result specifications.

3. If end result specifications are used, shall provide an objective or standard to be achieved with the successful bidder expected to exercise the bidder's skill and ingenuity in achieving that objective or standard of performance by selecting the means and manner of performance and by assuming a corresponding responsibility for that selection.

D. A bid shall be accompanied by a certified check, cashier's check or surety bond for ten per cent of the amount of the bid included in the proposal as a guarantee that the contractor will enter into a contract to perform the proposal pursuant to the plans and specifications.

E. The certified check, cashier's check or surety bond shall be returned to the contractors whose proposals are not accepted and to the successful contractor on the execution of a satisfactory bond and contract as provided in this article.

F. The surety bond provided pursuant to subsection D of this section shall be executed and furnished as required by title 34, chapter 2, and the conditions and provisions of the surety bid bond regarding the surety's obligations shall follow the form required under section 34–201, subsection A, paragraph 3.

G. If a bid that is satisfactory to the board is received, it shall let a contract to the lowest responsible bidder, on the contractor giving performance and payment bonds that follow the form and include the provisions required by title 34, chapter 2, article 2.

H. If the bids received for construction or reconstruction are not satisfactory to the board, a second call shall be made. If they are again rejected by the board, it may authorize the state engineer to construct or reconstruct the item as it deems most advantageous.

§ 28–6924. Progress payments

A. The following apply to the department's highway construction projects awarded pursuant to section 28–6923:

1. Progress payments may be made by the department to the contractor on the basis of a duly certified and approved estimate of the work performed during a preceding period of time. The progress payments shall be paid on or before fourteen days after the estimate of the work is certified and approved. The estimate of the work shall be deemed received by the department on submission to the person designated by the department for the submission, review or approval of the estimate of the work. An estimate of the work submitted under this section shall be deemed approved and certified after seven days from the date of submission unless before that time the department prepares and issues a specific written finding detailing those items in the estimate of the work that are not approved and certified under the contract. The department may withhold an amount from the progress payment sufficient to pay the expenses the department reasonably expects to incur in correcting the deficiency set forth in the written finding. On completion and acceptance of separate divisions of the contract on which the price is stated separately in the contract, payment may be made in full including retained percentages, less deductions, unless a substitute security has been provided.

2. The contractor shall pay to the contractor's subcontractors or material suppliers and each subcontractor shall pay to the subcontractor's subcontractors or material suppliers, within seven days of receipt of each progress payment, unless otherwise agreed in writing by the parties, the respective amounts allowed the contractor or subcontractor on account of the work performed by the contractor's or subcontractor's subcontractors or material suppliers, to the extent of each subcontractor's or material supplier's interest in the amount. These payments to subcon-

tractors or material suppliers shall be based on payments received pursuant to this section. Any diversion by the contractor or subcontractor of payment received for work performed on a contract or failure to reasonably account for the application or use of the payments constitutes grounds for disciplinary action by the registrar of contractors. A subcontractor or material supplier shall notify the registrar of contractors and the department in writing of any payment less than the amount of percentage approved for the class or item of work as set forth in this section.

3. A subcontractor may notify the department in writing requesting that the subcontractor be notified by the department in writing within five days after payment of each progress payment made to the contractor. The subcontractor's request under this paragraph remains in effect for the duration of the subcontractor's work on the project.

4. If any payment to a contractor is delayed after the date due, interest shall be paid at the rate of one per cent per month or a fraction of the month on the unpaid balance.

5. If any periodic or final payment to a subcontractor or material supplier is delayed by more than seven days after receipt of the periodic or final payment by the contractor or subcontractor, the contractor or subcontractor shall pay the subcontractor or material supplier interest, beginning on the eighth day, at the rate of one per cent per month or a fraction of a month on the unpaid balance.

B. A contract for construction shall not materially alter the rights of any contractor, subcontractor or material supplier to receive prompt and timely payment as provided under this section.

C. Nothing in this section prevents a contractor or subcontractor, at the time of application and certification to the department or contractor, from withholding the application and certification to the department or contractor for payment to the subcontractor or material supplier for unsatisfactory job progress, defective construction work or materials not remedied, disputed work or materials, third party claims filed or reasonable evidence that a claim will be filed, failure of a subcontractor to make timely payments for labor, equipment and materials, damage to the contractor or another subcontractor, reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract amount or a reasonable amount for retention that does not exceed the annual percentage retained by the department.

D. This section creates no duty of the department to a subcontractor or material supplier other than the duty to notify pursuant to subsection A, paragraph 3 of this section and creates no cause of action in favor of a subcontractor or material supplier against this state, the department or any state employee or agent.

§ 28–6925. Contract counsel fund; appropriation; exemptions; disbursements; reimbursement

A. The sum of thirty thousand dollars is appropriated from the state highway fund to the department for deposit in a special fund designated as the contract counsel fund. The department of transportation shall spend monies in the fund to reimburse the attorney general for department of law services.

B. The appropriation made by this section is limited to the hiring of attorneys for condemnation cases pertaining to the purchase and acquisition of rights-of-way on federal aid projects.

C. The department of administration shall transfer and replenish the sum appropriated under this section from monies in the state highway fund appropriated for construction of state highways to the contract counsel fund. On receipt of itemized verified statements accompanied by proper receipts and vouchers showing in detail the expenditures from the contract counsel fund, the department of

administration shall issue a warrant to fully replenish the contract counsel fund from monies appropriated for construction of state highways, except that the total of the warrants shall not exceed thirty thousand dollars at any time.

D. The appropriation under this section is exempt from the provisions of section 35–190 relating to lapsing of appropriations.

ARTICLE 3. FIVE YEAR TRANSPORTATION FACILITIES CONSTRUCTION PROGRAM

§ 28–6951. Five year transportation facilities construction program; departmental committee

A. The director shall develop a five year transportation facilities construction program according to the policies established by the board.

B. To aid in the development of the five year transportation facilities construction program, the director shall appoint a departmental committee that is responsible to the director. The departmental committee is subject to title 38, chapter 3, article 3.1.

C. The departmental committee shall:

1. Recommend priorities on transportation facilities construction projects to be constructed by this state that may include any relevant criteria for the development of priority recommendations for the construction and development of transportation facilities to be constructed by this state.

2. Update and prepare annually a long-range statewide transportation facilities construction program covering the following five fiscal years for submission to the board as follows:

(a) The first year of the five year program shall consist of the highest priority transportation facilities construction projects that with reasonable certainty can be advertised for public bidding.

(b) The committee shall group proposed projects for the four remaining years of the five year program by the year it is estimated construction will begin and in order of their priorities.

(c) The committee shall provide the estimated cost of the program for each year that is approximately equal to the revenues estimated to be available for transportation facilities construction purposes during that year.

3. Review priority changes in or introduction of new projects to a proposed or an adopted five year program that the board has requested and make recommendations in a written report to the board on the requested priority changes or introduction of new projects based on a study of the criteria and policy that establish the priorities of projects.

4. Review the adopted five year transportation facilities construction program from time to time during the fiscal year and make recommendations in a written report to the board for priority changes in or introduction of new projects to the program based on a study of the criteria and policy that establish the priorities of projects. The committee shall fully document its recommendations.

§ 28–6952. Five year transportation facilities construction program; publication; hearing

A. On or before the second Monday in April of each year, the board shall review the updated five year transportation facilities construction program prepared by the director.

B. On or before the first Monday in May of each year, the board shall publish a notice in a newspaper of general circulation in each county in which construction

projects are planned under the statewide five year transportation facilities construction program for the following five fiscal years. The notice shall specify a date that is on or before the third Monday in May for a public hearing held at the office of the board to review the program and hear objections and protests from an individual or group.

C. After the public hearing, the board may make priority changes in or introduce new projects to the proposed five year transportation facilities construction program pursuant to section 28-6955.

§ 28-6953. Updated program; annual report

A. On or before June 30 of each year, the board shall:

1. Adopt an updated five year transportation facilities construction program for the following five fiscal years.

2. File a written report with the director and the governor outlining the updated program and explaining any priority changes made pursuant to section 28-6955.

3. File a copy of the program with the director of the department of administration and the state treasurer.

B. On or before the first Monday in August of each year, the board shall prepare and make available to the public an annual report that summarizes the updated five year statewide transportation facilities construction program. The report shall contain:

1. The name of each proposed transportation facilities construction project.

2. The anticipated year each project will be advertised for bidding.

3. The location, description and total estimated cost of each project.

4. An explanation of the project's priority.

5. Other data the board deems necessary.

§ 28-6954. Program requirements

The five year transportation facilities construction program shall:

1. Set forth estimated expenditures by project for engineering, rights-of-way and construction.

2. Include detailed information by project as to location, description and the reasons for the project's assigned priority.

3. List projects by priority and group them in the fiscal year during which it is estimated construction can begin.

4. For the first year of the program, consist of projects that can with reasonable certainty be advertised for public bidding.

5. Include a plan for the use of monies expected to be deposited in the county's regional area road fund as provided in chapter 17, article 1 of this title.

6. Include a plan for the use of monies that are expected to accrue in the county's regional transportation fund as provided in section 48-5310, that are dedicated for street and highway purposes and that are in the state highway system.

§ 28-6955. Five year program changes

A. The board may change a proposed or an adopted five year transportation facilities construction program.

B. If the board desires to change the priority of a project or to introduce a new project into a proposed or an adopted five year program that would result in changed priorities, the board shall require the director to study the requested change and make a recommendation to the board based on the criteria and policy

provided in section 28-6951. If the board changes the priority of projects of a proposed or an adopted five year program, the board shall:

1. Make the change only in an open meeting.

2. Specifically document and explain in a written report the reasons and justifications for changes and for any deviations from the recommendations of the director.

3. Include the written report with the updated five year program to be filed with the director and the governor the next fiscal year.

4. Immediately incorporate any priority changes approved by the board into the five year program.

C. Any changes in an adopted five year transportation facilities construction program other than changes affecting the priorities are not required to be reported in writing.

ARTICLE 4. STATE HIGHWAY FUND AND BUDGET

§ 28-6991. State highway fund; sources

A state highway fund is established in the state treasury that consists of:

1. Monies distributed from the Arizona highway user revenue fund pursuant to chapter 18 of this title.

2. Monies appropriated by the legislature.

3. Monies received from donations for the construction, improvement or maintenance of state highways or bridges. These monies shall be credited to a special account and shall be spent only for the purpose indicated by the donor.

4. Monies received from counties under cooperative agreements, including proceeds from bond issues. The state treasurer shall deposit these monies to the credit of the fund in a special account on delivery to the treasurer of a concise written agreement between the department and the county stating the purposes for which the monies are surrendered by the county, and these monies shall be spent only as stated in the agreement.

5. Monies received from the United States under an act of Congress to provide aid for the construction of rural post roads, but monies received on projects for which the monies necessary to be provided by this state are wholly derived from sources mentioned in paragraphs 2 and 3 of this section shall be allotted by the department and deposited by the state treasurer in the special account within the fund established for each project. On completion of the project, on the satisfaction and discharge in full of all obligations of any kind created and on request of the department, the treasurer shall transfer the unexpended balance in the special account for the project into the state highway fund, and the unexpended balance and any further federal aid thereafter received on account of the project may be spent under the general provisions of this title.

6. Monies in the custody of an officer or agent of this state from any source that is to be used for the construction, improvement or maintenance of state highways or bridges.

7. Monies deposited in the state general fund and arising from the disposal of state personal property belonging to the department.

8. Receipts from the sale or disposal of any or all other property held by the department and purchased with state highway monies.

§ 28-6992. Director of department of administration; comptroller of fund

A. The director of the department of administration is the comptroller of all expenditures from the state highway fund. The state treasurer shall not pay or allow a claim until the director of the department of administration approves it.

B. The duties of the director of the department of administration under this section are supervisory. The director of the department of administration shall not approve a claim or demand for a purpose that is not authorized.

C. On request, the director of the department of transportation shall submit to the director of the department of administration the facts and circumstances connected with a claim or demand.

§ 28-6993. State highway fund; authorized uses

A. Except as provided in subsections B and C of this section and section 28-6538, the state highway fund shall be used for any of the following purposes in strict conformity with and subject to the budget as provided by this section and by sections 28-6997 through 28-7003:

1. To pay salaries, wages, necessary travel expenses and other expenses of an officer and employee of the department and the incidental office expenses, including telegraph, telephone, postal and express charges and printing, stationery and advertising expenses.

2. To pay for both:

(a) Equipment, supplies, machines, tools, department offices and laboratories established by the department.

(b) The construction and repair of buildings or yards of the department.

3. To pay the cost of both:

(a) Engineering, construction, improvement and maintenance of state highways and parts of highways forming state routes.

(b) Highways under cooperative agreements with the United States that are entered into pursuant to this chapter and an act of Congress providing for the construction of rural post roads.

4. To pay land damages incurred by reason of establishing, opening, altering, relocating, widening or abandoning portions of a state route or state highway.

5. To reimburse the department revolving account.

6. To pay premiums on authorized indemnity bonds and on compensation insurance under the workers' compensation act.

7. To defray lawful expenses and costs required to administer and carry out the intent, purposes and provisions of this title and to pay lawful bills and charges incurred by the state engineer.

8. To acquire, construct or improve entry roads to state parks or roads within state parks.

9. To acquire, construct or improve entry roads to state prisons.

10. To pay the cost of relocating a utility facility pursuant to section 28-7156.

B. Monies deposited in the state highway fund from the tax levied pursuant to section 28-6536 shall be used for the design, right-of-way purchase, construction or reconstruction of highways that are part of the state highway system.

C. For each of the following fiscal years, the department shall allocate and the state treasurer shall distribute monies in the state highway fund to the department of public safety for funding a portion of highway patrol costs in eight installments in each of the first eight months of a fiscal year that do not exceed:

1. For the 1994-1995 fiscal year, twenty million dollars.

2. For the 1995–1996 fiscal year, seventeen million five hundred thousand dollars.

3. For the 1996–1997 fiscal year, fifteen million dollars.

4. For the 1997–1998 fiscal year, twelve million five hundred thousand dollars.

5. For the 1998–1999 fiscal year and for all subsequent fiscal years, ten million dollars.

§ 28–6994. Rules

The director shall adopt rules for the expenditure of all monies in the state highway fund.

§ 28–6995. Preferences

A. In spending monies from the state highway fund, the department shall give preference to the requirements of the budget in the following order:

1. Constructing highways in cooperation with the United States.

2. Taking over and constructing other state highways.

B. Reconstruction or replacement of existing highways that are damaged or destroyed by acts of God or other sudden or unexpected causes shall be given preference accorded for maintenance expenditures pursuant to the order named in subsection A.

§ 28–6996. Investment

With the advice of the state treasurer, the director may invest inactive deposits in the state highway fund in United States government bonds or interest bearing notes and other interest bearing obligations of the United States for which the full faith and credit of the United States are pledged. The state treasurer shall credit interest earned on state highway monies to the state highway fund.

§ 28–6997. Fiscal year; budget

A. The fiscal year of the department begins on July 1 of each year and ends the following June 30.

B. The department shall operate strictly under a budget provided and authorized by the legislature.

§ 28–6998. Public monies; expenditure

A. The department is subject to the provisions of title 35, chapter 1 relating to public finances and to all other acts of the legislature applicable to the expenditure of public monies.

B. The department shall conform to the state budget system and shall not make expenditures unless both:

1. The department is authorized to make the expenditure by the legislature.

2. The money is appropriated for the expenditure.

§ 28–6999. Expenditure; appropriation limitation; violation; classification; civil action

A. The director shall not make or authorize an expenditure for any purpose during a fiscal year in excess of the amount appropriated by the legislature for that purpose.

B. A member of the board or an employee or agent of the department who knowingly approves for expenditure or who knowingly causes to be expended any amount in violation of this section is both:

1. Guilty of a class 2 misdemeanor.

2. Liable for the amount on the person's official bond to be recovered in a civil action in the name of this state brought by either:

(a) The attorney general.

(b) On the failure or refusal of the attorney general to act, any citizen of this state for the benefit of this state.

§ 28–7000. Contracts; exceptions

Notwithstanding section 28–6999, the department may enter into:

1. Construction contracts the performance of which may extend beyond the close of the fiscal year.

2. Contracts or agreements for the purpose of right-of-way acquisitions that may obligate state monies for payment up to ten years before the estimated completion date of construction.

§ 28–7001. Right-of-way purchase; financing

A. If the department elects to enter into a contract or agreement for the purchase of right-of-way and in addition to other methods of acquisition prescribed by law, at the discretion of the property owner, the department may enter into a contract or agreement for the purchase of right-of-way utilizing one or more of the following financing methods:

1. Cash to mortgage purchase agreement.

2. Seller financing.

3. Assumption of existing financing.

4. Lease-purchase agreement.

5. Any other term purchase agreement.

B. A contract or agreement authorized by section 28–7000 or this section shall not contain a financing method that would be a debt pursuant to article IX, section 5 of the Constitution of Arizona.

C. The department may negotiate regarding the terms of purchase and enter into a contract with the property owner regarding the financing and terms of purchase. The contract between the department and the property owner regarding financing and the terms of purchase is binding in the event of condemnation.

§ 28–7002. Right-of-way acquisitions; applicability; limitation

A. Sections 28–7000 and 28–7001 relating to right-of-way acquisitions apply only to advance acquisition of rights-of-way and do not apply to any other means of right-of-way acquisition.

B. The department shall not initiate financing as prescribed in sections 28–7000 and 28–7001 after a condemnation action is filed.

§ 28–7003. Construction program account transfers

The director of the department of transportation may certify to the director of the department of administration and the state treasurer the transfer of amounts from one construction program account to another construction program account only as follows:

1. Construction program items involving urban projects constructed with federal urban monies and state highway monies may be transferred to other urban projects.

2. If a construction program item or account in the first year of its adopted long-range construction program does not contain sufficient monies for awarding or

completing a contract, additional monies may be transferred to it from other construction program items from either:

(a) A construction program item or account in which there are excess monies after the completion of the work and there is a complete discharge and satisfaction of all liabilities incurred on that account.

(b) A construction program item or account with a priority not falling within the first year of its adopted long-range construction program.

§ 28–7004. Payroll preparation

The department of administration shall prepare or delegate the duty of preparing the payroll of officers and employees of the department of transportation.

§ 28–7005. Account; small expenses

A. The director of the department of administration may issue a warrant in an amount of not more than five hundred thousand dollars on claims properly certified by the department of transportation to establish an account to facilitate only the payment of small expenditures, payrolls and expense accounts in connection with the operation of the department of transportation. The state treasurer shall pay claims authorized by this subsection from any monies appropriated to the department of transportation.

B. If the director of the department of administration has issued a warrant pursuant to this section, the director of the department of administration shall not issue another like warrant until an itemized verified statement and proper receipts and vouchers showing in detail the expenditure and distribution of the amount previously advanced for the account under this section and the account to which each item of the statement shall be charged is filed with the director of the department of administration. On receipt of the statement, the director of the department of administration shall charge each item to the proper account and may issue a further warrant, on claims, to replenish the revolving account, but the total shall not exceed five hundred thousand dollars at any time.

§ 28–7006. Transportation department equipment revolving fund; definitions

A. A transportation department equipment fund is established in the state treasury that consists of:

1. Monies appropriated by the legislature to the department for the purchase, maintenance, service or repair of equipment and consumable material, including monies appropriated to pay salaries, wages and benefits of department employees engaged in maintaining, servicing or repairing equipment or supervising these activities.

2. Monies received by the department from the sale of equipment and consumable material at public auction or by other disposal methods provided by law.

3. Monies credited and transferred to the fund pursuant to subsection C of this section for the use of consumable material and for the use or servicing of equipment.

4. Monies received from insurance recoveries for equipment and consumable material losses.

5. Monies received from donations.

6. Monies received from the United States as reimbursement to provide aid for the use of equipment and consumable materials in the construction, maintenance or repair of transportation improvements.

7. Earnings on any monies in the transportation department equipment fund that are invested pursuant to section 28–6996.

B. The director shall establish and from time to time modify or adjust the equipment rental schedule and the other fee schedule to reflect all current costs of ownership, maintenance, operation and service of equipment, including the costs of labor and supervision and consumable materials used in the equipment.

C. Department equipment shall not be used for any purpose and the department shall not incur an expense in the maintenance, service or repair of equipment unless within thirty days after the end of any month in which equipment is used or the expenses are incurred both:

1. The appropriate project, program, section, division, activity or budget unit is charged for the use pursuant to the equipment rental schedule or other fee schedule.

2. The transportation department equipment fund is credited and the monies are transferred to that fund.

D. Monies in the transportation department equipment fund shall be spent only to:

1. Purchase equipment and consumable materials.

2. Rent equipment.

3. Pay salaries, wages and employee related costs and benefits and operating expenses for employees engaged in repairing, maintaining or servicing equipment or supervising these activities.

4. Pay salaries, wages, employee related costs and benefits and the operating expenses of the department motor pool.

E. Monies in the transportation department equipment fund shall be spent in conformity with the laws governing state financial operations, except that balances remaining at the end of the fiscal year do not revert to the state general fund or the state highway fund.

F. In this section, unless the context otherwise requires:

1. "Consumable material" means motor vehicle fuel, petroleum lubricants, tires, batteries, replacement or repair parts, automotive accessories and any other article of supply or material consumed in the operation, improvement, repair or maintenance of equipment.

2. "Equipment" means any automobile, truck, tractor, trailer, motor driven vehicle, aircraft or other piece of equipment used by the department in the enforcement of the traffic laws and in the administration, maintenance, construction or repair of the state transportation system and any mechanical shop tool or device used in the improvement, repair or maintenance of this equipment.

3. "Equipment rental schedule" means the list of rental rates for each piece of rental equipment owned or rented by the department and used as the basis of reimbursing the transportation department equipment fund for use of any equipment owned by the department.

4. "Other fee schedule" means the list of all costs and expenses that is used as the basis of reimbursing the transportation department equipment fund for an expenditure for labor or consumable material that is not reflected in the equipment rental schedule but which cost or expense is nevertheless incurred by the department in the maintenance, service or repair of equipment.

§ 28–7007. State highway fund; claims; payment

Monies in the state highway fund shall be paid only on an itemized and verified claim by the director of the department of transportation or any other bonded agent authorized by the director of the department of transportation. A claim shall be presented to and filed with the director of the department of administration disclosing the authority for the claim. If the director of the department of administration approves the claim, the director of the department of administration

shall charge it to the proper account and draw a warrant on the state treasurer who shall pay the claim from the state highway fund and shall charge the claim to the proper account as shown on the warrant.

§ 28–7008. State highway fund reimbursement; nonhighway costs

A. To limit the expenditures of monies in the state highway fund established by section 28–6991, pursuant to article IX, section 14, Constitution of Arizona, to highway purposes, the department of transportation shall:

1. Maintain a strict account of all costs incurred by each function of the department. The department of transportation shall determine and allocate the costs between highway and nonhighway functions, including the costs of wages, salaries, materials, supplies and equipment or facility use.

2. Concurrently with or immediately after the determination of all of the costs prescribed in paragraph 1, certify to the department of administration and the state treasurer the full amount of all of the costs relating to nonhighway functions.

B. On receiving the certification by the department of transportation pursuant to subsection A of this section, the department of administration shall authorize and the state treasurer shall transfer the full amount of the nonhighway costs from any monies appropriated to the department of transportation from nonhighway user revenues to the state highway fund.

ARTICLE 5. STATE HIGHWAYS AND ROUTES

§ 28–7041. State highways and routes defined

A. The state highways, to be known as state routes, consist of the highways declared before August 12, 1927 to be state highways, under authority of law, that the board, after receipt of a recommendation from the director, may add to, abandon or change. If the board proceeds contrary to the recommendations of the director, it shall file a written report with the governor stating the reasons for the action.

B. The state highways consist of the parts of the state routes designated and accepted as state highways by the board. A highway that has not been designated as a state route shall not become a state highway and any portion of a state route shall not become a state highway until it has been specifically designated and accepted by the board as a state highway and ordered to be constructed and improved.

C. All highways, roads or streets that have been constructed, laid out, opened, established or maintained for ten years or more by the state or an agency or political subdivision of the state before January 1, 1960 and that have been used continuously by the public as thoroughfares for free travel and passage for ten years or more are declared public highways, regardless of an error, defect or omission in the proceeding or failure to act to establish those highways, roads or streets or in recording the proceedings.

§ 28–7042. Width of highways; exception

A. Highways that were constructed, laid out, opened or established before August 12, 1927 as highways by the territory or state or by a board of supervisors or political subdivision of this state and that have been used continuously by the public as thoroughfares for free travel and passage for two years or more, regardless of an error, defect or omission in the proceeding to establish the highways or in recording the proceedings, and highways established pursuant to law are declared highways sixty-six feet wide, unless the width of the highways is otherwise specified.

B. Except as specifically provided for in this title, this section does not apply to a portion of a highway within the limits of an incorporated city or town that has a

population of more than two thousand five hundred persons according to the most recent United States decennial census or the most recent special census as provided in section 28-6532.

§ 28-7043. Designation of state route as state highway

A. At least two weeks before the designation and acceptance by the transportation board of a state route or portion of a state route as a state highway, the transportation board shall give notice to the board of supervisors of the county in which the proposed highway is located of the intention of the transportation board to consider the designation.

B. The board of supervisors may:

1. Appear before the transportation board and be heard on the proposal.

2. Petition the transportation board to take over and designate a state route as a state highway.

C. Until designated and accepted as state highways, all state routes are county highways and shall be constructed, improved and maintained as county highways, except as otherwise provided in this title.

D. A part of a state route shall not be taken over or designated as a state highway until monies for its improvement are provided in the budget of the department. If part of a state route is designated and accepted by the transportation board as a state highway, the department shall maintain the highway.

§ 28-7044. Signs

The director shall:

1. Prescribe standard board and road signs or other devices and provide a uniform system of marking and signaling on state routes and state highways that correlate with and as far as possible conform to the system approved by the American association of state highway officials.

2. Regulate the use of advertising signboards and road signs on state roads or state highways.

§ 28-7045. Director; rules; state highway and route use

The director shall:

1. Adopt rules for closing state highways under construction or repair.

2. Exercise complete and exclusive operational control and jurisdiction over the use of state highways and routes and adopt rules regarding the use as the director deems necessary to prevent the abuse and unauthorized use of these highways and routes.

§ 28-7046. Opening, altering or vacating highway; review of order

A. If the director or the board desires to establish, open, relocate, alter, vacate or abandon a state highway or a portion of a state highway, the director shall make and deliver a written report to the board describing the highway or portion of the highway to be affected. If the board decides that the public convenience will be served, it shall enter a resolution on its minutes approving the proposed action and authorizing the director to proceed and to acquire any property for the action by condemnation or otherwise.

B. The superior court may review by certiorari the action of the board establishing, opening, relocating, altering, vacating or abandoning state highways.

§ 28–7047. **Mountain preserve; limitation; definition**

A. This state or a political subdivision of this state shall not construct, lay out, open or establish a street, road or highway through a designated mountain preserve unless the construction of the street, road or highway is approved by a majority of the electors of a charter city voting on the matter.

B. This section does not apply to a state route that is proposed to be constructed within a designated mountain preserve and that is in the state highway system on August 15, 1990.

C. For the purposes of this section, "designated mountain preserve" means individual parcels of real property that are within a charter city, that have been designated as a whole as a mountain preserve and that have been accumulated or designated through any of the following methods:

1. Real property that is owned by a charter city and that is located within a generally recognized mountain preserve area.

2. Real property purchased by a charter city in whole or in part for the purpose of including the real property within a mountain preserve with the proceeds of general obligation bonds issued by the charter city.

3. Real property designated by ordinance to be a part of a mountain preserve by the city council of a charter city.

§ 28–7048. **Lease of areas above and below highways; exemptions**

A. The director may lease to any public agency, as defined in section 11–951, or to a private person or entity the use of areas above or below state highways, subject to reservations, restrictions and conditions the director deems necessary to assure adequate protection of the safety and integrity of highway facilities and to secure the safety of motorists. Before entering into the lease, the director shall:

1. Determine that the proposed use by a lessee is not in conflict with the zoning regulations of the local government concerned.

2. Make the lease pursuant to procedures prescribed by the board.

3. Make a lease with a private person or entity only after competitive bidding.

B. The transportation board may reject any or all bids or call for additional bids if in the opinion of the board the bids submitted are not in the best interest of this state. The board shall not accept a bid that does not yield at least a fair rental value for the property to the state highway fund.

C. The department shall transmit the revenues derived from the leases to the state treasurer for deposit in the state highway fund.

D. This section does not apply to permits, easements and rights-of-way for public service corporations.

§ 28–7049. **Classification of streets that connect highways and routes**

A. If the streets of an incorporated city or town form necessary or convenient links for the connection of sections of state highways or state routes, or for carrying the state highways or state routes through the city or town, the director and the governing body of the city or town, in the case of state highways, or the board of supervisors and the governing body of the city or town, in the case of state routes, may agree that the streets are deemed state highways or county highways, respectively.

B. The agreement shall provide for maintenance of the streets classified pursuant to this section.

§ 28–7050. Federal aid secondary highways; definition

A. On petition of the board of supervisors of a county and if the board decides that the public convenience is served and the designation will not interfere with the completion and upkeep of the present county highway system, the board may request that the federal highway administration place a road on the county federal aid secondary system.

B. Federal aid secondary county highways shall be constructed, improved, repaired and maintained by the county with the department acting as an agent for the counties for the receipt of federal aid monies.

C. The department shall pay costs of construction, improvement, repair and maintenance of federal aid secondary state highways.

D. Matching monies for county federal aid secondary projects are the responsibility of the county, and matching monies for state federal aid secondary projects are the responsibility of the department.

E. Any rural road in this state may be designated a federal aid secondary road by approval of the board with the concurrence of the federal highway administration.

F. For the purposes of this section, "secondary roads" means roads having secondary order of significance to primary roads that connect centers of population.

§ 28–7051. Roadside parks; historical markers

A. The department may construct, maintain and operate roadside parks on highway property for the use and benefit of the public.

B. The department may construct and erect signs and plaques marking points of historical importance on highway property. The signs and plaques shall not be erected unless they have been certified as reasonably authentic and historically correct by the director of the department of library, archives and public records.

§ 28–7052. Action concerning lands taken or damaged in construction of highway or airport; statute of limitations

An action brought to recover possession of or to clear title to real property claimed by this state or by a political subdivision of this state as a public highway or airport or an action brought to recover compensation or damage for property taken or damaged in or for the construction of a public highway or airport shall be commenced within two years after the cause of action has accrued and not afterward.

§ 28–7053. Misuse of public highway or airport; violation; classification; injunction; definition

A. A person who commits or causes to be committed any of the following acts is guilty of a petty offense:

1. Places or maintains an encroachment or obstruction on, makes any use of or otherwise occupies a public highway or airport of this state or any of its political subdivisions for any purpose other than for authorized public travel, communication, transportation or transmission, except as otherwise provided in this section.

2. Places or maintains an encroachment or obstruction on, uses, occupies, damages or otherwise interferes with a public highway, airport or public bridge, causeway, viaduct, trestle or dam, unless either:

(a) Authorized by the director, if it is a state highway or structure or airport facility.

(b) Authorized by the governing body of the political subdivision in which the act is committed, if it is not a state highway or structure or airport facility.

3. Knowingly molests or destroys any part, projection, structure, appurtenance or accessory of a public highway or airport or destroys or otherwise interferes with a drainage ditch constructed for the protection of a public highway or airport, a dike, ditch, levee or jetty or an embankment appurtenant to a dike, ditch, levee or jetty.

4. Knowingly destroys or interferes with a ford, dip, culvert or crossing of a creek, gulch, river or stream by digging away the banks or by damming, deepening or widening a creek, gulch, river or stream to divert waters on the public highway or airport or to cause injury or damage to the public highway or airport by flooding or otherwise.

5. Knowingly places or maintains a vehicle, aircraft or structure parked or placed wholly or partly within a public highway, runway or taxiway specifically for the purpose of selling the vehicle, aircraft or structure or of selling or specifically advertising the sale of, at any location, an article, service or thing.

6. Knowingly stores, services, repairs or otherwise works on a vehicle wholly or partly within a highway other than on a vehicle that is temporarily disabled.

7. Knowingly removes, damages or destroys a tree or shrub standing on a highway right-of-way.

8. Knowingly obstructs or injures a public highway, runway or taxiway by causing or permitting flow or seepage of water under the person's control to escape onto the highway, runway or taxiway.

B. Each day of violation of any provision of subsection A of this section is a separate violation on failure to remove or to diligently prosecute the removal of an encroachment after notice under section 28–7054. Each encroachment shall be treated as a separate violation.

C. In addition to the penalties prescribed by this section, an act in violation of this section is a public nuisance and may be abated by an injunction. A person who commits the act is subject to an action for damages by this state brought by the attorney general or the county attorney of the county in which the act is committed on direction of the attorney general.

D. This section does not apply to:

1. Department personnel or agents performing normal construction and maintenance functions.

2. A person who has prior authorization in writing from the director to perform any of the acts referred to in this section.

E. For the purposes of this section, "encroachment" includes a structure or object of any kind or character that is placed in, under or over a portion of the public highway or airport.

§ 28–7054. Highway or airport encroachments; additional remedies

A. If an encroachment is a fixed advertising device or a movable object, notice for the removal of the encroachment may be given to the occupant or owner of the reversionary interest of the land or person causing or owning the encroachment by personal service or by registered or certified mail at the person's place of residence if known, and if unknown, notice may be posted on the encroachment.

B. If it is a highway encroachment, the notice shall specify the width of the highway and the place and extent of the encroachment and shall require the removal of the encroachment within thirty days thereafter if the encroachment is a fixed advertising device and within fifteen days after notice is given or posted if the encroachment is a movable object.

C. If it is an airport encroachment, the notice shall specify the location of the runway or taxiway and the place and extent of the encroachment and shall require

the removal of the encroachment within thirty days thereafter if the encroachment is a movable object.

D. If notice is given under this section and if the removal is not commenced within the required period or after being commenced is not diligently prosecuted, the department or the governing body of the appropriate political subdivision if it is not a state highway or airport facility may remove the encroachment without commencing any action. The person responsible for the encroachment shall pay the cost of removal, and an action may be filed in the superior court in the county where the encroachment is made or exists and where the removal is manifested to collect reimbursement of the necessary cost of removal to the subdivision of this state that has custody and control of the highway or airport facility by law.

E. The procedure provided by this section is not exclusive and does not prohibit the use of either:

1. Any other remedy provided by law to protect a highway or airport facility.

2. The authority of officers of the department of public safety to cause the immediate removal of obstructions, encroachments, vehicles or aircraft.

§ 28–7055. Leaving gate open on fenced land; classification

A. A person traveling on a road or highway that is open for use and used by the public, that passes into or over any part of an enclosed field or pasture of another person and that has a gate or bars across the road or highway at the point of entrance to or exit from the enclosed field or pasture shall securely close the gate or bars after opening them.

B. A person who violates this section is guilty of a petty offense.

§ 28–7056. Dumping trash on highways or airports; classification

A. A person who dumps, deposits, places, throws or leaves refuse, rubbish, debris, filthy or odoriferous objects, substances or other trash on a state or county highway, road, public thoroughfare, public airport, the right-of-way to a state or county highway, road, public thoroughfare or public airport or within twenty yards of a state or county highway, road, public thoroughfare or public airport is guilty of a class 3 misdemeanor.

B. If a class 3 misdemeanor is committed as provided in subsection A from a motor vehicle or aircraft, the driver of the vehicle or pilot of the aircraft is presumed to be the offender.

C. The director, the board of supervisors of each county and the governing body of each city or town shall cause signs to be erected at suitable intervals on highways, airports and public thoroughfares in their respective areas of authority, including public parks, informing the public that it is unlawful to commit the acts prohibited by subsection A.

D. The highway patrol, the sheriff's office of each county and the peace officers of each city or town shall enforce this section.

§ 28–7057. Publication of law relating to dumping trash on highways

The director shall cause to be printed and distributed with each license plate and each original or renewal of a driver license material relating to section 28–7056 as the director deems advisable.

ARTICLE 6. LAND PURCHASE, SALE AND CONDEMNATION

§ 28–7091. Definition of market value

For the purposes of this article, "market value" means the most probable price estimated in terms of cash in United States dollars or comparable market financial

arrangements that the property would bring if exposed for sale in the open market, with reasonable time allowed in which to find a purchaser, buying with knowledge of all of the uses and purposes to which it was adapted and for which it was capable.

§ 28–7092. Land acquisition; transportation purposes

A. In the name of this state, the director may acquire, either in fee or a lesser estate or interest, real property that the director considers necessary for transportation purposes by purchase, donation, dedication, exchange, condemnation or other lawful means with monies from the state highway fund or any other monies appropriated to the department.

B. Property acquired for transportation purposes includes land or any interest in the land necessary for:

1. Rights-of-way, campsites, roadside rest areas, water or material needed in the construction, improvement or maintenance of state highways, airports, runways, taxiways or other property under the jurisdiction, possession or control of the department.

2. Spoil banks, rock quarries, gravel pits, sand or earth borrow pits.

3. Rights-of-way to the place where material required in the construction, improvement or maintenance of state highways, airports, runways or taxiways may be located.

4. Offices, shops, maintenance camps, storage yards, inspection or weighing stations or radio transmitter or repeater stations.

5. Rights-of-way for access to any location prescribed in this subsection.

C. If part of a parcel of land is to be taken for transportation purposes and the remainder is to be left in such shape or condition as to be of little value to its owner or to give rise to claims or litigation concerning severance or other damage, the director may acquire the whole parcel by any means provided in subsection A, and the remainder may be sold or may be exchanged for other property needed for transportation purposes.

§ 28–7093. Eminent domain

A. This state may exercise the right of eminent domain for transportation purposes, and the court in which the action is pending shall give the action precedence over other civil actions.

B. If property that is devoted to or held for some public use other than existing street, highway or airport uses for which the power of eminent domain might be exercised is to be taken for such transportation purposes and if the person or agency in charge of the public use consents, the director may purchase real property or an interest in the property to be exchanged with the person or agency for the real property that is to be taken for transportation purposes.

C. This article does not limit the authorization to the department to acquire, other than by exchange, property for these purposes or to acquire directly by condemnation, purchase or otherwise, without such exchange, property held for some other public use by any lawful means provided in section 28–7092.

§ 28–7094. Property acquisition; future needs; highway properties fund; rental revenue

A. The authority provided by this article to acquire real property for transportation purposes includes authority to acquire for future needs if the board has an adopted and approved state route plan or airport site location showing a reasonable need for the property.

B. The director may:

1. Lease or let at fair rental value lands that are held for transportation purposes and that are not presently needed for these purposes on terms and conditions determined by the director.

2. Maintain and care for the property described in paragraph 1 to secure rent from the property on terms consistent with this article.

C. The highway properties fund is established in the state treasury. The director shall transmit rents received from property acquired to the state treasurer for deposit in the state highway fund, except that twenty-four per cent of all rents received shall be deposited in the highway properties fund. The state treasurer shall credit net income received from rentals under this section to the budgetary item from which the property was acquired.

D. If the director determines that any rental revenue collected under this section represents overpayment or payment in duplicate, the director may authorize the refund of the overpayment or payment in duplicate from the highway properties fund and the state highway fund.

E. Not later than November 1 next following the close of any fiscal year, the department of administration shall pay the rents deposited in the highway properties fund to the county assessor in the county in which the real property is situated. The director of the department of transportation shall certify to the department of administration the amount of the rentals attributable to each county and shall notify each county of the rental and location of each piece of rental property for which rents are deposited in the fund.

F. The county assessor shall distribute any payment received by the county assessor pursuant to this section to the county, to each revenue district for which the county assesses and collects real property taxes or assessments and to every other taxing agency within the county in which the property is situated. The amount distributable to the county and each such revenue district or other taxing agency shall be proportionate to the ratio that the amount of the taxes and assessments of each on similar real property similarly situated within that part of the county embracing the smallest in area of the revenue districts or other taxing agencies other than the county, levied for the fiscal year next preceding, bears to the combined amount of the taxes and assessments of all such districts and agencies, including the county, on such property levied for that year. The county assessor shall determine and certify the amounts distributable to the board of supervisors, and the board shall order the distribution.

G. Any monies distributed pursuant to this section to any county, revenue district or other taxing agency shall be deposited to the credit of the same fund as any taxes or assessments on any taxable similar real property similarly situated. If a county receives a payment pursuant to this section of twenty-five dollars or less for any parcel of leased property, all of the payment shall be distributed to the county for deposit in the county general fund.

H. The respective jurisdictions may spend the monies received by them under this section for any proper public purpose not prohibited by the state constitution.

§ 28-7095. Conveyance of property not needed for transportation purposes

A. The director may dispose of real property or any right, title or interest in the real property if the director determines that it is not needed or used for transportation purposes. After the establishment, laying out, substantial completion of a transportation improvement or abolishment of a transportation improvement by formal action of the transportation board, the director may convey the real property or any interest in the real property that was acquired pursuant to this article and that the director determines is not necessary for state transportation purposes.

B. Except as provided in section 28–7099, the director may convey the real property described in subsection A of this section to an agency of the federal government, this state or a county, city or town of this state without a public sale if the director considers the conveyance to be in the public interest and if the real property is to be used for such a specific public purpose. The agency shall pay the department for the conveyance based on a current appraisal establishing the fair market value of the property to be conveyed. If the property conveyed is to be used for a specific highway purpose, the agency shall reimburse the department for its expenditures for the property. The director may convey other marketable property to the highest and most responsible bidder at a public auction or by direct sale or exchange after at least thirty days' notice in a newspaper of general circulation in the county in which the property is located. At least two independent appraisals are required for property that is offered to the public, and the property shall not be offered or conveyed for less than or the amount of the low appraisal. All purchase offers are public, and any person may submit a subsequent offer that matches or exceeds a previous purchase offer. The sale may be made for cash or on terms of at least twenty per cent down with the balance payable in annual installments for ten years, and the unpaid balance bears interest at a rate determined by the director. After appraisal, the director may dispose of property by quit claim deed to adjacent property owners if the property has no value to this state.

C. The director may execute all deeds or conveyances necessary to convey any real property or interest in the real property to be conveyed under this section and may assess a fee for the costs of preparing and executing any conveyance under this section. The director may either:

1. Insert in the deed or conveyance conditions, covenants, exceptions and reservations as the director deems to be in the public interest.

2. Convey in fee simple absolute.

D. It is conclusively presumed in favor of any purchaser for value and without notice of any real property or interest in the real property conveyed pursuant to this section that the department acted within its lawful authority in acquiring the property and that the director acted within the director's lawful authority in executing a deed, conveyance or lease authorized by this article.

E. The director may adopt rules for using real estate brokers to assist in any disposition of property under this section. The director may pay a commission, from proceeds received under this section, to a broker who provides the purchaser unless the broker is the purchaser or lessee or the purchaser is another governmental agency.

§ 28–7096. Appraisal report

The director shall justify each acquisition or disposal of real property under this article by at least one appraisal report that is of sufficient scope to document and justify the economic basis for the acquisition or disposal.

§ 28–7097. Before condition; market value change

In acquiring property for transportation purposes pursuant to this article, when determining the market value of the property to be taken and the market value of the remainder, if any, in the before condition, a decrease or increase in the market value of the real property before the date of valuation caused by the public project for which the property is to be acquired or by the likelihood that the property would be acquired for the project shall be disregarded.

§ 28–7098. **Appraisal; condemnation; initial offer**

A. Before filing a condemnation action to acquire property for transportation purposes pursuant to this article, the department shall obtain one or more appraisals that estimate the amount of just compensation for the proposed taking and damaging of the property.

B. The department's initial offer of just compensation to the aggregate of those persons with an interest in the property shall not be less than the lowest of the appraisals prepared by or for the department.

C. At any time after the department has filed a condemnation action and on request, it shall promptly provide to any person in interest a copy of the appraisal of the property on which the department's most recent offer is based.

§ 28–7099. **Property repurchase**

A. If property is acquired for transportation purposes by agreement of the parties before the filing of a condemnation action or by stipulation before judgment in the condemnation action, the deed transferring the property shall contain a provision authorizing the original owner or the original owner's heirs to repurchase the property if the director determines that the property is not needed or used for transportation purposes at a purchase price equal to the price paid by the department to acquire the property plus interest calculated for each month or portion of a month that the department owns the land as provided for in this section. The interest to be paid if the property is repurchased is simple interest computed at the prime rate charged by banks on short-term business loans as determined for publication in the bulletin of the board of governors of the federal reserve system as of the first day of the month.

B. The right of repurchase expires on the earlier of eight years after the date of recording the deed to the property from the original owner or ninety days after the director's determination that the property is not needed or used for transportation purposes.

C. If the director determines that the property is not needed or used for transportation purposes, if the deed transferring the property contains a provision for repurchase and if the right of repurchase has not expired, the director shall offer the property to the original owner or the owner's heirs at a price determined pursuant to this section. If the original owner or the owner's heirs accept the offer within ninety days after the director determines that the property is no longer needed or used for transportation purposes, the director shall issue a quitclaim deed to the property on payment of the price. A quitclaim deed issued under this section or any deed or other document evidencing abandonment or sale by the director creates a presumption of compliance with the requirements of this section relating to the right of repurchase of the property by the original owner or the owner's heirs and is conclusive evidence of meeting the requirements of this section in favor of purchasers and encumbrancers for value and without actual notice. Knowledge of the grantor shall not be imputed to the grantee.

§ 28–7100. **Dismissal of condemnation action**

A. Before payment of the compensation and damages awarded the defendants by the court or jury, the director may abandon the proceedings and cause the condemnation action to be dismissed without prejudice.

B. The court may require that reasonable attorney fees, expert witness fees and costs be paid as a condition of dismissal.

§ 28–7101. Condemnation; interest

Interest on a judgment in a condemnation proceeding instituted by the department, including interest that is payable pursuant to section 12–1123, subsection B, shall be calculated for each month or portion of a month that interest is owed and shall be either:

1. The prime rate charged by banks on short-term business loans as determined for publication in the bulletin of the board of governors of the federal reserve system, as of the first day of that month.

2. In the absence of a determination by the board of governors of the federal reserve system, calculated in the same manner based on comparable data as determined by the United States department of commerce, bureau of economic analysis, for publication in "survey of current business".

3. If the prime rate cannot be determined from publication provided in paragraph 2, determined by a federal agency that is designated by the board and that makes and publishes data sufficient to determine the prime rate of interest.

§ 28–7102. Inverse condemnation; resolution of necessity; alternatives; limitations; action; extension

A. If the board adopts a highway corridor and selects a highway alignment for the adopted corridor, within eighteen months of selection of the alignment, the board shall adopt a resolution of necessity declaring that acquisition of one or more parcels of real property is necessary for transportation purposes. If the department has not presented a written offer to the property owner within six months of the adoption of the resolution of necessity, the property owner may file an action in superior court for inverse condemnation to do either of the following:

1. Require the department to take the property and pay compensation for the property.

2. Recover damages from the department for any interference with the possession and use of the property resulting from adoption of the resolution of necessity.

B. The property owner must commence an action under subsection A of this section not later than eighteen months after the date the board adopts the resolution of necessity.

C. The department may commence a condemnation proceeding or the board may rescind the resolution of necessity as a matter of right at any time before the property owner commences an action under this section. If the department commences a condemnation proceeding or if the board rescinds the resolution of necessity before the property owner commences an action under this section, the property owner may not bring an action under this section.

D. After a property owner has commenced an action under this section, the board may rescind the resolution of necessity and the department may abandon the taking of the property only under the same circumstances and subject to the same conditions and consequences as abandonment of a condemnation proceeding.

E. Commencement of an action by a property owner under this section does not affect any authority the department may have to commence or abandon an action pursuant to other sections in this article or title 12, chapter 8, articles 2 and 3 or to take possession of any property.

F. In lieu of an action commenced by a property owner pursuant to subsection A of this section or if the limitations period provided in subsection B has expired, the property owner may file an action in superior court to compel the board, within the time the court deems appropriate, to rescind the resolution of necessity or to compel the department to commence a condemnation proceeding to acquire the property.

G. The time limitations prescribed in this section may be extended by the board if both of the following occur:

1. The department applies to the board for an extension and provides a written explanation of and a justification for the need for an extension.

2. An extension is determined necessary by the board due to an unforeseeable and unpreventable circumstance or event that renders compliance with the prescribed time periods impossible or that causes an extreme hardship in completing the transportation project.

§ 28-7103. Effect of article

The sections in this article do not limit the provisions of any other section, each of which is a distinct and separate authorization.

ARTICLE 7. RELOCATION ASSISTANCE

§ 28-7141. Definitions

In this article, unless the context otherwise requires:

1. "Business" means a lawful activity, except a farm operation, that is conducted primarily by or for any of the following:

(a) The purchase, sale, lease and rental of personal and real property and the manufacture, processing or marketing of products, commodities or other personal property.

(b) The sale of services to the public.

(c) By a nonprofit corporation.

(d) Solely for the purposes of section 28-7143, for assisting in the purchase, sale, resale, manufacture, processing or marketing of products, commodities, personal property or services by the erection and maintenance of an outdoor advertising display or displays, whether or not the display or displays are located on the premises on which any of the above activities are conducted.

2. "Comparable replacement dwelling" means a dwelling that is all of the following:

(a) Decent, safe and sanitary.

(b) Adequate in size to accommodate the occupants.

(c) Within the financial means of the displaced person.

(d) Functionally equivalent.

(e) In an area that is not subject to unreasonably adverse environmental conditions.

(f) In a location that is generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services and the displaced person's place of employment.

3. "Displaced person":

(a) Means a person who moves from real property or moves the person's personal property from real property either:

(i) As a direct result of a written notice of intent to acquire or the acquisition of the real property in whole or in part for a program or project undertaken by a displacing agency.

(ii) On which the person is a residential or business tenant or conducts a farm operation or a business as a direct result of rehabilitation, demolition or any other displacing activity as the department may prescribe under a program or project

undertaken by a displacing agency in a case in which the displacing agency determines that the displacement is permanent.

(b) Solely for the purposes of sections 28–7142 and 28–7143, means a person who moves from real property or moves the person's personal property from real property either:

(i) As a direct result of a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which the person conducts a business or farm operation, for a program or project undertaken by a displacing agency.

(ii) As a direct result of rehabilitation, demolition or any other displacing activity as the department may prescribe of other real property on which the person conducts a business or a farm operation, under a program or project undertaken by a displacing agency if the displacing agency determines that the displacement is permanent.

(c) Does not include either:

(i) A person who has been determined either to be unlawfully occupying the displacement dwelling or to have occupied the dwelling for the purpose of obtaining assistance under this article.

(ii) In a case in which the displacing agency acquires property for a program or project, a person, other than a person who was an occupant of the property at the time it was acquired, who occupies the property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project.

4. "Displacing agency" means the department in carrying out a program or project with federal or state financial assistance that causes a person to be a displaced person.

5. "Family" means two or more persons living together in the same dwelling unit who are related to each other by blood, marriage, adoption or legal guardianship.

6. "Farm operation" means an activity conducted primarily for the production of one or more agricultural products or commodities, including timber for sale and home use, and customarily producing the products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

7. "Individual" means a person who is not a member of a family.

8. "Initiation of negotiations" means the date the department first makes personal contact with the owner or the owner's personal representative of the property sought to be acquired if the price to be paid for the property is discussed.

9. "Mortgage" means the classes of liens as are commonly given to secure advances on or the unpaid purchase price of real property under the laws of the state in which the real property is located and the credit instruments, if any, secured thereby.

10. "Person" means an individual, family, partnership, corporation or association.

§ 28–7142. Relocation assistance advisory services

A. Programs or projects undertaken by a displacing agency shall be planned in a manner that both:

1. Recognizes, at an early stage in the planning of the programs or projects and before the commencement of any actions that will cause displacements, the problems associated with the displacement of individuals, families, businesses and farm operations.

2. Provides for the resolution of the problems in order to minimize adverse impacts on displaced persons and to expedite program or project advancement and completion.

B. The displacing agency shall ensure that the relocation assistance advisory services described in subsection C are made available to all persons displaced by the agency. If the displacing agency determines that a person occupying property that is immediately adjacent to the property where the displacing activity occurs is caused substantial economic injury as a result of the activity, the agency may make advisory services available to the person.

C. Each relocation assistance advisory program required by subsection B shall include the measures, facilities or services that may be necessary or appropriate in order to:

1. Determine and make timely recommendations on the needs and preferences, if any, of displaced persons for relocation assistance.

2. Provide current and continuing information on the availability, sales prices and rental charges of comparable replacement dwellings for displaced homeowners and tenants and suitable locations for businesses and farm operations.

3. Assist a person who is displaced from a business or farm operation in obtaining and becoming established in a suitable replacement location.

4. Supply:

(a) Information concerning federal, state and local programs that may be of assistance to displaced persons.

(b) Technical assistance to those persons in applying for assistance under the programs.

5. Provide other advisory services to displaced persons in order to minimize hardships to those persons in adjusting to relocation.

D. The displacing agency shall coordinate relocation activities performed by the agency with other federal, state or local governmental actions in the community that could affect the efficient and effective delivery of relocation assistance and related services.

E. If a displacing agency acquires property for a program or project, a person who occupies the property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project is eligible for advisory services to the extent determined by the displacing agency.

F. The department may establish local relocation assistance offices to carry out subsection A.

G. The department may contract with federal, other state, county or local agencies to provide relocation assistance services if the agency is required by law to provide the services and if the services are compatible with those services provided by the department.

§ 28-7143. Moving and related expenses; payment; substitute payments

A. As a part of the cost of construction and on proper application to the department, the department shall pay to a displaced person, business or farm operation:

1. Actual reasonable expenses in moving the displaced person and the displaced person's family, business, farm operation or other personal property.

2. Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not more than the reasonable expenses that would have been required to relocate the property as determined by the department.

3. Actual reasonable expenses in searching for a replacement business or farm.

4. Actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization or small business at its new site pursuant to criteria established by the department, but not more than ten thousand dollars.

B. A displaced person who is eligible for payments under subsection A, who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection A may receive an expense and dislocation allowance determined according to a schedule established by the director.

C. A displaced person who is eligible for payments under subsection A, who is displaced from the person's place of business or farm operation and who is eligible under criteria established by the department may elect to accept, instead of the payment authorized by subsection A, a fixed payment in an amount that is determined according to criteria established by the department and that is at least one thousand dollars but not more than twenty thousand dollars. A person whose sole business at the displacement dwelling is the rental of the property to others does not qualify for a payment under this subsection.

§ 28–7144. Replacement dwelling; additional payment

A. In addition to other payments authorized by this article, the displacing agency shall pay not more than twenty-two thousand five hundred dollars to a displaced person who is displaced from a dwelling actually owned and occupied by the displaced person for at least one hundred eighty days before the initiation of negotiations for the acquisition of the property. This additional payment shall include the following elements:

1. The amount, if any, that when added to the acquisition cost of the dwelling acquired by the displacing agency equals the reasonable cost of a comparable replacement dwelling.

2. The amount, if any, that will compensate the displaced person for any increased interest costs and other debt service costs that the person is required to pay for financing the acquisition of any comparable replacement dwelling, only if the dwelling acquired by the displacing agency was encumbered by a bona fide mortgage that was a valid lien on the dwelling for at least one hundred eighty days immediately before the initiation of negotiations for the acquisition of the dwelling.

3. Reasonable expenses incurred by the displaced person for evidence of title, recording fees and other closing costs incidental to the purchase of the replacement dwelling except prepaid expenses.

B. The displacing agency shall make the additional payment authorized by this section only to a displaced person who purchases and occupies a decent, safe and sanitary replacement dwelling within one year after the date on which the person receives final payment from the displacing agency for the acquired dwelling or the date on which the obligation of the displacing agency under section 28–7152 is met, whichever is later, except that the displacing agency may extend this period for good cause. If the period is extended, the payment under this section is based on the costs of relocating the person to a comparable replacement dwelling within one year of that date.

§ 28–7145. Expenses incidental to transfer of property

In addition to the payments authorized by sections 28–7143 and 28–7144 and as a part of the cost of construction, the department shall reimburse the owner, after the date of payment of the purchase price or the date of deposit in court of monies to satisfy the award or compensation in a condemnation proceeding to acquire real property, whichever is earlier, to the extent it deems fair and reasonable for expenses the owner necessarily incurred for:

1. Recording fees, transfer taxes and similar expenses incidental to conveying the real property.

2. Penalty costs for prepayment of any preexisting recorded mortgage that is entered into in good faith and that encumbers the real property.

3. The pro rata portion of real property taxes that are paid and that are allocable to a period after the date of vesting of title in the state or the effective date of the possession of the real property by the state, whichever is earlier.

§ 28–7146. Replacement housing for tenants

A. In addition to amounts otherwise authorized by this article, a displacing agency shall pay to or for a person who is displaced from a dwelling and who is not eligible to receive a payment under section 28–7144 if the dwelling was actually and lawfully occupied by the displaced person for at least ninety days immediately before either:

1. The initiation of negotiations for acquisition of the dwelling.

2. In a case in which displacement is not a direct result of acquisition, another event as the department prescribes.

B. Payment under subsection A of this section consists of the amount necessary to enable the person to lease or rent for a period of not more than forty-two months a comparable replacement dwelling but not more than five thousand two hundred fifty dollars. At the discretion of the displacing agency, a payment under this subsection may be made in periodic installments. Computation of a payment under this subsection to a low income displaced person for a comparable replacement dwelling shall take into account the person's income.

C. A person who is eligible for a payment under subsection A of this section:

1. May elect to apply the payment to a down payment on and other incidental expenses relating to the purchase of a decent, safe and sanitary replacement dwelling.

2. At the discretion of the displacing agency, may be eligible under this subsection for the maximum payment allowed under subsection B of this section, except that the payment to a displaced homeowner who has owned and occupied the displacement dwelling for at least ninety days but not more than one hundred seventy-nine days immediately before the initiation of negotiations for the acquisition of the dwelling shall not exceed the payment the person otherwise would have received under section 28–7144 if the person had owned and occupied the displacement dwelling one hundred eighty days immediately before the initiation of the negotiations.

§ 28–7147. Application review by director

A displaced person who is aggrieved by a determination as to eligibility for a payment authorized by this article or the amount of a payment may have the person's application reviewed by the director. The director's decision is final.

§ 28–7148. Rules

A. The director shall adopt rules as the director determines is necessary to ensure that:

1. The payments and assistance authorized by this article are administered in a manner that is fair and reasonable and as uniform as practicable.

2. A displaced person who makes proper application for a payment authorized by this article is paid promptly after a move, or in hardship cases, paid in advance.

3. An aggrieved person may have the person's application reviewed.

B. The director shall adopt any other rules that are consistent with this article as the director deems necessary or appropriate to carry out this article.

§ 28–7149. Payments not income

A payment received by a displaced person under this article:

1. Is not income for the purposes of title 43 relating to the taxation of income.

2. Is not considered as income or resources to a recipient of public assistance.

3. Shall not be deducted from the amount of aid to which the recipient would otherwise be entitled under a federal, state, county or city welfare program.

§ 28–7150. Effect on eminent domain proceedings

In a condemnation proceeding brought under the power of eminent domain this article does not create an element of value or damages not in existence on July 1, 1974.

§ 28–7151. Negotiation and purchase of property for future transportation facilities

The department may negotiate and purchase at a price mutually acceptable to the property owner and the department property that is expected to be needed for future transportation facilities. This subsection applies only to qualified advance acquisitions of properties that are located within projects for which, at the time of the purchase, construction is not scheduled in the five year transportation facilities construction program provided for in chapter 18, article 2 of this title.

§ 28–7152. Assurance of dwellings

A. If a program or project undertaken by a displacing agency cannot proceed on a timely basis because comparable replacement dwellings are not available and the head of the displacing agency determines that the dwellings cannot otherwise be made available, the head of the displacing agency shall take any action that is necessary or appropriate to provide the dwellings by the use of monies authorized for the project. The displacing agency may exceed the maximum amounts that may be paid under sections 28–7144 and 28–7146 on a case by case basis for good cause as determined pursuant to department rules.

B. A person shall not be required to move from a dwelling on account of a program or project undertaken by a displacing agency unless the displacing agency is satisfied that comparable replacement housing is available to the person.

C. The displacing agency shall ensure that a person is not required to move from a dwelling unless the person has had a reasonable opportunity to relocate to a comparable replacement dwelling, except in any of the following cases:

1. A major disaster as defined in section 102(2) of the federal disaster relief act of 1974.

2. A national emergency declared by the President of the United States.

3. Any other emergency that requires the person to move immediately from the dwelling because continued occupancy of the dwelling by the person is a substantial danger to the health or safety of the person.

§ 28–7153. Condemnation; litigation expenses

A. The court having jurisdiction of a proceeding instituted by the department to acquire real property by condemnation shall award the owner of any right to, title to or interest in the real property an amount that will reimburse the owner for the owner's reasonable costs, disbursements and expenses, including reasonable attor-

ney, appraisal and engineering fees, actually incurred because of the condemnation proceedings, if either of the following occurs:

1. The final judgment is that the department cannot acquire the real property by condemnation.

2. The proceeding is abandoned by the department as authorized by section 28–7100.

B. The court rendering a judgment for the plaintiff in a proceeding brought under section 28–7052 awarding compensation for the taking of property by the department in effecting a settlement of that proceeding shall determine and award to the plaintiff, as a part of the judgment or settlement, an amount that in the opinion of the court or the department will reimburse the plaintiff for the plaintiff's reasonable costs, disbursements and expenses, including reasonable attorney, appraisal and engineering fees, actually incurred because of the proceeding.

§ 28–7154. Buildings, structures and improvements

A. Notwithstanding any other law, if this state acquires an interest in real property, it shall acquire at least an equal interest in all buildings, structures or other improvements located on the acquired real property that it requires to be removed from the real property or that it determines will be adversely affected by the use to which the real property will be put.

B. For the purpose of determining the just compensation to be paid for any building, structure or other improvement required to be acquired by subsection A:

1. The building, structure or other improvement shall be deemed to be a part of the real property to be acquired notwithstanding the right or obligation of a tenant, as against the owner of any other interest in the real property, to remove the building, structure or improvement at the expiration of the tenant's term.

2. The fair market value that the building, structure or improvement contributes to the fair market value of the real property to be acquired or the fair market value of the building, structure or improvement, for removal from the real property, whichever is more, shall be paid to the tenant.

C. Payment under this section shall not result in duplication of any payments otherwise authorized by law. A payment shall not be made under this section unless the owner of the land involved disclaims all interest in the improvements of the tenant. In consideration for this payment, the tenant shall assign, transfer and release to this state all of the tenant's right, title and interest in and to the improvements.

D. This section does not deprive the tenant of any rights to reject payment under this section and to obtain payment for the property interests in accordance with applicable law, other than this section.

§ 28–7155. Acquired property; maintenance

Notwithstanding any other law, a displacing agency shall maintain real property that is acquired by the displacing agency in carrying out a program or project and that is not scheduled for immediate rehabilitation or demolition in a manner consistent with protecting and maintaining surrounding property values.

§ 28–7156. Utility relocation; cost reimbursement

A. The director may authorize the reimbursement to a city, town or county for the cost of labor, equipment, materials, preliminary engineering and right-of-way purchase required to adjust or relocate a utility facility if all of the following apply:

1. An existing city, town or county highway or street is established as a state highway.

2. At the time the highway or street is established as a state highway, a utility facility belonging to a city, town or county exists within the right-of-way of the highway or street.

3. It becomes necessary to adjust or relocate the utility facility due to modification or improvement of the state highway.

B. The director shall determine the payment for labor, equipment and materials. The cost of relocation shall not exceed the value of the substitute utility facility. The director shall base the determination of the value of a substitute utility facility on the costs for replacement of a like facility. Costs of relocation shall exclude any betterments or increases in the size or capacity beyond those of the existing utility facility.

C. This section does not apply to a city, town or county utility facility that is owned by the city, town or county and that exists within the highway or street right-of-way by virtue of a permit, franchise or other revocable authority granted by the department, unless the authority was previously granted as part of an adjustment or relocation pursuant to this section.

D. Once established pursuant to a relocation prescribed by this section, a city's, town's or county's rights remain with the applicable city, town or county for which the relocation occurred.

ARTICLE 8. DISPOSITION OF PUBLIC ROADWAYS

§ 28–7201. Definitions

In this article, unless the context otherwise requires:

1. "Governing body" means the city or town council or other authority of a city or town, the board of supervisors of a county or the transportation board.

2. "Owner" or "owners of record" includes a person, firm, partnership, association or corporation.

3. "Owners association" means a nonprofit corporation authorized to do business in this state.

4. "Roadway" includes all or part of a platted or designated public street, highway, alley, lane, parkway, avenue, road, sidewalk or other public way, whether or not it has been used as such.

§ 28–7202. Disposition of unnecessary public roadways

If a governing body determines that a public roadway owned by the city, town, county or state or a portion of the roadway is not necessary for public use as a roadway, the governing body may dispose of or use the roadway as provided in this article.

§ 28–7203. Roadway exchange

A roadway or portion of a roadway may be exchanged with an abutting owner for all or part of a new public roadway, and title vests in the grantee when the exchange is made.

§ 28–7204. Roadway sale; definition

A. The governing body may authorize the director to sell and convey the land within the roadway or portion of the roadway by quitclaim deed.

B. On conveyance, the roadway or portion of the roadway is deemed vacated, title to the roadway or portion of the roadway vests in the grantee and, if the

grantee is an abutting owner, title vests subject to the same encumbrances, liens, limitations, restrictions and estates as exist on the grantee's abutting land.

C. At least sixty days before the date of the sale, a notice of sale describing the roadway or portion of the roadway to be sold shall:

1. Be posted at intervals of no more than one mile and in at least three places on or along the side of the roadway.

2. Make specific reference to this section.

3. State that a person may submit purchase offers and that abutting owners have preference rights pursuant to this article.

4. Be delivered or mailed to abutting owners of record if their addresses are known or can be readily discovered.

D. Abutting owners of record in whom title to a portion of the roadway would vest under section 28–7205 may deliver, at the sale or at any time before the sale, to the clerk or secretary of the governing body or the director, in the case of this state, a written offer to purchase the portion or a part of the portion for the consideration paid for the land by the city, town, county or state, whichever first acquired the land within the roadway for public use. If an offer is submitted in a timely manner, it shall be preferred over all other offers.

E. In the absence of an offer prescribed in subsection D of this section, the governing body or the director, in the case of this state, may sell the roadway or portion of the roadway for an amount of consideration it deems advisable.

F. A quitclaim deed issued under this section creates a presumption of compliance with the requirements of this section relating to the sale of the roadway or portion of the roadway, including recording, mailing and posting the notice of the sale and conducting the sale. The deed is conclusive evidence of meeting these requirements in favor of purchasers and encumbrancers for value and without actual notice. Knowledge of the grantor shall not be imputed to the grantee.

G. For the purposes of this section, "abutting owner" means the original owner of the vacated roadway or the abutting owner's heirs who have previously had a portion of the property acquired for roadway purposes and thereafter are left with an abutting remainder of property over which direct ownership is still retained.

§ 28–7205. City, town or county road vacated

If the roadway is a city, town or county roadway, the governing body may resolve that the roadway or portion of the roadway be vacated. On the making of the resolution, title to the roadway or portion of the roadway vests, subject to the same encumbrances, liens, limitations, restrictions and estates as exist on the land to which it accrues, as follows:

1. If a roadway that is the exterior boundary of a subdivision or other tract of land is vacated, title to the roadway vests in the owners of the land abutting the vacated roadway to the same extent that the land included within the roadway, at the time the roadway was acquired for public use, was a part of the subdivided land or was a part of the adjacent land.

2. If less than the entire width of the roadway is vacated, title to the vacated portion vests in the owners of the land abutting the vacated portion.

3. If a roadway bounded by straight lines is vacated, title to the vacated roadway vests in the owners of the abutting land and each abutting owner takes to the center of the roadway, except as provided in paragraphs 1 and 2. If the boundary lines of abutting lands do not intersect the roadway at a right angle, the land included within the roadway vests as provided in paragraph 4.

4. In all instances not specifically provided for, title to the vacated roadway vests in the owners of the abutting land, and each abutting owner takes that portion of the

vacated roadway to which the abutting owner's land or any part of the abutting owner's land is nearest in proximity.

5. On vacation of a roadway no portion accrues to an abutting roadway.

§ 28–7206. Planned development roadway vacated

Notwithstanding section 28–7205, if the roadway is a city, town or county roadway in a planned development, the governing body may resolve that the roadway or portion of the roadway be vacated and that title to the vacated roadway or portion of the roadway vests in the owners association if the following conditions are met:

1. The owners association includes the owners of the land abutting the roadway or portion of the roadway to be vacated.

2. The owners association has rights and remedies under covenants, conditions or restrictions of title to maintain the vacated roadway and to assess all members of the association for the maintenance of the roadway.

3. Two-thirds of the members of the owners association and a majority of the owners of commercial property abutting the roadway or portion of the roadway to be vacated approve the vesting of title to the roadway or portion of the roadway in the association.

§ 28–7207. State roadway abandoned

If the roadway is a state roadway, the governing body may resolve that this state's interest in the roadway or portion of the roadway be abandoned. On abandonment:

1. This state's interest in the part of the roadway that is located outside the boundaries of incorporated cities or towns vests in the county where the roadway is located.

2. This state's interest in the part of the roadway that is located within the boundaries of an incorporated city or town vests in that city or town.

3. The director shall promptly notify the city, town or county affected by the abandonment, and that county, city or town may maintain the roadway as other county, city or town roadways are maintained or dispose of it as provided in this section or section 28–7214.

§ 28–7208. Consideration required

Notwithstanding any other law, vesting of title pursuant to sections 28–7205, 28–7206 and 28–7207 is subject to the giving of consideration from the owner of the abutting property to the governing body in an amount deemed by the governing body to be commensurate with the value of the abandoned roadway. The governing body shall give due consideration to its degree of fragmentation and marketability and any other public benefit received by the governing body in return for the abandoned roadway in determining the amount of consideration.

§ 28–7209. Vacated or abandoned highway; affected jurisdiction; procedure

A. If the board vacates or abandons a portion of a state route or state highway pursuant to section 28–304, the board shall:

1. Vacate or abandon the portion of the route or highway in cooperation with an affected jurisdiction and in full recognition of the financial and administrative impacts of the changes on the affected jurisdiction.

2. Provide four years' advance notice to the affected jurisdiction, except that, by mutual agreement, the board and the affected jurisdiction may waive this requirement for notification.

B. Before a paved highway is vacated or abandoned, the pavement before the vacating or abandonment shall be in such a condition that additional surface treatment and major maintenance of the highway are not required for at least five years, unless the board and the affected jurisdiction agree to waive the requirement of this subsection.

§ 28–7210. **Reservation of easements**

Rights-of-way or easements for the following continue as they existed before the disposal or abandonment of the rights-of-way or easements:

1. Existing sewer, gas, water or similar pipelines and appurtenances.

2. Canals, laterals or ditches and appurtenances.

3. Electric, telephone and similar lines and appurtenances.

§ 28–7211. **Notice; hearing; appraisal**

The governing body or the board, in the case of this state, may give notice of pending disposition of roadways, hold hearings, obtain appraisals and take other similar action in connection with the disposition if it deems the action necessary or advisable.

§ 28–7212. **Disposition; joint action**

A. The part of a county roadway that is the boundary line between two counties shall not be disposed of except by joint action of the boards of supervisors of both counties.

B. The part of a state or county roadway that is a boundary line of an incorporated city or town or that is a state or county highway within an incorporated city or town shall not be disposed of except by joint action of the governing bodies of the city or town and the county or this state. Notwithstanding this subsection but subject to the obligations of the contract, a county board of supervisors or this state may abandon a county or state highway within an incorporated city or town by resolution.

§ 28–7213. **Resolution; effective date**

A governing body's resolution that disposes of a roadway or a portion of a roadway or that applies the roadway to another public use shall:

1. Describe the roadway and its disposition or use.

2. Take effect when it is recorded in the office of the county recorder of the county in which the roadway is located.

§ 28–7214. **Extinguishment of easements**

If a city, town or county does not own title to a roadway but holds right-of-way easements, the easements may be extinguished by the governing body's resolution.

§ 28–7215. **Public road access**

A roadway shall not be vacated if any land adjoining the roadway is left without an established public road connecting the land with another established public roadway, unless there is expressly reserved in the conveying instrument the roadway rights of ingress and egress for public or emergency vehicles, all property owners, property owner guests and invitees and persons lawfully conducting business on the land.

ARTICLE 9. BRIDGES

§ 28–7251. Construction of bridge or dam; violation; classification

A. It is unlawful to construct or begin the construction of a bridge, dam, dike or causeway over or in any navigable river or other navigable water within the jurisdiction of this state unless the attorney general has recommended and the governor has authorized the construction.

B. A person or corporation that violates this section is guilty of a class 1 misdemeanor.

§ 28–7252. Failure to construct or repair bridge or crossing; classification

A person who is required by law to construct, maintain or repair bridges or crossings over a ditch or irrigating canal and who knowingly fails or refuses to construct, maintain or repair these bridges or crossings is guilty of a class 2 misdemeanor.

ARTICLE 10. ECONOMIC STRENGTH PROJECTS

§ 28–7281. Economic strength projects

The following highway projects are economic strength projects pursuant to this article:

1. A project that will retain a significant number of jobs in this state or within a local authority.

2. A project that will significantly increase the number of jobs in this state or within a local authority.

3. A project that will lead to significant capital investment in this state or within a local authority.

4. A project that will make a significant contribution to the economy of this state or within a local authority.

§ 28–7282. Economic strength project fund

A. An economic strength project fund is established in the state treasury consisting of the monies allocated for projects listed by the department of commerce pursuant to section 41–1513.

B. Monies in the economic strength project fund shall be used to fund projects that are recommended by the commerce and economic development commission and that are approved by the transportation board.

C. Monies remaining in the economic strength project fund at the end of a fiscal year do not revert to the state general fund.

D. The state treasurer may invest inactive deposits in the economic strength project fund pursuant to section 35–313. The state treasurer shall credit all interest earned on economic strength project fund monies to the economic strength project fund.

§ 28–7283. Construction and maintenance of economic strength projects

A. The department shall construct and maintain economic strength projects that are part of the state highway system.

B. A local authority shall construct and maintain an economic strength project that is not part of the state highway system if the local authority has jurisdiction over the project.

§ 28–7284. **Agreements**

The director may enter into agreements on behalf of this state with a local authority in regard to the financing, construction or maintenance of an economic strength project recommended by the commerce and economic development commission and approved by the board.

§ 28–7285. **Rules**

The board may prescribe rules for the administration of this article.

§ 28–7286. **Board authority; construction standards; priority list date**

A. The board has final authority to approve an economic strength project recommended by the commerce and economic development commission. The board shall fund an approved economic strength project from the economic strength project fund.

B. Before approving an economic strength project, the board shall ensure that the project is compatible with other transportation facilities and conforms to applicable construction and engineering standards of the department of transportation or the appropriate local authority.

C. With the advice of the commerce and economic development commission, the board may set an official date each year on which the economic strength priority list is due to the board. The commerce and economic development commission may provide an updated priority list to the board at any time.

ARTICLE 11. TOURIST ADVERTISING

§ 28–7311. **Logo sign programs; rules; definition**

A. The department may establish a logo sign program. Notwithstanding sections 28–2078, 28–7048 and 28–7053, as part of the program the department may contract with a third party to install and maintain specific services information signs, known as logo signs, on certain portions of the completed interstate highway system in this state. The third party shall agree in the contract to:

1. Furnish, install, maintain and replace signs for the benefit of business advertisers who provide gas, food, lodging and camping facilities for the general public.

2. Lease advertising space on the signs to operators of the facilities prescribed in paragraph 1 of this subsection.

B. In addition to the program established in subsection A of this section, the department may establish a rural logo sign program. Notwithstanding sections 28–2078, 28–7048 and 28–7053, as part of this program the department may contract with a third party to install and maintain specific services information signs, known as logo signs, on any class of state highway, other than a segment of the interstate highway system, located outside of an urbanized area with a population of one hundred thousand or more persons. The third party shall agree in the contract to:

1. Furnish, install, maintain and replace signs for the benefit of business advertisers that provide gas, food, lodging and camping facilities for the general public.

2. Lease advertising space on the signs to operators of the facilities prescribed in paragraph 1 of this subsection.

C. The department shall adopt rules to implement and operate the logo sign programs. Costs incurred under the programs established by this section shall be paid under agreements negotiated between the third party and the business advertisers.

D. For the purposes of this section:

1. "Population" means the population determined in the most recent United States decennial census or in the most recent special census as provided in section 28–6532.

2. "Urbanized area" means an urbanized area as defined in the decennial census by the United States bureau of the census.

§ 28–7312. Tourism encouragement; Arizona highways magazine

A. The director may spend monies from the state highway fund in the amount prescribed by law to encourage tourist travel to and through this state by giving publicity to points and places of historic interest, climatic and recreational advantages, the possibilities of successful pursuits and industrial enterprises and other information that in the opinion of the director tends to attract visitors to this state.

B. The publicity shall be given through the medium of the magazine "Arizona Highways" and the publication of maps, pamphlets and other descriptive material designed to carry out the purposes of this article.

C. The director shall determine the price for:

1. Annual subscriptions, single copies and the discount allowed dealers of "Arizona Highways".

2. Other material published and offered for sale by the magazine.

D. The director may distribute the magazine free of charge to libraries, schools, chambers of commerce, hotels, tourist agencies, visitors, prospective visitors, other persons, agencies and business, industry or convention organizations in quantities the director deems beneficial in carrying out the purposes of this article. The number of free copies of the magazine each month shall not exceed ten per cent of the total number of paid subscriptions.

§ 28–7313. Publication section; publisher

A. The department shall maintain a section for the publication of the magazine, maps, pamphlets and other descriptive material provided by section 28–7312.

B. The director shall appoint a publisher as head of the section.

C. Compensation for the publisher is as established pursuant to section 38–611.

§ 28–7314. Publisher powers and duties; award of contract

A. The publisher may:

1. Subject to approval of the director, direct the organization of the section of publications and employ or enter into contracts for distribution and wholesale sale of the magazine.

2. Make quarterly reports to the director of expenditures by the section and the work accomplished under the publisher's direction and include other matters as the director deems proper or requires.

3. Make expenditures to advertise and promote the sale and distribution of the publications authorized by this article.

4. Approve claims for expenditures in connection with the publication of the magazine and for expenditures in connection with the publication.

5. Subject to the approval of the director, contract for the publication, production, sale and distribution of sole source creative products. As used in this paragraph, "sole source creative products" means items that in the professional judgment of the publisher are available from a single source, such as material

protected by copyright, specific photographs and original artwork, for the magazine or maps, pamphlets and other descriptive material.

B. The director may award a contract to the bidder that has the facilities and equipment to perform all phases of production in a workmanlike and timely manner with the quality and workmanship desired in the publication. A contract period for printing and publishing shall not exceed five years.

C. The publisher may refund all cancelled purchases and subscriptions on claims signed by the publisher.

§ 28–7315. Arizona highways magazine fund

A. An Arizona highways magazine fund is established in the state treasury.

B. The fund consists of monies:

1. Appropriated by the legislature from the state highway fund of not more than five hundred thousand dollars annually.

2. Received from the sales of subscriptions, single copies, maps, pamphlets and other descriptive material.

C. The monies appropriated to the fund shall be spent in conformity with the laws governing state financial operations, except that:

1. Balances remaining at the end of the fiscal year do not revert to the general or state highway fund.

2. Expenditures are exempt from section 35–173.

D. The state treasurer shall invest the monies in the Arizona highways magazine fund pursuant to title 35, chapter 2, article 2. The state treasurer shall credit all interest earned on Arizona highways magazine monies to the Arizona highways magazine fund.

ARTICLE 12. COOPERATIVE NATIONAL HIGHWAY AID AGREEMENTS

§ 28–7341. Agreements between department and federal agencies

The director may enter into cooperative agreements with the secretary or any authorized officer of the departments constituting the defense establishment of the United States, the federal highway administrator or any other authorized officer or agency of the United States for construction, acquisition, maintenance or improvement of roads and other projects.

§ 28–7342. Cooperative agreement provisions

A cooperative agreement entered into under this article:

1. Shall provide that all monies advanced by this state in pursuance of the project shall be promptly reimbursed by the United States agency entering into the agreement to the extent of the agency's participation in the cost of the project.

2. If the agreed participation of the United States agency is one hundred per cent of the cost or under other conditions as the director determines, may contain a provision that all of the agency's participation cost shall be deposited in advance in a special trust account with the state treasurer.

3. If feasible, shall enumerate as closely as possible all items of costs and expenditures for which the United States agency is obligated to reimburse the department.

§ 28–7343. Authority of director relating to monies

A. If the director determines it necessary for the expeditious completion of a cooperative agreement undertaken pursuant to this article, the director may pay

from the state highway fund or from any account within the state highway fund all costs of construction, including the acquisition of lands or property necessary to the project, engineering costs, operational expense, equipment rentals and other costs that have prior approval of the United States department or agency with which the cooperative agreement is made.

B. The department may cause to be set up proper budget items within or outside the state highway fund or special accounts within the fund and may make and certify transfers of monies among or between these accounts and the special trust account referred to in section 28–7342 or any other trust account established by the United States or by the department for carrying out cooperative agreements as provided by this article.

§ 28–7344. Reimbursement by federal agency

The United States agency with which a cooperative agreement is entered into shall promptly reimburse the state highway fund or an account within the fund for all expenditures made by the department under the agreement chargeable to the agency at reasonably regular intervals as the work progresses.

CHAPTER 21

STATE HIGHWAY FINANCING AND BONDING

ARTICLE 1. STATE HIGHWAY FUND BONDS

§ 28–7501. Definitions

In this article, unless the context otherwise requires:

1. "Any highway purpose" includes any one or more of the following purposes:

(a) Payment of highway obligations.

(b) The cost of and cost allocated to construction, reconstruction, maintenance and repair of public highways and bridges, county, city and town roads and streets.

(c) The acquisition of real property for future highway needs.

(d) The cost of constructing landscape buffers, noise barriers, pedestrian bypasses, multi-use paths and other environmental impact mitigation measures to mitigate the adverse impact of freeways on local neighborhoods.

2. "Bond related expenses" means:

(a) Printing, publication or advertising expenses with respect to the sale and issuance of bonds.

(b) Fees, expenses and costs of registrars.

(c) Fees, expenses and costs of attorneys, accountants, feasibility consultants, computer programmers or other experts employed to aid in the sale and issuance of the bonds.

(d) Other costs, fees and expenses incurred or reasonably related to the issuance and sale of the bonds.

3. "Bond related obligation" means an agreement or contractual relationship between the board and a bank, trust company, insurance company, surety bonding company, pension fund or other financial institution providing increased credit on or security for the bonds or liquidity for secondary market transactions.

4. "Bonds" means bonds of the board issued pursuant to this article.

§ 28–7502. Bond authority

A. Subject to this chapter, the board may:

1. Issue its negotiable bonds in a principal amount that in the opinion of the board is necessary to provide sufficient monies for any highway purpose, to establish reserves to secure the bonds and to provide for the payment of all other expenditures of the board incidental to and necessary and convenient to carry out these purposes. The amount of bonds that may be issued shall be determined pursuant to section 28-7510.

2. Issue refunding bonds if the board deems refunding expedient.

3. Refund any bonds issued by the board or by its predecessor in interest, the Arizona state highway commission, if these bonds are secured from the same source of revenues as the bonds authorized in this chapter, by the issuance of new bonds, whether or not the bonds to be refunded have matured.

4. Issue bonds partly to refund bonds then outstanding and partly for any highway purpose consistent with this article or as the legislature may authorize.

5. Provide for the registration as to the principal or both principal and interest of the bonds.

B. Regardless of whether or not the bonds are of such form or character as to be negotiable instruments under the terms of the negotiable instruments law, the bonds are fully negotiable within the meaning of and for all purposes of the negotiable instruments law.

§ 28-7503. Bond requirements

The bonds shall:

1. Be authorized by resolution of the board.

2. Bear such date or dates and mature at such time or times, not exceeding twenty years from their respective dates, as the resolution or resolutions may provide.

3. Bear interest at such rate or rates, including rates that may vary, pursuant to parameters set by the board in the authorizing resolution.

4. Be in the denominations, be in the form, either coupon or registered, be executed in the manner, be payable in the medium of payment at the office of the state treasurer of this state or at such other place or places and be subject to the terms of redemption, at the option of either the board or the owner of the bond, as the resolution or resolutions provide.

5. Be sold at public or private sale above, at or below par and on the terms the board determines, except that bonds to fund or refund other bonds may be exchanged with the holders of bonds being funded or refunded on terms the board determines.

§ 28-7504. Bond payment; security

A. In connection with the issuance of the bonds authorized by this article or to secure the payment of the bonds and interest on the bonds, the board by resolution may:

1. Provide that bonds issued under this article may be secured by a first lien, subject to section 28-7509, on all or any part of the monies paid into the state highway fund from the sources specifically collected as prescribed in article IX, section 14, Constitution of Arizona, and the monies distributed pursuant to section 28-5808.

2. Pledge and assign to or in trust with a trustee appointed by the board for the benefit of the holder or the holders of the bonds any part of the state highway fund revenues collected as prescribed in article IX, section 14, Constitution of Arizona, and the monies distributed pursuant to section 28-5808, as will be necessary to pay the principal of and interest on the bonds as the principal and interest become due.

3. Set aside, regulate and dispose of reserves and sinking funds.

4. Provide that sufficient amounts of the proceeds from the sale of the bonds may be used to fully or partly fund all reserves or sinking funds set up by the bond resolution.

5. Prescribe the procedure, if any, by which the terms of a contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent to and the manner in which the consent may be given.

6. Provide for payment from the proceeds of the sale of the bonds of all fees, charges and bond related expenses or obligations incurred by the board in the issuance, sale, delivery and payment of the bonds.

7. Do any other matters, of like or different character, that may in any way affect the security and protection of the bonds.

B. A pledge made pursuant to this article is valid and binding from the time when the pledge is made.

C. The monies pledged pursuant to this article and received by the state treasurer to be deposited in the state highway fund are immediately subject to the lien of the pledge without any future physical delivery or further act, and any lien of any pledge is valid or binding against all parties having claims of any kind in tort, contract or otherwise against the board regardless of whether the parties have notice of the lien or pledge. When placed in the records of the board, the official resolution or trust indenture or any instrument by which this pledge is created is notice to all concerned of the creation of the pledge, and these instruments are not required to be recorded in any other place.

§ 28–7505. Liability; bond validity

A. The members of the board or a person executing the bonds is not personally liable for the payment of the bonds.

B. The bonds are valid and binding obligations of the department notwithstanding the fact that before the delivery of the bonds any of the officers whose signatures appear on the bonds cease to be officers of the department.

C. From and after the sale and delivery of the bonds, the bonds are incontestable by the board or department.

§ 28–7506. Bond purchase; cancellation

The board may purchase bonds out of any monies available for the purchase, and these bonds shall then be canceled, at a price of not more than either of the following:

1. If the bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment date on the bonds.

2. If the bonds are not then redeemable, the redemption price applicable on the first date after the purchase on which the bonds become subject to redemption plus accrued interest to that date.

§ 28–7507. Notice; bond issuance

A. The board shall publish a notice of its intention to issue bonds under this article for at least five consecutive days in a newspaper published in this state. The last day of publication shall be at least ten days before the issuance of the bonds.

B. The notice shall state the amount of the bonds to be sold and the intended date of issuance.

C. A copy of the notice shall be hand delivered or sent by certified mail with return receipt to the director of the department of administration on or before the last day of publication.

§ 28–7508. **Financial interest prohibited; violation; classification**

A. A member of the board or employee of the department shall not have a financial interest in any real property for future highway needs that is purchased from monies made available by the issuance of bonds.

B. A person who violates this section is guilty of a class 2 misdemeanor.

§ 28–7509. **Highway bond proceeds fund**

A. The highway bond proceeds fund is established in the state treasury. After deducting the necessary fees, charges and expenses incurred in the issuance and sale of the bonds, the department shall promptly transfer the proceeds received from the sale and delivery of the bonds for all purposes to the state treasurer for deposit in the highway bond proceeds fund. The state treasurer shall maintain the fund separate and apart from all other funds, except that the treasurer shall first apply those amounts of the bond proceeds provided in the resolution issuing the bonds to all reserve and sinking funds created in the bond resolution. The department may spend monies in the highway bond proceeds fund for any lawful purpose not inconsistent with the resolution or resolutions authorizing the bonds.

B. The board may order the investment of monies in the highway bond proceeds fund by the state treasurer in any of the following:

1. United States treasury obligations.

2. Consolidated farm loan bonds.

3. Obligations issued by the federal intermediate credit banks or by banks for cooperatives on the authority of the farm credit act of 1933.

4. Any other obligations guaranteed by the United States government.

5. Any investments authorized by any other agencies of the United States government that are now authorized for use to secure public deposits.

6. State, county or municipal bonds issued in this state on which the payments of interest have not been deferred.

C. The order directing the state treasurer to invest the monies shall provide the specified time when the proceeds from the sale of the bonds shall be used for the purposes directed in the bond resolution, and the state treasurer shall invest the proceeds from the sale of the bonds in the securities prescribed in subsection B in such a way as to mature at the specified date.

D. The board shall use the monies or securities in the highway bond proceeds fund solely for the purposes provided in the bond resolution, except that, if the revenues pledged to secure the bonds ever are insufficient to pay the annual principal and interest on the bonds, the board shall order:

1. The liquidation of the securities remaining in the fund.

2. The state treasurer to apply all such monies in the fund as necessary to make current all payments then due on the bonds.

§ 28–7510. **Parity bonds**

A. The board may issue parity bonds only when all of the payments due on the principal and interest on the outstanding bonds are current.

B. The board may not issue parity bonds unless both of the following tests are met:

1. The monies subject to pledge for payment of the bonds for the preceding twelve months exceed by two times the highest annual principal and interest payments on all of the outstanding bonds and the bonds to be issued for the highest one year period during the life of both the outstanding bonds and the bonds to be issued.

2. The total principal amount of bonds outstanding, excluding refunded bonds, at any one time shall not exceed eight hundred million dollars, unless the additional amount is authorized by the legislature.

C. The bonds sought to be issued shall mature and the principal and interest are payable at the same time as bonds then outstanding that have the same priority of lien.

D. All bonds issued under this article are deemed to contain the restrictions against issuance of parity bonds contained in this section, whether or not the resolution issuing the bonds or the bonds themselves contain covenants to this effect.

E. For purposes of this section, amounts subject to pledge shall be presumptively determined by a certificate of the chairman of the board.

F. The pledge of revenues prescribed in section 28–7504, subsection A, paragraphs 1 and 2 is not subject to sections 28–6952 through 28–6955, 28–6992, 28–6993, 28–6995 through 28–7006. The payment of the necessary fees, charges and expenses incurred in the issuance of the bonds and the principal of and interest on the bonds are not subject to section 28–7007 but shall be made in the manner prescribed in the resolution issuing the bonds.

§ 28–7511. Bonds; freeway mitigation; matching amount

A. A city or town may issue general obligation bonds for the purpose of planning, undertaking and carrying out projects for the elimination of present slum and blighted areas and the prevention of the development of those conditions in the future by mitigating the effects of existing and proposed freeway conditions on cities, towns and neighborhoods. The projects may include acquiring land for recreation, water, sewage and drainage facilities, streets, sidewalks, ways and other public places and other projects to develop or redevelop affected areas.

B. The board may use bond monies obtained pursuant to section 28–7510 to match on a one to one basis the city or town general obligation bond monies obtained pursuant to this section to provide funding for expenses related to mitigation measures on property located within the department's right-of-way. If a city or town obtains bond monies pursuant to this section for the purpose of mitigating the effects of proposed freeway conditions on cities, towns and neighborhoods, this state shall not construct the freeway unless the board agrees to the mitigation measures proposed by the city or town.

§ 28–7512. Agreement of state

A. This state pledges to and agrees with the holders of the bonds that this state will not limit or alter the rights vested in the board to collect the fees, excises and taxes as may be necessary to produce sufficient revenue to meet the expense of the state highway system and to fulfill the terms of any agreements made with the holders of the bonds or in any way impair the rights and remedies of the bondholders, until all bonds issued under this article, interest on the bonds, interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders are fully met and discharged.

B. The board as agent for this state may include this pledge and undertaking by this state in its resolutions and indentures securing its bonds.

§ 28–7513. Taxation exemption

The board is regarded as performing a governmental function in carrying out the purposes of this article and is not required to pay taxes or assessments on any of the property acquired or constructed for these purposes or on the activities of the board in maintaining and caring for the real property or in the revenues derived from the real property. The bonds, their transfer and the income from the bonds are at all times free from taxation in this state.

§ 28–7514. Attorney general bond certification

A. The board may submit to the attorney general any bonds to be issued under this article after all proceedings for the authorization of the bonds have been taken. On the submission of the proceedings to the attorney general, the attorney general shall investigate and determine the validity of the bonds and the regularity of all proceedings in connection with the issuance.

B. If the proceedings conform to this article and if it is determined that the bonds when delivered and paid for will constitute binding and legal obligations of the board enforceable according to the terms of the bonds, the attorney general shall certify in substance on the back of each of the bonds that it is issued in accordance with the constitution and laws of this state.

§ 28–7515. Bond obligations of the board

A. Bonds issued pursuant to this article:

1. Are obligations of the board issuing the bonds.

2. Are payable only pursuant to the terms of the bonds.

3. Are not obligations that are general, special or otherwise of this state.

4. Are not a legal debt of this state.

5. Are not enforceable against this state.

B. Payment of the bonds issued pursuant to this article is not enforceable out of any monies of the department other than the income and revenue pledged and assigned to or in trust for the benefit of the holder or holders of the bonds.

§ 28–7516. Bonds; legal investments

Bonds issued under this article are made securities:

1. In which all of the following may properly and legally invest monies including capital in their control or belonging to them:

(a) Public officers and bodies of this state.

(b) Political subdivisions of this state.

(c) Insurance companies and associations and other persons carrying on an insurance business.

(d) Banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business.

(e) Administrators, guardians, executors, trustees and other fiduciaries.

(f) Other persons authorized to invest in bonds or other obligations of this state.

2. That may be deposited with and may be received by all public officers and bodies of this state and all political subdivisions of this state for any purpose for which the deposit of bonds or other obligations of this state is authorized.

§ 28–7517. **Exclusive law**

A. The powers provided by this article are in addition to the powers conferred by any other general or special law. Without reference to any other provision of this title or to any other general or special law, this article is authority for the completion of the purposes prescribed in this article, for entering into acquisition and construction contracts in connection with those purposes and for the authorization, issuance and sale of the bonds pursuant to this article without regard to the procedure required by any other law.

B. Except as otherwise provided in this article, the provisions of this title that relate to the matters contained in this article are superseded because this article is the exclusive law on these matters.

ARTICLE 2. REGIONAL AREA ROAD FUND BONDS

§ 28–7561. **Bonds payable from transportation excise taxes**

A. The board is designated as the body having sole and exclusive power to authorize and issue bonds or incur long-term obligations payable in whole or in part from monies in a regional area road fund established by chapter 17, article 1 of this title. The board may act for and on behalf of a county that has a regional area road fund established by chapter 17, article 1 of this title to:

1. Issue negotiable bonds payable solely from monies paid into the bond account of the respective regional area road fund in a principal amount that in the opinion of the board is necessary to provide sufficient monies for any lawful purpose for which the respective regional area road fund monies may be spent, to establish reserves to secure the bonds and to provide for the payment of all other expenditures of the board that are incidental, necessary and convenient to carry out these purposes.

2. Issue refunding bonds if the board deems refunding expedient.

3. Refund any bonds issued by the board and payable from regional area road fund income as authorized in this article by the issuance of refunding bonds, whether the bonds to be refunded have or have not matured. Proceeds of refunding bonds may be used to pay principal, interest or redemption premiums on refunded bonds.

4. Issue bonds partly to refund bonds then outstanding and partly for any other purpose consistent with this article.

B. Regardless of whether or not the bonds are of such form or character as to be negotiable instruments under the terms of the uniform commercial code, the bonds are fully negotiable within the meaning and for all purposes of the uniform commercial code.

§ 28–7562. **Bond requirements**

A. The bonds authorized by this article shall:

1. Be authorized by resolution of the board.

2. Bear such date or dates and mature at such time or times, not exceeding the earlier of twenty years from their respective dates or the date the transportation excise taxes securing the bonds cease, as the resolution or resolutions may provide.

3. Bear interest at such rate or rates, including rates that may vary, pursuant to parameters set by the board in the authorizing resolution.

4. Be in the denomination, be in the form, either coupon or registered, be executed in the manner and be payable as to principal, interest or premium in the medium of payment at the office of the state treasurer of this state or at such other place or places as the board provides either by automatic deposit, wire transfer or mail, as the resolution or resolutions may provide.

5. Be subject to the terms of redemption, at the option of either the board or the owner of the bond, as the resolution or resolutions may provide.

B. The bonds may be sold at either public or private sale, above, at or below par and on terms the board determines. Bonds to fund or refund other bonds may be exchanged with the holders of bonds being funded or refunded on terms the board determines.

§ 28–7563. Bond payment; security

In connection with the issuance of the bonds authorized by this article or to secure the payment of the bonds and interest on the bonds, the board by resolution may:

1. Provide that bonds issued under this article may be paid with and secured by a pledge on all or any part of the monies paid into the bond account of the respective regional area road fund, and if monies in the bond account are ever insufficient, from any other unobligated monies in the construction account or the bond proceeds account. The board may:

(a) Set the priority of lien or claim of any series or issue of bonds against any other series or issues.

(b) Not abrogate or change the priority unless the affected series or issue is to be fully paid or fully provided for by the issuance of refunding bonds or the holders of the bonds affected agree in writing to the change.

2. Pledge and assign to or in trust, with a trustee appointed by the board, for the benefit of the holder or the holders of the bonds all or any part of the monies paid into the bond account of the respective regional area road fund as will be necessary to pay the principal of, interest on and premium, if any, on the bonds as the bonds become due.

3. Set aside, regulate and dispose of reserves and sinking funds.

4. Provide that sufficient amounts of the proceeds from the sale of the bonds may be used to fully or partly fund all reserves or sinking funds set up by the bond resolution.

5. Prescribe the procedure, if any, by which the terms of a contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent to and the manner in which the consent may be given.

6. Provide for payment from the proceeds of the sale of the bonds of all legal and financial expenses incurred by the board in the issuance, sale, delivery and payment of the bonds.

7. Do any other matters, of like or different character, that may in any way affect the security and protection of the bonds.

§ 28–7564. Pledges; liens

A. A pledge made pursuant to this article is valid and binding from the time when the pledge is made. The monies pledged pursuant to this article when placed in the bond account, bond proceeds account or construction account of the respective regional area road fund are immediately subject to the lien of the pledge without any future physical delivery or further act.

B. A lien of any pledge is valid or binding against all parties having claims of any kind in tort, contract or otherwise against the board, regardless of whether the parties have notice. When placed in the records of the board, the official resolution or trust indenture or any instrument by which this pledge is created is notice to all concerned of the creation of the pledge, and these instruments are not required to be recorded in any other place. A filing or recording of the resolution of the board creating or extending the lien or pledge in order for the pledge or lien to become fully effective is not required in any office other than in the office of the board.

§ 28–7565. Liability; bond validity

A. The members of the board or a person executing the bonds authorized by this article are not personally liable for the payment of the bonds.

B. The bonds are valid and binding obligations of the board notwithstanding the fact that before the delivery of the bonds any of the officers whose signatures appear on the bonds cease to be officers of the board.

C. From and after the sale and delivery of the bonds, the bonds are incontestable by the board or the county.

§ 28–7566. Bond purchase

The board may purchase bonds authorized by this article out of any monies available, and these bonds may then be canceled, at a price of not more than either of the following:

1. If the bonds are then redeemable, the price then applicable plus accrued interest to the next interest payment date on the bonds.

2. If the bonds are not then redeemable, the redemption price applicable on the first date after the purchase on which the bonds become subject to redemption plus accrued interest to that date.

§ 28–7567. Notice; bond issuance

A. The board shall publish a notice of its intention to issue bonds under this article for at least five consecutive days in a newspaper published in this state. The last day of publication shall be at least ten days before the issuance of the bonds.

B. The notice shall state the amount of the bonds to be sold and the intended date of issuance.

§ 28–7568. Bond proceeds; distribution; expenditures

A. After deducting the necessary costs and expenses of the issuance and sale of the bonds, the department shall promptly transfer the proceeds received from the sale and delivery of bonds issued pursuant to this article to the state treasurer for deposit in the bond proceeds account within the regional area road fund pursuant to chapter 17, article 1 of this title. The state treasurer shall first apply those amounts of the bond proceeds provided in the resolution issuing the bonds to all reserve and sinking funds created in the bond resolution.

B. The board shall use the bond proceeds solely for the purposes provided in the bond resolution, except that, if the revenues pledged to secure the bonds ever become insufficient to pay the annual principal and interest on the bonds, the board shall order:

1. The liquidation of the bonds.

2. The state treasurer to apply all of the receipts as necessary to make current all payments then due on the bonds.

§ 28–7569. Agreement of state and county

A. This state pledges to and agrees with the holders of the bonds issued under this article that this state will not limit or alter the transportation excise taxes in a way that adversely affects the rights of the holders of the bonds, limit or alter the authority of the respective county levying a transportation excise tax in a way that prevents the imposition of sufficient transportation excise taxes to fulfill the terms of any agreements made with the holders of the bonds or in any way impair the rights and remedies of the bondholders, until all bonds issued under this article, interest on the bonds, interest on any unpaid installments of interest and all costs and expenses

in connection with any action or proceedings by or on behalf of the bondholders are fully met and discharged.

B. The board as agent for this state may include this pledge and undertaking by this state in its resolutions and indentures securing its bonds.

C. A county shall not take any action to lower or terminate any transportation excise tax.

§ 28-7570. **Taxation exemption**

The board is regarded as performing a governmental function in carrying out the purposes of this article and is not required to pay taxes or assessments on any of the property acquired or constructed or on the activities of the board in maintaining and caring for the real property or in the monies derived from the real property. The bonds issued under this article, their transfer and the income from the bonds are at all times free from taxation in this state.

§ 28-7571. **Attorney general bond certification**

A. The board may submit to the attorney general any bonds to be issued under this article after all proceedings for the authorization of the bonds have been taken. On the submission of the proceedings to the attorney general, the attorney general shall investigate and determine the validity of the bonds and the regularity of all proceedings in connection with the issuance.

B. If the proceedings conform to this article and if it is determined that the bonds when delivered and paid for will constitute binding and legal obligations of the board enforceable according to the terms of the bonds, the attorney general shall certify in substance on the back of each of the bonds that it is issued in accordance with the constitution and laws of this state.

§ 28-7572. **Bond obligations of the board**

Bonds issued pursuant to this article:

1. Are obligations of the board issuing the bonds.

2. Are payable only pursuant to the terms of the bonds.

3. Are not obligations general, special or otherwise of this state.

4. Are not a legal debt of this state or of the respective county imposing the transportation excise tax.

5. Are not enforceable against this state or that county out of any monies other than the income and revenue pledged and assigned to or in trust for the benefit of the holder or holders of the bonds.

§ 28-7573. **Bonds; legal investments**

Bonds issued under this article are made securities:

1. In which all of the following may properly and legally invest monies including capital in their control or belonging to them:

(a) Public officers and bodies of this state.

(b) Political subdivisions of this state.

(c) Insurance companies and associations and other persons carrying on an insurance business.

(d) Banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business.

(e) Administrators, guardians, executors, trustees and other fiduciaries.

(f) Other persons authorized to invest in bonds or other obligations of this state.

2. That may be deposited with and may be received by all public officers and bodies of this state and all political subdivisions of this state for any purpose for which the deposit of bonds or other obligations of this state is authorized.

ARTICLE 3. GRANT ANTICIPATION NOTES

§ 28–7611. Definitions

In this article, unless the context otherwise requires:

1. "Grant agreement" means a written agreement between the director and the United States of America or any of its departments or agencies by which the director will receive a grant to construct a project or to reimburse the director for monies spent with respect to the project.

2. "Grant anticipation notes" means notes authorized by this article.

3. "Grant revenues" means any revenues the director will receive under a grant agreement, proceeds of grant anticipation notes and income and gain from the investment of these revenues and proceeds.

§ 28–7612. Grant anticipation notes

After the director has entered into one or more grant agreements, the board may issue and sell grant anticipation notes. The principal, premium, if any, and interest on the notes shall be paid solely from any of the following:

1. The grant revenues.

2. If provided by the board at the time of authorizing the issuance of the grant anticipation notes, other monies lawfully available for application to that purpose, including the proceeds from the sale of other obligations of the director.

§ 28–7613. Refund

The board may issue grant anticipation notes to refund grant anticipation notes previously issued and other obligations, the proceeds of which were or are to be applied to the financing of the project to which the grant agreement relates.

§ 28–7614. Limitations

The amount of grant anticipation notes secured by grant revenues issued by the director shall not exceed the aggregate of all uncollected grant revenues to be received by the board.

§ 28–7615. Application of grant revenues; grant anticipation notes fund; payment of notes

A. On the issuance of any grant anticipation notes, the grant revenues to be received by the director pursuant to the applicable grant agreement shall be collected and, as provided by the board at the time of authorizing the issuance of the grant anticipation notes, used for any of the following:

1. Paid into a special fund to be known as the grant anticipation notes fund.

2. Held for application to the payment of the costs of the project to which the grant agreement relates.

3. Applied to reimburse the director for monies previously spent with respect to the project.

B. As long as any grant anticipation notes are outstanding, monies paid into the grant anticipation notes fund pursuant to subsection A shall only be used to pay principal and interest on the grant anticipation notes.

C. Notwithstanding any other law, this article authorizes the payment when due or redemption in advance of maturity, if the notes so provide, of all principal and interest and redemption premiums on the notes from the monies in the grant anticipation notes fund.

§ 28–7616. Use of proceeds

The proceeds from the sale of the notes shall be used by the director for payment of any of the following:

1. Costs and expenses incurred in the construction or acquisition of the project for which the grant or grants are being made.

2. Legal and financial costs and expenses incurred in issuing and administering the notes.

3. Costs for which the director will be entitled to receive reimbursement pursuant to the grant agreement.

4. If authorized by the board, payment of interest to accrue on the notes during their life.

5. Payment of the principal, premium or interest on other obligations, all or a portion of the proceeds of which were or are to be applied to the financing of the project to which the grant agreement relates.

§ 28–7617. Nature of grant anticipation notes; limited obligation

A. Grant anticipation notes issued under this article are not general obligations of the department, any public officer or employee of the department or this state.

B. The notes are limited obligations payable solely from grant revenues received by the director and, if provided by the board at the time of authorizing the issuance of the grant anticipation notes, other monies lawfully available for application to that purpose and pledged to the payment of the principal, premium, if any, and interest on the notes.

C. A holder of a grant anticipation note may not compel the payment of grant revenues to the director.

CHAPTER 22

TRANSPORTATION PROJECT PRIVATIZATION

ARTICLE 1. TRANSPORTATION FACILITY PILOT PROJECTS

§ 28–7701. Agreements with private entities; limitations

A. The department may request proposals from private entities and enter into written agreements with private entities relating to both of the following:

1. The construction of transportation facilities by private entities.

2. The lease to private entities of transportation facilities constructed by the department pursuant to this article.

B. To facilitate the development of transportation facilities, the agreements with private entities prescribed in subsection A may provide for any of the following:

1. The lease of state highway rights-of-way.

2. The lease of airspace over and under state highways.

3. The granting of easements of necessity.

4. The issuance of permits or other authorization for the private entities to construct transportation facilities supplemental to existing state transportation facilities.

C. An agreement with a private entity entered into pursuant to this section shall provide for all of the following:

1. State ownership of the transportation facility constructed by a private entity.

2. Lease of the transportation facility to the private entity for a period mutually agreeable to the department and the private entity.

3. Reversion to this state of the transportation facility constructed by the private entity after the expiration of the lease at no expense to this state, as consideration for the lease granted by this state.

4. Reimbursement by the private entity to the department or any other state agency for costs incurred after the written agreement is finalized, including the costs of planning, environmental impact assessment, design, maintenance, police services and any other service rendered.

5. Authorization for the private entity to impose and collect tolls for the use of a transportation facility constructed by the private entity.

6. During the term of the lease, the private entity shall apply toll revenues to:

(a) Capital outlay costs for the transportation facility plus interest and principal repayment for any debt incurred.

(b) Costs associated with operations, toll collection and administration of the facility.

(c) Payment to this state for reimbursement of the costs of maintenance, police and other services if these services are performed by this state pursuant to the written agreement with the private entity.

(d) A reasonable return on investment to the private entity.

D. The department shall select not more than two pilot projects under this article.

§ 28–7702. Transportation facility requirements

A. The plans and specifications for a transportation facility constructed pursuant to this article shall comply with the department's standards for state projects. During the term of the lease, a transportation facility constructed by and leased to a private entity is deemed to be a part of the state highway system.

B. The board shall approve a transportation facility constructed or operated pursuant to this article only if a reasonable alternative route exists.

C. A transportation facility constructed or operated pursuant to this article shall:

1. Accommodate the same type of motor vehicles as the existing alternative facility.

2. Provide a route that is at least as direct as the existing alternative facility.

§ 28–7703. Default

A. If there is a material and continuing default in the performance of the private entity's construction duties or contractual obligations or if construction has not begun within two years of the date of the agreement authorized by this article or after final clearance of all necessary government approvals and authorizations, whichever is later, the board, after a hearing in which the private entity has notice and an opportunity to participate, may take the following actions that the department may participate in or initiate:

1. Revoke the agreement.

2. Declare a default in the construction or lease of the transportation facility.

3. Make or cause to be made the appropriate claims under any completion or performance bond.

4. Take other action determined appropriate by the board under the circumstances.

B. If the agreement is revoked pursuant to subsection A:

1. The private entity does not have authority to construct or operate the transportation facility.

2. The department may construct and operate the transportation facility.

3. The department may take steps that are in the public interest, including completion of the construction of or additions to the transportation facility, closing the transportation facility or an intermediate step.

4. The private entity shall grant to the department all of its rights, title and interest in the transportation facility.

C. This section does not limit the department's exercise of the power of eminent domain. The private entity may obtain compensation from the department for assets obtained pursuant to subsection B or the exercise of the power of eminent domain, except that the department shall deduct from the value of the assets all of its costs incurred in connection with the completion or fulfillment of the unperformed obligations of the private entity and other costs associated with the actions provided in this section. The department shall account for monies received from the proceeds of any payment or completion bond in calculating the amount due the private entity.

§ 28–7704 Department powers

A. The department may:

1. Continue to charge tolls for the use of a transportation facility constructed by a private entity pursuant to section 28–7701 after the lease of the facility to the private entity expires.

2. Exercise any power granted to it pursuant to this title to facilitate the development and construction of transportation facilities pursuant to this article.

B. In administering and enforcing this article, the director may conduct investigations and audits as the director deems necessary.

§ 28–7705. Lease status; tax exemptions, credit and refund

A. The lease to the private entity of the transportation facility constructed pursuant to this article is deemed a governmental activity.

B. The lease to the private entity of the transportation facility and any toll revenues collected pursuant to this article are not subject to transaction privilege tax, sales tax, use tax or any similar excise tax imposed by this state.

C. A person who pays a toll to operate a motor vehicle on a transportation facility constructed or operated pursuant to this article may apply for a refund or credit from this state for motor vehicle fuel license taxes, use fuel taxes or motor carrier taxes paid while operating the motor vehicle on that transportation facility.

D. The director shall adopt rules prescribing the procedures for granting the refunds or credits.

§ 28–7706. Immunity

This article is not a waiver of the absolute or qualified immunity or affirmative defenses of this state, a public entity or a public employee as provided by law concerning participation or approval of all or any part of the transportation facility

agreement, construction, maintenance or operation, including interconnection of the transportation facility with other transportation facilities in this state.

ARTICLE 2. ROADWAY CONSTRUCTION PILOT PROJECTS

§ 28-7741. Definitions

In this article, unless the context otherwise requires:

1. "Operation" means the functions and pursuits of the operator of a roadway under this article that are related to acquisition, approval, construction, enlargement, maintenance, patrolling, toll collections or connections of the roadway or highway with any other street or highway, including management and administrative functions related to actual physical operation of the roadway and management of the affairs of the operator.

2. "Operator" means the corporation that applies to the board for authority to construct, operate or enlarge a roadway and that, after being granted authority, is responsible for the operation of a roadway pursuant to this article.

3. "Roadway":

(a) Means that portion of a highway that is improved, designed or ordinarily used for vehicular travel, excluding the berm or shoulder.

(b) If a highway includes two or more separate roadways, refers to that roadway separately but not to all of the roadways collectively.

4. "Toll" means the fee charged by the operator for a single use of all or a portion of the roadway.

§ 28-7742. Roadway authority; application

A. A person shall not construct, operate or enlarge a roadway in this state without written authority granted by the board pursuant to this article or except as otherwise authorized by this title.

B. The board shall not select more than two pilot projects under this article.

C. An application for the authority to construct, operate or enlarge a roadway shall contain the following material and information:

1. The geographic area to be served by the roadway and a survey indicating the approximate route of the roadway.

2. A list of the property owners through whose property the roadway may pass or whose property may abut the roadway.

3. The methods by which the operator may secure all rights-of-way required for the roadway, including a description of the nature of the interest in the lands to be acquired and a provision for permanent dedication as long as the lands are used for transportation purposes.

4. The comprehensive plan or plans for all counties, cities and towns through which the roadway will pass and an analysis showing that the roadway does not impede the comprehensive plan or plans.

5. The operator's plan for financing the proposed construction or enlargement of the roadway, including proposed tolls to be charged for use of the roadway, projected amounts to be collected from the tolls, anticipated traffic volume, detailed plans for the distribution of monies and the priority in which necessary expenditures will be made.

6. The operator's plan for operation of the proposed roadway or enlargement of the roadway.

7. A list of all permits and approvals required for construction of the roadway from local, state or federal agencies, including an environmental impact assessment and a schedule for securing the approvals.

8. An overall description of the project, the project design and all proposed interconnections with the state highway system, including any interstate highway, secondary system of highways or the streets of any county, city or town not within the state highway system, accompanied by a copy of the approval of the project, the roadway design and interconnections from the board and from the county, city or town for connection with a street that is not under state control.

9. A list of public utility facilities to be crossed and plans for crossings or relocations of these facilities.

10. A certificate of the operator providing that:

(a) The roadway will be designed and constructed to meet department standards.

(b) The roadway will be designed and constructed substantially in accordance with a proposed timetable that is agreeable to the department.

(c) The operator will execute a design, review and inspection agreement with the department providing that the department shall both:

(i) Authorize construction on review and approval of the plans and specifications for the roadway and its interconnection with other streets or highways.

(ii) Inspect periodically the progress of the construction work to ensure its compliance with department standards.

11. Completion and performance bonds in a form and amount satisfactory to the board.

D. The board shall determine the amount of the completion and performance bond for each operation required by subsection C after consultation with the department.

E. To the extent the roadway does not impede the comprehensive plan or plans required in subsection C, the fact that the operator is a corporation, as opposed to this state, does not affect the construction and operation of the roadway.

§ 28–7743. Utility crossings; definitions

A. The applicant shall include in the application a list of public utility facilities and rights-of-way to be crossed or otherwise affected in the construction of the roadway and a plan and schedule for the crossings. Both the operator and each public utility whose works are to be crossed or affected shall cooperate fully with each other in planning and arranging the manner of the crossing or relocation of the facilities.

B. A public service corporation possessing the powers of eminent domain is granted these powers in connection with the moving or relocation of facilities to be crossed by the roadway or to be relocated to the extent that moving or relocation is made necessary by construction of the roadway, including construction of temporary facilities for the purpose of providing service during the period of construction.

C. If the applicant or operator and the public utility whose facilities are to be crossed or relocated fail to agree to a plan for a crossing or any necessary relocation, either party may request the board to inquire into the need for the crossing or relocation and to decide whether the crossing or relocation should be compelled and, if so, the manner in which the crossing or relocation is to be accomplished. The board may employ department engineers to examine the location and plans for the crossing or relocation, hear any objections, consider modifications and make a recommendation to the board.

D. For the purposes of this section:

1. "Public utility" includes a railroad.

2. "Railroad" includes a railway operated for the public transportation of persons or property except a street railroad.

§ 28–7744. **Incorporation requirement; eminent domain restriction**

A. The applicant shall be incorporated under the laws of this state.

B. The operator is not entitled to exercise the power of eminent domain to acquire lands, estates or interests in lands or estates or any other property used by the operator for the construction or enlargement of a roadway pursuant to this article.

§ 28–7745. **Board powers**

A. The board shall:

1. Review and approve or deny the application provided by section 28–7742.

2. Supervise and control the operator in the performance of its duties under this article and this title.

3. Correct any abuse in the performance of the operator's public duties.

B. The board may require from the operator a report describing the nature of its contractual and other relationships with individuals or entities contracting with the operator for the provision of significant financial, construction or maintenance services. The board shall review the report and other materials as it deems necessary to determine improper or excessive costs.

C. The board shall approve a roadway constructed or operated pursuant to this article only if a reasonable alternative route exists. A roadway constructed or operated pursuant to this article shall:

1. Accommodate the same type of motor vehicles as the existing alternative route.

2. Provide a route that is at least as direct as the existing alternative route.

§ 28–7746. **Local approval**

A. Before the board grants authority and when the application materials are filed with the board, the applicant shall provide the local governing body of each jurisdiction through which any part of the roadway passes with the application information and materials required by section 28–7742 and an overall description of the project and its benefits. The local governing body may participate in procedures conducted by the board concerning the application.

B. If the operator wishes to occupy lands owned by a county, city or town, including the streets of a county, city or town, it shall first obtain the necessary property interests by grant or other lawful conveyance to the operator.

C. If the applicant wishes to interconnect with the streets of a county, city or town and the jurisdiction is willing to allow the interconnection, the applicant shall submit appropriate plans for the connection to the local governing body. The local governing body shall approve the connection only if it determines that the connection meets all appropriate engineering requirements and is in the public interest.

D. The operator and the county, city or town may agree on supplemental or related matters in addition to the matters specified in this article according to terms and conditions that are reasonable, appropriate and in the public interest.

§ 28–7747. **Board approval; inspection agreement**

A. The person who applies for authority to construct or enlarge a roadway pursuant to this article shall first obtain the approval of the board for the project, the project construction costs, the location and design of the roadway and the roadway's connection with any road under the jurisdiction of the board at proper and convenient places in order to provide for the convenience of the public. The board may approve the project and its interconnections with other roads if its interconnections are compatible with the existing road network.

B. The board's approval is conditioned on both:

1. The federal government's approval of any interconnection, if interconnections with any interstate highway or other federal facility are contemplated and if federal approval is required and has not been obtained at the time the board acts.

2. Subsequent compliance by the applicant with an agreement executed pursuant to subsection C.

C. If the board approves the project, project design and connections of the roadway, the department shall enter into an agreement with the applicant providing that on a reimbursable basis, the department shall:

1. Review plans and specifications for the roadway and approve them if they conform to state practices.

2. Inspect and approve construction of the roadway if it conforms to the plans and specifications and to state construction and engineering standards.

3. Throughout the life of the roadway project, monitor the maintenance practices of the operator and take action as appropriate to ensure the performance of maintenance obligations.

4. Perform other necessary services that the private entity is unable to perform, including project development and environmental impact statements.

D. The agreement prescribed in subsection C shall require the operator to establish and fund accounts to ensure that monies are available to meet the obligations of the operator, including reasonable reserves for contingencies and maintenance replacement activities.

E. The approval of plans, specifications and construction may be undertaken in phases, but construction shall not begin until the approval of plans including that phase of construction.

F. Costs incurred by the department before the written agreement with the private entity is finalized are not reimbursable.

§ 28–7748. **Toll rates**

A. The board shall not approve or revise the toll rates charged by the operator.

B. The operator shall:

1. File and maintain at all times with the board an accurate schedule of rates charged to the public for use of all or any portion of the roadway and a statement that the operator shall apply the rates uniformly to all users within any reasonable classification the operator elects to implement.

2. Not apply or collect rates in a discriminatory fashion.

3. Permit vehicular passage to a person who pays a toll.

§ 28–7749. **Tax refund or credit**

A person who pays a toll to operate a motor vehicle on a roadway that is constructed or operated pursuant to this article may apply for a refund or credit, as prescribed by the director, for motor vehicle fuel license taxes, use fuel taxes or

motor carrier taxes paid while operating the motor vehicle on this transportation facility.

§ 28–7750. Operator powers and duties

A. The operator may:

1. Operate the roadway and charge tolls for the use of the roadway to receive reimbursement of costs and a reasonable return on investment.

2. Subject to applicable permit requirements, cross any right-of-way if the crossing does not unreasonably interfere with the use of the right-of-way.

3. Classify traffic on the roadway according to reasonable categories for the assessment of tolls.

4. With the consent of the department, adopt and enforce reasonable rules, including rules that:

(a) Prescribe maximum and minimum speeds that conform to department and state practices.

(b) Exclude vehicles, cargoes or materials from the use of the roadway if exclusion of these vehicles, cargoes or materials by this state or a local authority is authorized by the laws of this state.

(c) Establish high occupancy vehicle lanes for use during all or any part of a day and limit the use of these lanes to certain traffic.

B. The operator shall:

1. Pledge any revenue net of operational expenses realized from tolls charged for the use of the roadway in order to secure repayment of any obligations incurred for the construction, enlargement or operation of the roadway.

2. Limit the debts or obligations of the operator to an amount that does not exceed the cost of development and construction plus a reasonable amount for financing expenses and reserve funds.

3. Construct and maintain the roadway for anticipated use according to appropriate standards of the department for public highways operated and maintained by the department.

4. Enlarge or expand the roadway when unsatisfied demand for use of the roadway makes it economically feasible.

5. Contract with the department for the inspection of construction work by the department at appropriate times during any construction or enlargement.

6. Cooperate fully with the department in establishing any interconnection with the roadway that the department may make.

7. Contract with this state and appropriate local authorities for those portions of the roadway within the local jurisdiction for enforcement of the traffic and public safety laws by state and local authorities.

§ 28–7751. Insurance; immunity

A. An operator who constructs, operates or enlarges a roadway pursuant to this article shall secure and maintain a policy of public liability insurance or self-insurance in the form and amount satisfactory to the board and sufficient to insure coverage of tort liability to the public and employees and to enable the continued operation of the roadway. The operator shall file proofs of coverage and copies of policies with the board.

B. This article is not a waiver of the absolute or qualified immunity or affirmative defenses of this state, any public entity or any public employee as provided by law concerning participation or approval of all or any part of the roadway applica-

tion, construction, maintenance or operation, including interconnection of the roadway with other highways in this state.

§ 28–7752. Default

A. If there is a material and continuing default in the performance of the operator's construction or operation duties or if the operator fails to comply with the terms of its agreement with the department, the board, after a hearing in which the applicant or operator has notice and an opportunity to participate, may take the following actions that the department may participate in or initiate:

1. Revoke the authority for the roadway.

2. Declare a default in the construction or operation of the roadway.

3. Make or cause to be made the appropriate claims under any completion or performance bond.

4. Take other action determined appropriate by the board under the circumstances.

B. If authority is revoked pursuant to subsection A:

1. The applicant or operator does not have authority to construct or operate the roadway.

2. The department may construct and operate the roadway.

3. The department may take steps that are in the public interest, including completion of the construction of or additions to the roadway, closing the roadway or an intermediate step.

4. The operator shall grant to the department all of its rights, title and interest in the assets of the corporation.

C. This section does not limit the department's exercise of the power of eminent domain. The operator may obtain compensation from the department for assets obtained pursuant to subsection B or the exercise of the power of eminent domain, except that the department shall deduct from the value of the assets all of its costs incurred in connection with the completion or fulfillment of the unperformed obligations of the operator and other costs associated with the actions provided in this section. The department shall account for monies received from the proceeds of any payment or completion bond in calculating the amount due the operator.

§ 28–7753. Excess toll revenues; disposition

On at least an annual basis, the director shall transmit all toll revenues authorized by section 28–7750 in excess of a reasonable rate of return on investment as prescribed in the written agreement pursuant to this article to the state treasurer for deposit in the highway user revenue fund established by chapter 18, article 2 of this title.

§ 28–7754. Governmental activity; tax exemptions

A. A lease to a private entity of a roadway constructed pursuant to this article is deemed a governmental activity.

B. A lease to a private entity of a roadway and any toll revenues collected pursuant to this article are not subject to transaction privilege tax, sales tax, use tax or any similar excise tax imposed by this state.

§ 28–7755. Police powers

A. The roadways constructed or operated under this article may be policed in whole or in part by officers of the department of public safety, even though all or some portion of the project is located in the corporate limits of any city or town or

other political subdivision. The operator and the department of public safety shall agree on reasonable terms and conditions pursuant to which the activities provided in this section may take place.

B. The officers are under the exclusive control and direction of the director of the department of public safety. All other police officers of this state and of each county, city, town or other political subdivision of this state through which a roadway extends have the same powers and jurisdiction within the limits of the roadways as they have beyond those limits and have access to the roadway at any time for the purpose of exercising the powers and jurisdiction. Their authority does not extend to the private offices, buildings, garages and other improvements of the operator to any greater degree than the police power extends to any other private buildings and improvements.

§ 28–7756. State liability

The full faith and credit of this state are not pledged for any financing of the operator. Assumption of the operation of the project by this state does not obligate this state to pay any obligation of the operator whether or not secured from sources other than toll revenue.

§ 28–7757. Traffic and motor vehicle laws

The traffic and motor vehicle laws of this title apply to persons and motor vehicles on the roadway constructed or operated under this article, and the police officers have the same powers of arrest as those applying to conduct on the state highway system. Punishment for offenses committed on the roadway shall be as prescribed by law for conduct occurring on the state highway system.

§ 28–7758. Termination of certificate; asset dedication

A. Within ninety days after the completion and closing of the original permanent financing, the operator shall provide full details of the financing, including the terms of all bonds, to the board and shall certify the date on which all debt will be retired. The board may require the operator to provide copies of any relevant documents and shall review the financing and determine the date on which all bonds or other debt constituting the original permanent financing will be retired. After establishing this date, the board shall enter an order terminating the operator's authority on a date prescribed in the written agreement with the private entity.

B. At the request of the operator or the department or on the board's own initiative, the board may revise its order to modify the date for termination of the certificate of authority to account for any refinancing of the original permanent financing if the refinancing or modification is in the public interest or any refinancing for the purpose of expansion or early retirement of the debt.

C. When the authority terminates, the authority and duties of the operator under this article cease, and the highway assets and improvements of the operator shall be dedicated to the department for highway purposes.

CHAPTER 23

HIGHWAY BEAUTIFICATION

ARTICLE 1. ADVERTISING REGULATION

§ 28–7901. Definitions

In this article, unless the context otherwise requires:

1. "Business area" means an area that is outside municipal limits, that embraces all of the land on the same side of the highway on which one or more commercial or

industrial activities are conducted, including all land within one thousand feet measured in any direction from the nearest edge of the actual land used or occupied for such activity, its parking, storage and service areas, its driveways and its established front, rear and side yards, that constitutes an integral part of such activity and that is zoned, under authority of law, primarily to permit industrial or commercial activity. If one or more commercial or industrial activities are located within one thousand feet of a freeway interchange, the business area shall extend three thousand feet measured in each direction parallel to the freeway from the center line of the crossroad but shall not extend beyond the limits of the established commercial or industrial zone.

2. "Freeway" means a divided arterial highway on the interstate or primary system with full control of access and with grade separations at intersections.

3. "Information center" means a site that is established and maintained at a safety rest area to inform the public of places of interest in this state and that provides other information the board considers desirable.

4. "Interstate system" means the portion of the national system of interstate and defense highways located in this state that are officially designated by the board and approved by the United States secretary of transportation pursuant to 23 United States Code.

5. "Main traveled way":

(a) Means the portion of a roadway for the movement of vehicles, excluding shoulders, on which through traffic is carried.

(b) In the case of a divided highway, means the traveled way of each of the separated roadways for traffic in opposite directions.

(c) Does not include facilities such as frontage roads or parking areas.

6. "Outdoor advertising" means any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard or other thing that is designed, intended or used to advertise or inform and the message of which is visible from any place on the main traveled way of the interstate, secondary or primary systems.

7. "Primary system" means that portion of connected main highways located in this state that are officially designated by the board and approved by the United States secretary of transportation pursuant to 23 United States Code.

8. "Safety rest area" means a site established and maintained by or under public supervision or control for the convenience of the traveling public within or adjacent to the right-of-way of the interstate or primary systems.

9. "Secondary system" means that portion of connected highways located in this state that are officially designated by the board and approved by the United States secretary of transportation pursuant to 23 United States Code.

10. "Tourist related advertising display" means any outdoor advertising that advertises a specific public or private facility, accommodation, goods or service, at a particular location or site, including an overnight lodging, campsite, food service, recreational facility, tourist attraction, educational or historical site or feature and automotive service facility or garage.

11. "Unzoned commercial or industrial area" means an area that is not zoned under authority of law and in which land use is characteristic of that generally permitted only in areas that are actually zoned commercial or industrial under authority of state law and that embraces all land on the same side of the highway on which one or more commercial or industrial activities are conducted, including all land within one thousand feet measured in any direction from the nearest edge of the actual land used or occupied by this activity, its parking, storage and service areas, its driveways and its established front, rear and side yards that constitutes an integral part of this activity. As used in this paragraph, commercial or industrial activities does not include:

(a) Outdoor advertising structures.

(b) Agricultural, forestry, grazing, farming and related activities.

(c) Transient or temporary activities, including wayside fresh produce stands.

(d) Activities not visible from the main traveled way.

(e) Activities conducted in a building principally used as a residence.

(f) Railroad tracks and minor sidings and aboveground or underground utility lines.

§ 28–7902. Outdoor advertising authorized

A. The following outdoor advertising may be placed or maintained along an interstate, secondary or primary system within six hundred sixty feet of the edge of the right-of-way:

1. Directional or other official signs or notices that are required or authorized by law, including signs pertaining to natural wonders and scenic and historic attractions.

2. Signs, displays and devices advertising activities conducted on the property on which they are located.

3. Signs, displays and devices advertising the sale or lease of the property on which they are located.

4. Signs, displays and devices lawfully placed after April 1, 1970 in business areas.

5. Signs, displays and devices lawfully placed after either:

(a) July 1, 1974 in zoned or unzoned commercial or industrial areas inside municipal limits.

(b) April 1, 1972 in unzoned commercial or industrial areas outside municipal limits.

6. Signs, displays and devices that are lawfully existing on April 1, 1970 and that are located in business areas and in zoned commercial or industrial areas outside municipal limits.

7. Signs, displays and devices lawfully existing on either:

(a) July 1, 1974 that are located in zoned or unzoned commercial or industrial areas inside municipal limits.

(b) April 1, 1972 in unzoned commercial or industrial areas outside municipal limits.

8. Nonconforming tourist related advertising displays that are lawfully erected and in existence on May 5, 1976, that are located in defined hardship areas, that provide specific directional information to the traveling public and that are approved by the United States secretary of transportation pursuant to 23 United States Code section 131(*o*).

9. A sign located in a charter city adjacent to an interstate highway with a changing message for identification of businesses that are located on separate contiguous parcels and that are part of a single development approved by a city council as part of a development agreement entered into before April 22, 1990. The changing message may not contain words or phrases that continuously travel or scroll in a manner that presents a message longer than may be displayed on the sign at one instant in time. The director may adopt rules governing the interval within which a message may be displayed or changed. This paragraph does not alter, change or affect any other statute, rule, regulation, policy or interpretation concerning the use of signs with changing messages or the ownership of property on which the signs are located.

B. Outdoor advertising authorized under subsection A, paragraphs 1, 4 and 5 shall conform with standards contained and shall bear permits required in rules adopted by the director under this article, except that the authorized outdoor advertising along highways in the secondary system that are not state highways need only bear permits required by the responsible county or municipal authority.

C. Outdoor advertising authorized under subsection A, paragraphs 6 and 7 need not conform to standards contained but shall bear permits required in rules adopted by the director under this article, except that the authorized outdoor advertising along highways in the secondary system that are not state highways need only bear permits required by the responsible county or municipal authority.

D. If preservation would be consistent with this article, signs may be preserved or maintained if they were lawfully in existence on October 22, 1965 and if the director determines, subject to the approval of the United States secretary of transportation as provided for by 23 United States Code section 131(c), that they are landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance.

§ 28–7903. Outdoor advertising prohibited

A. Outdoor advertising shall not be placed or maintained adjacent to the interstate, secondary or primary systems at the following locations or positions, under any of the following conditions or if the outdoor advertising is of the following nature:

1. If it is within view of, directed at and intended to be read from the main traveled way of the interstate, primary or secondary systems, except outdoor advertising authorized under section 28–7902.

2. If it is visible from the main traveled way and simulates or imitates a directional, warning, danger or information sign permitted under this article, if it is likely to be mistaken for any such permitted sign or if it is intended or likely to be construed as giving warning to traffic, such as by the use of the words "stop" or "slow down".

3. If it is within any stream or drainage channel or below the flood water level of any stream or drainage channel where the outdoor advertising might be deluged by floodwaters and swept under any highway structure crossing the stream or drainage channel or against the supports of the highway structure.

4. If it is visible from the main traveled way and displays a red, flashing, blinking, intermittent or moving light or lights likely to be mistaken for a warning or danger signal, except that part necessary to give public service information such as time, date, weather, temperature or similar information.

5. If an illumination on the outdoor advertising is of such brilliance and in such a position as to blind or dazzle the vision of travelers on the main traveled way.

6. If it exists under a permit as required by this article and is not maintained in safe condition.

7. If it is obviously abandoned.

8. If it is placed in a manner that either:

(a) Obstructs or otherwise physically interferes with an official traffic sign, signal or device.

(b) Obstructs or physically interferes with the vision of drivers in approaching, merging or intersecting traffic.

9. If it is placed on trees or painted or drawn on rocks or other natural features, except signs permitted by section 28–7902, subsection A, paragraph 2.

B. At interchanges on freeways or interstate highways outside municipal limits, an outdoor advertising sign, display or device shall not be erected in the area

between the crossroad and a point five hundred feet beyond the beginning or ending of pavement widening at the exit from or entrance to the main traveled way.

§ 28–7904. Directional and other official signs

Directional and other official signs authorized by section 28–7902, subsection A, paragraph 1 shall comply with rules that are adopted by the director, that are relative to the lighting, size, number, spacing and other requirements as appropriate to implement this article and that are not inconsistent with national standards as may be adopted by the United States secretary of transportation pursuant to 23 United States Code section 131(c).

§ 28–7905. Outdoor advertising standards

A. After April 1, 1970, outdoor advertising placed in business areas, and after April 1, 1972, outdoor advertising placed in unzoned commercial or industrial areas outside municipal limits, shall comply with this article and the following standards:

1. The size of outdoor advertising shall not exceed one thousand two hundred square feet in area with a maximum vertical facing dimension of twenty-five feet and a maximum horizontal facing dimension of sixty feet, including border and trim and excluding base or apron supports and other structural members. These size limitations apply to each facing of outdoor advertising. The area shall be measured by the smallest square, rectangle, triangle, circle or combination of the smallest square, rectangle, triangle or circle that will encompass the entire advertisement. Two advertising displays not exceeding three hundred fifty square feet each may be placed in a facing. Back to back or V-type signs may be placed, with the maximum area allowed for each facing.

2. Spacing of outdoor advertising shall not be placed:

(a) Within five hundred feet of other outdoor advertising on the same side of a freeway.

(b) Within five hundred feet of the beginning or ending of pavement widening at the exit from or entrance to the main traveled way at a scenic overlook or safety roadside rest area on any portion of a freeway.

(c) Within three hundred feet of other outdoor advertising on the same side of any portion of the primary system that is not a freeway.

3. Minimum spacing distances from other outdoor advertising do not apply to outdoor advertising that is separated by a building or other obstruction in such a manner that only one display located within the minimum distances set forth in this subsection is visible from the highway at any one time. Spacing distances shall be measured along the nearest edge of the pavement to a point directly opposite the outdoor advertising.

4. Outdoor advertising authorized under section 28–7902, subsection A, paragraphs 2 and 3 shall not be counted and measured from in determining compliance with the spacing requirements of this subsection.

B. After July 1, 1974, outdoor advertising placed in zoned or unzoned commercial or industrial areas inside municipal limits shall comply with the following standards:

1. The size of outdoor advertising shall not exceed the limits provided in subsection A, paragraph 1 of this section.

2. Spacing of outdoor advertising shall not be placed:

(a) Within five hundred feet of other outdoor advertising on the same side of a freeway.

(b) Within one hundred feet of other outdoor advertising on the same side of any portion of the primary system that is not a freeway.

3. It shall meet the standards prescribed in subsection A, paragraphs 3 and 4 of this section.

§ 28-7906. Outdoor advertising and property right acquisition; compensation; removal; hearing

A. The director shall acquire by gift, agreement, purchase, exchange, eminent domain or other lawful means all right, title, leasehold and interest in any outdoor advertising together with the right of the owner of the real property on which the outdoor advertising is located to erect and maintain the outdoor advertising on the real property, if the outdoor advertising is prohibited by this article. Damages resulting from any taking of property in eminent domain shall be determined in the manner provided by law.

B. If compensation is required by federal law and if federal participation in the compensation is required by federal law, nonconforming outdoor advertising is not required to be removed until federal monies for the federal share of compensation as required by federal law are made available to the department.

C. If outdoor advertising is placed after July 1, 1974 contrary to this article or the rules adopted by the director or if a permit is not obtained as prescribed in this article, the outdoor advertising is unlawful.

D. The director shall give notice by certified mail of the director's intention to remove advertising deemed unlawful to both the owner or the occupant of the land on which the outdoor advertising is located and the owner of the outdoor advertising, if the latter is known, or if unknown, by posting notice in a conspicuous place on the outdoor advertising. Within seven days after the notice is mailed or posted, the owner of the land or the outdoor advertising may make a written request to the director for a hearing to show cause why the outdoor advertising should not be removed.

E. The director shall designate a hearing officer, who is an administrative employee of the department, to conduct and preside at the hearing. If a hearing is requested, the department shall hold the hearing within thirty days after the hearing is requested and the department shall give the party requesting the hearing at least five days' notice of the time of the hearing. The department shall conduct the hearing at department administrative offices. A full and complete record and transcript of the hearing shall be taken.

F. Within ten days after the hearing, the hearing officer shall make a written determination of findings of fact, conclusions and decision and shall mail a copy by certified mail to the owner or the party who requested the hearing.

G. If the decision is adverse to the party, within ten days after the decision is rendered the party may petition the superior court in the county in which the outdoor advertising is located to determine whether the decision of the hearing officer was lawful and reasonable. If the decision of the court upholds that of the director, the owner of the land or the outdoor advertising or both shall pay all costs from the time of the administrative hearing, including court costs.

H. If a hearing before the director is not requested, if an appeal is not taken from the director's decision of the hearing or if the director's decision is affirmed on appeal, the director shall immediately remove the offending outdoor advertising. The owner of the outdoor advertising, the owner or occupant of the land or the owner of the outdoor advertising and the owner or occupant of the land are liable for the costs of this removal. The director has no liability for the removal.

§ 28-7907. Agreement with secretary of transportation

A. The director shall enter into the agreement with the United States secretary of transportation provided for by 23 United States Code section 131(d) providing the

standards governing the size, lighting and spacing of outdoor advertising authorized under section 28–7902, subsection A, paragraphs 4 and 5 and defining an unzoned commercial or industrial area.

B. If the standards and definitions contained in the agreement do not agree substantially with this article, the agreement is not effective until this article is amended to conform with the terms of the agreement.

§ 28–7908. Rules

A. The director shall adopt and enforce rules governing the placing, maintenance and removal of outdoor advertising. The rules shall be consistent with:

1. The public policy of this state to protect the safety and welfare of the traveling public.

2. This article.

3. The terms of the agreement with the United States secretary of transportation pursuant to section 28–7907.

4. The national standards, criteria and regulations promulgated by the United States secretary of transportation pursuant to 23 United States Code section 131.

B. The director shall define by rule unzoned commercial or industrial areas, defined hardship areas and defined areas along the interstate and primary systems. The definitions shall:

1. Be consistent with the definitions of these areas provided in this article and in the agreement with the United States secretary of transportation pursuant to section 28–7907.

2. Take into consideration the negative economic impact and economic hardship of these areas.

§ 28–7909. Permits; fees; disposition

A. The director shall issue permits to place or maintain, or both, outdoor advertising authorized under section 28–7902, subsection A, paragraphs 1, 4, 5, 6, 7 and 8 and to establish and collect fees for the issuance of the permits. The fees shall not exceed the actual costs to the department.

B. The department shall transmit the fees collected under this article to the state treasurer for deposit in the state highway fund.

§ 28–7910. Governmental agency resolution; defined hardship area

A. On receipt of any resolution or other clear direction from any state agency, county, city, town or other governmental agency and of an analysis of negative economic impacts provided by the entity after the criteria and method of economic analysis determined by the director that removal of tourist related advertising devices would cause an economic hardship on a defined area, the director shall forward the resolution and economic analysis, if approved, with its endorsement and approval to the United States secretary of transportation for inclusion as a defined hardship area qualifying for exemption pursuant to 23 United States Code section 131(*o*).

B. A resolution submitted to the director in addition shall:

1. Find that the tourist related advertising devices provide directional information about goods and services in the interest of the traveling public.

2. Request the retention of the directional advertising devices described in this section.

§ 28–7911. Nongovernmental resolution; defined hardship area

A. On receipt of a resolution from any group of tourist related businesses, chambers of commerce or other such nongovernmental entities, and of an analysis of negative economic impacts provided by the entity after the criteria and method of economic analysis determined by the director that removal of tourist related advertising devices would cause an economic hardship on a defined area, the director shall forward the resolution and economic analysis, if approved, with its endorsement and approval to the United States secretary of transportation for inclusion as a defined hardship area qualifying for exemption pursuant to 23 United States Code section 131(*o*).

B. A resolution submitted to the director in addition shall:

1. Find that the tourist related advertising devices provide directional information about goods and services in the interest of the traveling public.

2. Request the retention of the directional advertising devices as described in this section.

§ 28–7912. City, town or county control of advertising displays

A. An incorporated city or town or a county may control outdoor advertising along interstate, secondary and primary highways on request to the director and certification by the director to the United States secretary of transportation that the city, town or county has:

1. Enacted comprehensive zoning ordinances.

2. By ordinance, regulates the size, lighting and spacing of outdoor advertising in zoned commercial and industrial areas along interstate, secondary and primary highways.

B. Cities, towns or counties shall not assume control of outdoor advertising under this section if the ordinance is less restrictive than this article.

§ 28–7913. Advertising displays; safety rest areas; information centers

To provide information in the specific interest of the traveling public, the director may authorize advertising displays at safety rest areas and at information centers.

§ 28–7914. Construction of article

This article is cumulative and supplemental to other provisions of law and does not affect or enlarge any authority of counties, cities or towns pursuant to any other provisions of law that may exist to enact ordinances regulating the size, lighting and spacing of outdoor advertising.

§ 28–7915. Violation; classification

A person who violates this article or a rule of the director adopted under this article is guilty of a class 2 misdemeanor.

ARTICLE 2. JUNKYARDS

§ 28–7941. Definitions

In this article, unless the context otherwise requires:

1. "Automobile graveyard" means an establishment or place of business maintained, used or operated for storing, keeping, buying or selling wrecked, abandoned, scrapped, ruined or dismantled motor vehicles or motor vehicle parts.

2. "Interstate system" means the portion of the national system of interstate and defense highways located in this state that are officially designated by the board and

approved by the United States secretary of transportation pursuant to 23 United States Code.

3. "Junk" means:

(a) Old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris or waste.

(b) Junked, dismantled or wrecked automobiles or parts of junked, dismantled or wrecked automobiles.

(c) Iron, steel and other old or scrap ferrous or nonferrous material.

4. "Junkyard" means an establishment or place of business maintained, used or operated for storing, keeping, buying or selling junk or for maintaining or operating an automobile graveyard, including garbage dumps and sanitary landfills.

5. "Main traveled way":

(a) Means the portion of a roadway for the movement of vehicles, excluding shoulders, on which through traffic is carried.

(b) In the case of a divided highway, means the traveled way of each of the separated roadways for traffic in opposite directions.

(c) Does not include facilities such as frontage roads or parking areas.

6. "Primary system" means that portion of connected main highways located in this state that are officially designated by the board and approved by the United States secretary of transportation pursuant to 23 United States Code.

7. "Unzoned industrial area" means an area that is not zoned under authority of state law and in which the land use is characteristic of that generally permitted only in areas that are actually zoned industrial under authority of state law and that embraces all land on the same side of the highway on which one or more industrial activities are conducted, including all land within one thousand feet measured in each direction parallel to the highway from the nearest edge of the industrial building or activity on the land. As used in this paragraph, industrial activity does not include:

(a) Agricultural, forestry, grazing, farming, ranching and related activities.

(b) Transient or temporary activities, including wayside fresh produce stands.

(c) Activities not visible from the main traveled way.

(d) Activities conducted in a building principally used as a residence.

(e) Railroad tracks, minor sidings and passenger depots and aboveground or underground utility lines.

(f) Junkyards.

(g) Outdoor advertising structures.

(h) Activities in operation fewer than three months a year.

(i) Activities more than three hundred feet from the edge of a right-of-way.

§ 28-7942. Junkyards; screening; relocation; rules

A. If it is considered feasible by the director, the director may screen a junkyard that is in existence on July 1, 1974, that is located within one thousand feet of the nearest edge of the right-of-way of the interstate or primary systems and that is visible from the main traveled way of the interstate or primary systems. The screening shall be at locations on the right-of-way so that the junkyard is not visible from the main traveled way of the interstate or primary systems.

B. If the director determines that the topography of the land adjoining the interstate or primary systems does not permit adequate screening of the junkyards or that the screening would not be economically feasible, the director may require the relocation, removal or disposal of the junkyard and its junk by agreement, purchase, exchange or eminent domain or may acquire the junkyard and its junk by

gift or other lawful means. If the director determines that it is in the best interest of this state, the director may acquire in the name of this state the land or an interest in the land that is necessary to accomplish the purposes of this article.

C. The owner of a junkyard that is located within one thousand feet of the nearest edge of the right-of-way of the interstate or primary system and that is visible from the main traveled way of the system whose property is taken in eminent domain is entitled to the payment of damages and to applicable relocation assistance payments, except that the owner is not entitled to the payments if the junkyard was established after May 11, 1971 unless the junkyard did not constitute a public nuisance pursuant to this article when it was established and was not otherwise unlawfully established in violation of municipal or county ordinances.

D. The director shall adopt rules governing the location, planting, construction and maintenance, including the materials used, in screening junkyards as required under this article.

E. This section does not apply to a junkyard that is operated in an area adjacent to the interstate and primary systems, that is within one thousand feet of the nearest edge of the right-of-way and that is within areas zoned for industrial use or within unzoned industrial areas.

§ 28-7943. Junkyards; screening license

A. After July 1, 1974, a person shall not establish a new junkyard or expand a junkyard lawfully existing on July 1, 1974, any portion of which is within one thousand feet of the nearest edge of the right-of-way of the interstate or primary systems, without obtaining a screening license from the director.

B. The director shall establish and collect a fee for the issuance of the license. The department shall transmit the fees collected for the licenses to the state treasurer for deposit in the state highway fund.

C. The director shall not issue a screening license under this section for the establishment of a new junkyard or for the expansion of an existing junkyard within one thousand feet of the nearest edge of the right-of-way of the interstate or primary systems unless it conforms to at least one of the following requirements:

1. Is screened by natural objects, plantings, opaque fences or other appropriate means to the extent that it is not visible from the main traveled way of the interstate or primary systems or is otherwise removed from sight.

2. Is located within an area zoned for industrial use under the authority of law.

3. Is located within an unzoned industrial area as determined from actual land uses and defined by rules adopted by the director.

§ 28-7944. Junkyards; nuisance; injunction

The establishment, operation or maintenance of a junkyard contrary to this article is a public nuisance, and the governing body responsible for the street or highway on which the junkyard is located or the director, in the case of this state, may apply to the superior court in the county in which the junkyard is located for an injunction to abate the nuisance.

§ 28-7945. Construction of article

This article does not affect the provisions of any lawful ordinance or regulation that is more restrictive than this article.

§ 28-7946. Violation; classification

A person who violates this article or a rule of the director adopted under this article is guilty of a class 2 misdemeanor.

CHAPTER 24

LOCAL TRANSPORTATION ASSISTANCE

ARTICLE 1. GENERAL PROVISIONS

§ 28–8101. Local transportation assistance fund

A. A local transportation assistance fund is established in the state treasury consisting of:

1. Monies deposited from the state lottery fund pursuant to section 5–522.

2. Monies appropriated pursuant to subsection B of this section.

3. Interest earned on local transportation assistance monies as provided in section 28–8102.

B. The legislature shall appropriate an amount that is necessary to provide that the total monies available in the local transportation assistance fund for each fiscal year equal twenty million five hundred thousand dollars.

C. A maximum amount of twenty-three million dollars may be deposited in the local transportation assistance fund each fiscal year from the state lottery fund as provided in section 5–522, subsection B.

D. A maximum amount of eighteen million dollars may be deposited in the local transportation assistance fund each fiscal year from the state lottery fund as provided in section 5–522, subsection A, paragraph 4.

§ 28–8102. Fund distribution; investment; definitions

A. An incorporated city or town may apply to the department before the third Monday in June for monies from the local transportation assistance fund.

B. On the first Monday in July of each year, the director shall determine the total amount of requests for local transportation assistance monies from cities and towns and, subject to available monies, shall authorize the payment distributed pursuant to subsection C of this section.

C. The state treasurer shall each month pay cities and towns requesting monies from the fund one-twelfth of the annual amount, from the available monies in the local transportation assistance fund. A city or town shall receive monies in the proportion that the population of each city or town bears to the total population of all cities and towns applying for monies in this state, except that a city or town applying for local transportation assistance monies is entitled to receive at least ten thousand dollars.

D. The state treasurer shall pay:

1. Cities and towns as provided in subsection C of this section a maximum amount of twenty-three million dollars in any one fiscal year from the local transportation assistance fund.

2. Counties, cities, towns and the public transportation fund as provided in subsection E of this section a maximum amount of eighteen million dollars in any one fiscal year from the local transportation assistance fund.

E. The director of the state lottery commission shall determine the proportion that ticket sales of lottery games in each county each month bears to the total ticket sales in this state each month and shall notify the state treasurer. The state treasurer shall allocate the monies deposited in the local transportation assistance fund pursuant to section 5–522, subsection A, paragraph 4 to each county in the proportion that ticket sales of lottery games in each county bears to the total ticket sales in this state. Each month the state treasurer shall pay one-twelfth of the annual amount of available monies deposited in the fund as follows:

1. To each county with a population of less than one million two hundred thousand persons and to each city and town in such a county, an amount in the proportion that the incorporated population of each city or town and unincorporated population of the county bears to the total population in that county. In a county with a population of less than five hundred thousand persons, these monies shall be used for transportation purposes. In a county with a population of five hundred thousand or more persons, but less than one million two hundred thousand persons, these monies shall be used for public transportation operating and related capital purposes.

2. To each county with a population of one million two hundred thousand or more persons, to the public transportation fund established by section 48–5103. These monies shall be used for public transportation operating and related capital purposes.

F. A city or town with a population of three hundred thousand persons or less shall use the monies received under subsection C of this section for transportation purposes except as provided in section 28–8103 and may use the monies for public transportation operating and related capital purposes. A city or town with a population of more than three hundred thousand persons shall use the monies received under subsection C of this section for public transportation operating and related capital purposes except as provided in section 28–8103.

G. The state treasurer:

1. May invest inactive monies in the local transportation assistance fund in bonds or other evidences of indebtedness of the United States or any of its agencies or instrumentalities if the obligations are guaranteed as to principal and interest by the United States or by an agency or instrumentality of the United States.

2. Shall credit all interest earned on local transportation assistance monies to the local transportation assistance fund.

H. In this section, unless the context otherwise requires:

1. "Population" means the population of a city, town or county as defined by section 41–563.

2. "Public transportation" means local transportation of passengers by means of a public conveyance.

§ 28–8103. Alternative uses; local transportation assistance fund

By resolution, a city or town may authorize the use of up to ten per cent of local transportation assistance fund monies received pursuant to section 28–8102 in any one fiscal year for cultural, educational, historical, recreational or scientific facilities or programs or for nonresidential outpatient programs or services for persons with a developmental disability as defined in section 36–551 who have never resided within a facility identified in or established pursuant to section 36–558, if the monies are matched equally by nonpublic monies received by the city or town and spent for the same purposes, except in a fiscal year when the total distributed from the local transportation assistance fund is less than twenty-three million dollars.

ARTICLE 2. PUBLIC TRANSPORTATION ASSISTANCE

§ 28–8131. State assistance; regional public transportation activities

A. Pursuant to section 28–332, the department may cooperate with cities, towns, counties and other governmental authorities, including regional planning agencies, to plan and coordinate regional public transportation services in and adjoining a vehicle emissions control area as defined in section 49–541. This planning and coordination may be for the purpose of extending public transportation services across jurisdic-

tional boundaries or into poorly served or unserved portions of urbanized areas and their suburban communities.

B. The department may cooperate with cities, towns, counties and other governmental authorities, including regional planning agencies, to plan, coordinate and encourage car pooling and van pooling activities in and adjoining a vehicle emissions control area as defined in section 49–541.

§ 28–8132. **Funding; improving transit services**

A. The department may make grants to governmental authorities provided in section 28–8131 for the purposes provided in this article and may cooperate with local authorities in improving existing transit services and in integrating these services to:

1. Better meet public transportation needs.

2. Promote a balanced regional transportation system.

3. Improve local or regional air quality.

4. Provide assistance in the planning, design and implementation of intermodal transportation projects, pedestrian related projects and bicycle related projects.

B. Planning, coordination and actual operation of these services may be funded with general state revenues appropriated by the legislature for these purposes.

§ 28–8133. **Demonstration or pilot projects**

A. The department may conduct demonstration or pilot projects to evaluate the effectiveness of new, extended, improved or integrated public transportation services, bicycle activities, pedestrian activities, intermodal transportation activities, and car pooling or van pooling activities in meeting regional transportation needs or in improving air quality.

B. These projects may be funded with general state revenues appropriated by the legislature for this purpose.

§ 28–8134. **Department participation; limitation**

In a county in which a regional public transportation authority has been established pursuant to title 48, chapter 29, the department may participate in the regional transit planning, coordination and demonstration activities prescribed by this article only in consultation with the authority.

CHAPTER 25

AVIATION

ARTICLE 1. GENERAL PROVISIONS

§ 28–8201. **Definitions**

In this article and articles 2 through 5 of this chapter, unless the context otherwise requires:

1. "Aeronaut" includes any aviator, pilot, balloonist and other person participating in the operation of aircraft while in flight.

2. "Aircraft" includes a balloon, airplane, amphibian and craft used for navigation through the air.

3. "Passenger" includes a person who rides in aircraft but has no part in its operation.

4. "Seizure of aircraft" means the physical disabling or securing of an aircraft by locks, chains or other mechanical devices.

§ 28-8202. State aviation fund

A. A state aviation fund is established in the state treasury. The state treasurer shall deposit in the fund:

1. Aviation fuel taxes or motor vehicle fuel taxes transmitted to the state treasurer by the department.

2. Monies transmitted to the state treasurer by the department as a result of the sale of an abandoned or seized aircraft.

3. The amount of flight property tax that the department of revenue has transmitted to the state treasurer pursuant to section 42-705.

4. Registration fees, license taxes and penalties collected pursuant to article 4 of this chapter.

5. Monies received by the department from the operation of airports under this article and articles 2 through 5 of this chapter.

B. The state treasurer may invest inactive deposits of the state aviation fund in United States government bonds or interest bearing notes and other interest bearing obligations of the United States for which the full faith and credit of the United States are pledged. The state treasurer shall deposit interest earned on aviation monies in the state aviation fund.

C. The department shall administer monies that are appropriated by the legislature from the state aviation fund.

D. The board shall distribute monies appropriated to the department from the state aviation fund for planning, design, development, acquisition of interests in land, construction and improvement of publicly owned and operated airport facilities in counties and incorporated cities and towns. The board shall distribute these monies according to the needs for these facilities as determined by the board. For purposes of this subsection, "publicly owned and operated airport facility" means an airport and appurtenant facilities in which one or more agencies, departments or instrumentalities of this state or a city, town or county of this state holds an interest in the land on which the airport is located that is clear of any reversionary interest, lien, easement, lease or other encumbrance that might preclude or interfere with the possession, use or control of the land for public airport purposes for a minimum period of twenty years.

§ 28-8203. Air service development fund

A. An air service development fund is established in the state treasury that consists of:

1. Monies received from the federal government or an agency of the federal government for any purpose authorized by this section.

2. Monies received from donations to the fund.

3. Monies repaid to the department on loans made pursuant to this section.

4. Monies received from insurance recoveries for capital equipment losses for capital equipment purchased pursuant to this section.

5. Earnings on monies from the fund that are invested pursuant to state law.

B. Monies from the air service development fund shall be spent only for the following purposes:

1. Short-term, low interest, unsecured loans to scheduled, certificated commuter air carriers to temporarily defray the carriers' operating expenses in extending air service into areas of this state deemed appropriate by the director.

2. Short-term, low interest, secured loans to scheduled, certificated commuter air carriers to purchase capital equipment for the use of the carriers in extending air service into areas of this state deemed appropriate by the director.

C. Monies in the air service development fund shall be spent in conformity with the laws governing state financial operations, except that balances remaining at the end of the fiscal year do not revert to the state general fund, the state highway fund or the state aviation fund.

§ 28-8204. State owned airports; fees

The director may establish fees for use of state owned airports and appurtenant facilities, including the following:

1. Landing and takeoff for commercial aircraft.

2. Aircraft tiedown.

3. Vehicle parking.

4. Equipment use.

5. Aircraft servicing.

6. Facility use.

7. Damages to equipment or facilities.

8. Janitorial or custodial services.

9. Terminal and land space rental.

10. Commission on sales at the airport.

11. Ground transportation use of the airport facility in serving passengers who are arriving or departing.

12. Use of advertising space.

13. Fuel flowage, storage, transportation and handling.

§ 28-8205. Construction of new airports; definitions

A. A new airport shall not be constructed within the boundaries of an urbanized area or within twenty-four statute miles of the exterior boundary of an urbanized area without approval of the board.

B. The board shall approve construction of a new airport only if both:

1. The construction of the new airport is consistent with the state, regional and local aviation system plans.

2. The state, regional and local aviation plans consider relevant criteria, including airspace and air safety, land use compatibility and priority of funding.

C. This section does not apply to a heliport or to an addition to an existing airport.

D. For the purposes of this section:

1. "Airport" means an area of land or water that is designed and set aside for the landing and taking off of aircraft.

2. "Heliport" means an area of land, water or structure that is used or intended to be used for the landing and takeoff of rotorcraft.

3. "Urbanized area" means an urbanized area as defined in the most recent decennial census by the United States bureau of the census.

§ 28–8206. **Sovereignty**

This state has sovereignty in space above land and water of this state, unless sovereignty is granted to and assumed by the United States pursuant to a lawful grant from this state.

§ 28–8207. **Ownership**

Ownership of space above land and water of this state is vested in the several owners of the surface beneath the land and water, subject to the right of flight described in section 28–8277.

§ 28–8208. **Crimes, torts and other wrongs; governing law**

A. Any crime, tort and other wrong that is committed by or against an aeronaut or passenger while in flight over this state is governed by the law of this state.

B. The law of this state determines whether damage by or to an aircraft while in flight over this state is a tort, a crime or any other wrong by or against the owner of the aircraft.

§ 28–8209. **Legal relationships while in flight**

Any contractual or other legal relationship entered into by aeronauts or passengers while in flight over this state have the same effect as if entered into on the land or water beneath the aeronauts or passengers.

ARTICLE 2. AERONAUTICS DIVISION

§ 28–8241. **Aeronautics division; assistant director**

A. An assistant director for aeronautics who has an aeronautical background shall administer the aeronautics division of the department.

B. The compensation of the assistant director shall be determined pursuant to section 38–611.

§ 28–8242. **Powers and duties**

A. The department:

1. Shall cooperate with all state, local and federal organizations to encourage and advance the safe and orderly development of aviation in this state.

2. May:

(a) Assemble and distribute to the public information relating to aviation, landing fields, navigational aids and other matters pertaining to aviation.

(b) Accept, in the name of this state, federal monies made available for the advancement of aviation.

(c) Represent this state on issues of routing structures and rate schedules concerning commercial airline traffic.

(d) Accept and receive federal and other public or private monies for the acquisition, construction, enlargement, improvement, maintenance, equipment or operation of airports and other air navigation facilities and sites or air navigation facilities for any other purpose authorized by this section. The department shall transmit these monies to the state treasurer for deposit in the state aviation fund.

(e) Facilitate the development of a regional airport.

B. Notwithstanding section 38–623, the director may authorize personnel of the department to use rental aircraft in the performance of their duties at the prevailing

hourly rate. The rental fee is a charge against monies appropriated for in-state and out-of-state travel.

C. The director shall adopt rules as necessary to administer this chapter and to promote public safety and the best interests of aviation in this state. The rules shall not supersede or conflict with rules of the United States government agencies having jurisdiction over aviation activities in this state.

D. The director shall:

1. Contract both:

(a) The operation of state owned airports.

(b) To obtain air search and rescue services.

2. In conjunction with local authorities, plan, build and develop airports, airport terminals and other related navigational facilities.

3. Operate and maintain the Grand Canyon national park airport located in the Kaibab national forest, Coconino county.

§ 28-8243. **Abandoned aircraft; definition**

A. A person shall not abandon an aircraft on property of another.

B. A peace officer who has reasonable grounds to believe that an aircraft has been abandoned may seize the aircraft and cause its removal from property of another. A peace officer who causes the removal of an aircraft pursuant to this subsection shall immediately notify the director in writing of the removal.

C. The abandonment of an aircraft in the manner provided in this section is a presumption that the last registered owner of record is responsible for the abandonment, unless the aircraft is the subject of a theft report filed with a local law enforcement agency.

D. On receipt of a report as required by this section, the director shall search the records of the department. On receipt of information disclosing the name and address of the owner and lienholder, if any, the director, at least fifteen days before the date of taking this action, shall give to the owner and lienholder, if any, notice of the director's intention to sell the aircraft. The director shall give notice by certified mail, return receipt requested, to be delivered to the addressee only.

E. If the records of the department fail to disclose the name and address of the owner and lienholder, if any, or if the notice is returned marked unclaimed or addressee unknown, the director shall publish notice of the director's intention to sell the aircraft once in a newspaper of general circulation in the county in which the aircraft was seized. The notice shall include a complete description of the aircraft, including the identification number and the place and date the aircraft was found.

F. If the aircraft is unclaimed at the expiration of fifteen days from mailing the certified notice or on the expiration of fifteen days from the publication, the director may sell the aircraft at public auction to the highest bidder. The director shall issue a bill of sale to the purchaser at the sale on compliance with this section.

G. The lienholder or owner shall retain any surplus arising from the sale, after deducting the costs of the sale of the aircraft, for a period of thirty days. If the surplus is not claimed on the expiration of that time it shall be transmitted to the state treasurer for deposit in the state aviation fund.

H. For the purposes of this section, "abandoned aircraft" means an aircraft that has been left on property without the consent of the owner or operator of the property for more than ninety days.

§ 28-8244. **Hearing; appeal**

A. A person who is aggrieved by a decision made within the department pursuant to this chapter may request a hearing before the director. The person shall submit a written request for the hearing to the department within thirty days after the decision of the department.

B. Except as otherwise provided in this section, the director shall hold the hearing in accordance with title 41, chapter 6.

C. A party to the hearing before the director may appeal pursuant to title 12, chapter 7, article 6.

ARTICLE 3. AIRCRAFT OPERATION

§ 28-8271. **Federal license; violation**

A. A person who operates aircraft in this state for which a license is required by the United States or a federal agency shall have the class of license that is required.

B. It is unlawful for a person to operate aircraft in this state in any manner without a license required by this section.

C. The licensee shall:

1. Keep the license in the licensee's personal possession when operating aircraft in this state.

2. Present the license for inspection on the request of a passenger, a peace officer of this state or an official, manager or person in charge of an airport in this state where the licensee will land.

§ 28-8272. **Federal regulation; licensing and registration; violation**

A. Aircraft operating in this state shall conform to design, construction and airworthiness standards prescribed by the United States or the appropriate federal agency for the navigation of aircraft subject to its jurisdiction.

B. It is unlawful for a person to navigate an aircraft in this state unless it is licensed and registered by the appropriate agency of the United States in the manner prescribed by regulations of the United States or the appropriate federal agency.

§ 28-8273. **Damage responsibility**

A. A pilot is responsible for damage to a person or property that is caused by aircraft directed by the pilot or under the pilot's control and that results from the negligence of the pilot, either in controlling the aircraft or while giving instructions to another person.

B. If the pilot is the agent or employee of another, both the pilot and the pilot's principal or employer are responsible for the damage.

§ 28-8274. **Aircraft collisions; liability**

The law applicable to torts on land determines the liability of the owner of one aircraft to the owner of another aircraft or to aeronauts or passengers on either aircraft for damage caused by a collision on land or in the air.

§ 28-8275. **Insurance coverage disclosure; civil penalty**

A. A person who rents an aircraft to another person shall both:

1. Deliver to the renter a written notice stating the nature and extent of insurance coverage provided, if any, for the renter against either:

(a) Loss of or damage to the hull of the aircraft.

(b) Liability arising out of the ownership, maintenance or use of the aircraft.

2. Retain copies of the notice for two years from the last date the renter has rented an aircraft from the person.

B. The notice provided in subsection A constitutes a material part of the rental agreement. The renter shall give written acknowledgment of receipt of this notice.

C. Delivery of the notice covers all future rentals of the same aircraft to the same person, unless the insurance coverage provided in the original notice has been reduced or eliminated.

D. For failure to deliver the notice pursuant to subsection A the department shall impose a civil penalty of not more than one thousand dollars.

§ 28–8276. Violations; classification

A. Unless another classification is provided, a person who violates this article is guilty of a class 3 misdemeanor.

B. An act or omission that is unlawful pursuant to this article does not include an act or omission that violates the laws or regulations of the United States.

C. It is not necessary to allege or prove as part of the case for this state that the defendant is not subject to prosecution under the laws of the United States for the alleged violation. The fact that the defendant is amenable to prosecution under the laws of the United States is a matter of defense, unless it affirmatively appears from the evidence of this state.

§ 28–8277. Low altitude flying prohibited

Flight of aircraft over lands and waters of this state is lawful, unless either:

1. It is at a low altitude that interferes with the existing use to which land, water or space over the land or water is put by the owner.

2. It is conducted in a manner that is imminently dangerous to persons or property lawfully on the land or water beneath the flight.

§ 28–8278. Landing prohibition; liability

A. Landing of aircraft on lands or waters of another without consent of the owner of the lands or waters is unlawful, unless it is a forced landing.

B. The owner or lessee of the aircraft or the aeronaut is liable for damages caused by a forced landing as provided in section 28–8273.

§ 28–8279. Trick or acrobatic flying; low level flying; dropping objects; classification

An aeronaut or passenger who does any of the following while in flight over a densely inhabited area or over a public gathering in this state is guilty of a class 1 misdemeanor:

1. Engages in trick or acrobatic flying or in any acrobatic feat.

2. Except while landing or taking off, flies at a low level that endangers persons on the surface beneath the flight.

3. Drops an object, except loose water, loose sand ballast or loose sheets of paper.

§ 28–8280. Careless or reckless aircraft operation; classification

A person who operates an aircraft in the air, on the ground or on the water in a careless or reckless manner that endangers the life or property of another is guilty

of a class 1 misdemeanor. In determining whether the operation was careless or reckless, the court shall consider the standards for safe operation of aircraft prescribed by federal statutes or regulations governing aeronautics.

§ 28-8281. **Killing birds or animals; classification**

A. Except as provided in subsection B, an aeronaut or passenger who intentionally kills birds or animals while in flight is guilty of a class 1 misdemeanor.

B. If authorized by the Arizona game and fish commission, the following persons may take coyotes by shooting from aircraft for wildlife and livestock management purposes:

1. An employee of the Arizona game and fish department.

2. An authorized employee of the United States government agency.

§ 28-8282. **Prohibited operation; under the influence; incapacitation**

A. A person shall not operate or be in actual physical control of an aircraft if the person is either:

1. Under the influence of intoxicating liquor, narcotic or other drugs or marijuana.

2. By reason of mental or physical disability, incapable of operating an aircraft under the circumstances.

B. In a criminal prosecution for a violation of subsection A relating to operating an aircraft while under the influence of intoxicating liquor, it is presumed that the defendant was under the influence of intoxicating liquor if there was at the time 0.04 per cent or more by weight of alcohol in the defendant's blood, urine, breath or other bodily substance. This subsection does not limit the introduction of any other competent evidence bearing on the question of whether or not the defendant was under the influence of intoxicating liquor.

C. A person shall not operate or be in actual physical control of an aircraft either:

1. While there is 0.04 per cent or more by weight of alcohol in the person's blood.

2. Within eight hours after consuming intoxicating liquor, narcotic or habit forming drugs or marijuana.

D. An owner of an aircraft or a person in charge or control of an aircraft shall not knowingly permit the aircraft to be operated by a person in violation of subsection A or C.

E. Per cent by weight of alcohol in the blood is based on grams of alcohol per hundred cubic centimeters of blood.

§ 28-8283. **Implied consent; immunity**

A. A person who operates or is in actual physical control of an aircraft in the air or on the ground or water gives consent to a test or tests of the person's blood, breath or urine to determine the alcoholic content of the person's blood if arrested for operating or being in actual physical control of an aircraft while under the influence of intoxicating liquor. The test shall be given in the same manner as prescribed in sections 28-2821, 28-2823 through 28-2825 and 28-2881.

B. If a person under arrest refuses to submit to a test designated by the law enforcement agency, the test shall not be given. The refusal to submit to the test is admissible in evidence in a prosecution for a violation of section 28-8282, subsection A or C. The law enforcement agency shall report the person's refusal to submit to the test to the federal aviation administration for appropriate administrative action.

C. A person qualified to withdraw blood or take a urine specimen under this section or any hospital, laboratory or clinic employing or utilizing the services of the person is not civilly liable as a result of these activities, if a law enforcement officer requests the withdrawal of blood or the taking of urine specimens, unless the person is guilty of gross negligence while performing the activities.

§ 28-8284. Violation; classification

A. A person who is convicted of a violation of section 28-8282 is guilty of a class 1 misdemeanor and shall be sentenced to serve not less than twenty-four consecutive hours in jail.

B. The court shall order the person to pay a fine of not less than two hundred fifty dollars and may order the person to perform not less than eight or more than twenty-four hours of community service.

C. A court shall not grant probation to or suspend any part or all of the imposition or execution of a sentence required by this section, except on the condition that the person serve not less than twenty-four consecutive hours in jail and pay a fine of not less than two hundred fifty dollars.

D. The court:

1. Shall not excuse an offender from spending twenty-four consecutive hours in jail.

2. May require the offender to attend traffic safety or alcohol abuse classes at the offender's expense.

3. If in the court's opinion the offender has the problem of habitual abuse of alcohol or drugs, shall require the offender to obtain treatment under its supervision.

E. Notwithstanding subsection A of this section, the judge may sentence a person pursuant to section 28-8286 instead of pursuant to subsection A of this section, if all of the following conditions are met:

1. The person is convicted of a violation of section 28-8282.

2. The prosecutor alleges the provisions of this subsection.

3. The court finds that alternative sentencing will serve the best interests of this state and that the person:

(a) Has not been convicted of one or more violations of section 28-8282 within sixty months of the date of commission of the acts out of which the charges arose. The dates of commission of the offense are the determining factor in applying this paragraph.

(b) Was not flying with 0.08 per cent or more by weight of alcohol in the person's blood.

(c) Did not cause serious physical injury as defined in section 13-105 to another person during the same event or course of conduct that resulted in the conviction for which the person is to be sentenced.

§ 28-8285. Alcohol abuse screening session

The court shall order a person convicted of a violation of section 28-8282 to complete an alcohol abuse screening session. The convicted person shall pay the reasonable costs of the screening session.

§ 28-8286. Alternative sentencing

If pursuant to section 28-8284, subsection E a court orders a person convicted of a violation of section 28-8282 to be sentenced pursuant to this subsection, the court:

1. Shall order the person to pay a fine of not less than two hundred fifty dollars.

2. May order the person to perform not less than eight or more than twenty-four hours of community service.

3. May require the person to attend traffic safety or alcohol abuse classes at the person's expense.

4. If in the court's opinion the person has the problem of habitual abuse of alcohol or drugs, shall require the person to obtain treatment under its supervision.

5. Shall not suspend any part or all of the imposition or execution of any sentence required by this subsection.

§ 28–8287. **Second offense**

A. If a person is convicted of a second violation of section 28–8282 or is convicted of a violation of section 28–8282 and has previously been convicted of an act in another state that if committed in this state would be a violation of section 28–8282 within a period of sixty months:

1. The person is guilty of a class 1 misdemeanor.

2. The person shall be sentenced to serve not less than sixty days in jail.

3. The court shall order the person to pay a fine of not less than five hundred dollars.

4. The court shall not grant probation to or suspend any part or all of the imposition or execution of any sentence required by this subsection, except on the condition that the person serve not less than sixty days in jail and pay a fine of not less than five hundred dollars.

5. If in the court's opinion the offender has the problem of habitual abuse of alcohol or drugs, the court shall require the person to obtain treatment under its supervision.

B. The dates of the commission of the offense are the determining factor in applying this section.

C. A second violation for which a conviction occurs as provided in this section shall not include a conviction for an offense arising out of the same series of acts.

§ 28–8288. **Third or subsequent offense**

A. If a person is convicted of a third or subsequent violation of section 28–8282 or is convicted of a violation of section 28–8282 and has previously been convicted of any combination of convictions of section 28–8282 or acts committed in another state that if committed in this state would be a violation of section 28–8282 within a period of sixty months:

1. The person is guilty of a class 5 felony.

2. The person is not eligible for probation, pardon, suspension of sentence or release on any basis except as specifically authorized by section 31–233, subsection A or B until the person has served not less than six months in prison.

3. The court shall not suspend the imposition of a prison sentence.

4. If in the court's opinion the person has the problem of habitual abuse of alcohol or drugs, the court shall require the person to obtain treatment under its supervision.

B. The dates of the commission of the offense are the determining factor in applying this section.

C. A third or subsequent violation for which a conviction occurs as provided in this section shall not include a conviction for an offense arising out of the same series of acts.

§ 28–8289. **Political subdivision; immunity**

A political subdivision processing or utilizing the services of a person ordered to perform community service pursuant to this article is not civilly liable to the person ordered to perform community service as a result of these activities unless the political subdivision or its agent or employee is guilty of gross negligence.

§ 28–8290. **Employment permitted**

A. On pronouncement of a jail sentence under section 28–8284, 28–8286, 28–8287 or 28–8288, the court may provide in the sentence that the defendant may be permitted, if the defendant is employed and can continue employment, to both:

1. Continue employment for not more than twelve hours per day or more than six days per week.

2. Spend the remaining day, days or parts of days in jail until the sentence is served.

B. The defendant sentenced under this section shall be allowed out of jail only long enough to complete the defendant's actual hours of employment.

§ 28–8291. **Prior convictions allowed**

A. The court:

1. Shall allow the allegation of a prior conviction or any other pending charge of a violation of section 28–8282 that is filed twenty or more days before the date the case is actually tried.

2. May allow the allegation of a prior conviction or any other pending charge of a violation of section 28–8282 that is filed any time before the date the case is actually tried.

B. When the allegation is filed, the state shall make available to the defendant a copy of any information obtained concerning the prior conviction or other pending charge.

C. The sequence of court dispositions of pending cases is immaterial if the offenses were committed within sixty months.

ARTICLE 4. AIRCRAFT REGISTRATION AND TAXATION

§ 28–8321. **Definition of resident**

For the purpose of registration of an aircraft, "resident" has the same meaning as prescribed in section 28–701.

§ 28–8322. **Registration; exceptions**

A. Except as otherwise provided, aircraft based in this state shall be registered with the department within sixty days after the aircraft is brought into this state. The aircraft owner shall apply to register the owner's aircraft on a form provided by the department and shall renew the registration annually for the calendar year before the last day of February.

B. Subsection A does not apply to aircraft that is:

1. Operated by an airline company and regularly scheduled for the primary purpose of carrying persons or property for hire in interstate, intrastate or international transportation.

2. Owned by a nonresident who bases the aircraft in this state for a period of not more than ninety consecutive days or ninety days in any one calendar year, if the aircraft is not engaged in intrastate commercial activity.

C. Aircraft, except aircraft included in subsection B, paragraph 1, entering the state to engage in commercial operations shall be registered before commencing these operations.

§ 28-8323. **Government aircraft**

The following aircraft shall be registered, but a tax or registration fee shall not be paid on the aircraft:

1. Aircraft owned and operated exclusively in the public service by the federal government, this state, any political subdivision of this state or the civil air patrol.

2. Aircraft owned and held by a bona fide aircraft dealer solely for the purposes of sale.

§ 28-8324. **Registration; license tax; proration; fee**

A. Aircraft on which a license tax is due under section 28-8335 shall not be registered unless the license tax is paid.

B. If registration of aircraft that is not previously subject to registration in this state is subject to registration after the beginning of the calendar year:

1. The license tax for that year on the aircraft shall be reduced by one-twelfth for each full month of the calendar year that has expired.

2. The aircraft owner shall pay the full registration fee.

§ 28-8325. **Registration fee; certificate; decal; duplicate**

A. On payment of a registration fee of five dollars, the license tax and the penalty, if any, the department shall issue a certificate and license decal.

B. The license decal shall be displayed on the aircraft at all times in the manner prescribed by the department.

C. On satisfactory proof of the loss or destruction of the license decal, the department shall issue a duplicate of the license decal to the owner on payment of a four dollar fee.

§ 28-8326. **Aircraft dealers; registration application; penalty**

A. At the time of the sale, aircraft dealers shall have the aircraft buyer prepare and sign an application for aircraft registration. The dealer shall immediately forward the application to the department.

B. A dealer who fails to forward the completed application to the department within twenty calendar days shall pay a penalty of twenty-five dollars.

§ 28-8327. **Exemption claim**

A. On request of the department, a person who claims that an aircraft is exempt from payment of the license tax or registration fee imposed by this article shall make available for inspection the aircraft logbook and furnish the names of any pilot who has flown the aircraft during the period for which the exemption is claimed.

B. The assessment of the department is presumed correct if the person wilfully fails to comply with this section.

§ 28-8328. **Failure to file exemption affidavit; penalty**

If an aircraft owner fails to file an appropriate affidavit for exemption from registration on or before the last day of February or within sixty days after the entry into this state of an exempt aircraft, the department shall collect the

registration fee, the license tax and a penalty of twenty-five dollars for the first month and five dollars for each succeeding month of delinquency.

§ 28–8329. **Late registration; penalty**

A. If an aircraft required to be registered under this article is not registered within sixty days after its entry into this state and renewed annually on or before the last day of February, a penalty of twenty-five dollars for the first month and five dollars for each succeeding month of delinquency shall be added to the registration fee and collected unless an exemption for the aircraft is established pursuant to this article.

B. Registration of an aircraft in the name of the applicant for the year immediately preceding the year for which the application for registration is made is prima facie evidence that the aircraft has been based in this state during the year for which the application for registration is made.

C. The total annual registration fee and license tax and the penalty prescribed in this section shall accompany a billing for registration of an aircraft on or after March 1 of the calendar year on which registration of the aircraft for the next preceding year expired. If it is determined after a hearing and on proof satisfactory to the aeronautics division that the aircraft was not based in this state before the filing of the application for registration of the aircraft, the amount of the penalty shall be refunded.

§ 28–8330. **Lien**

A. The license tax and each registration fee and penalty added are a lien on the aircraft on which they are due from the due date.

B. The lien has priority over any other lien or encumbrance on the aircraft, except for a lien of other state taxes that has priority by law.

C. The lien continues until the tax and all fees and penalties are paid.

D. On satisfaction of the lien, the department shall issue a release of the lien to the person against whom the lien was claimed. The release shall be a document in a form as specified in section 11–480.

E. If requested by the department, the sheriff of the county in which the aircraft is found or any other peace officer shall collect the license tax, fee and penalty by seizure of the aircraft from the person in possession of the aircraft, if any, and by sale as provided in section 28–8331.

§ 28–8331. **Seized aircraft sale**

A. If an aircraft has been seized under this article and held for a period of ninety days and if the owner has not complied with the law under which the aircraft was seized, including payment of the license tax, fees, penalties, costs and expenses of seizure, the sheriff of the county in which the aircraft is found shall sell the aircraft when requested by the department.

B. The sale of an aircraft under this section shall be at public auction after notice of the sale is sent by the department by certified mail at least five but not more than twenty days before the sale directed to the last known address of the owner of the aircraft, if the owner is known. If the owner is unknown, the department shall give notice by publication in a newspaper of general circulation in the county in which the lien on the aircraft is recorded. If notice is published in a weekly newspaper, the publication shall be made once each week for two consecutive weeks, or if published in a daily newspaper, six consecutive times, the last publication to be at least five but not more than ten days before the date of the sale.

C. Within five days after receipt of the proceeds of the sale, the sheriff shall transmit the entire proceeds to the department. After payment by the department of the license tax, fees, penalties and costs and expenses of the seizure and sale, the department shall pay the remaining proceeds of the sale to the owner from whom the aircraft was seized, if the owner is known. If the owner is unknown, the department shall transmit the remaining proceeds to the state treasurer. The state treasurer shall deposit the proceeds in the state aviation fund.

D. The department may issue a certificate of release of lien on payment of the tax, fees and penalties.

§ 28–8332. **Registration assignment**

A. Aircraft for which a registration certificate is required shall not be purchased, sold or otherwise transferred without assignment of the validated registration certificate.

B. Within sixty days after the assignment, the person to whom the assignment is made shall register the aircraft in the person's name with the department and pay the regular registration fee.

C. If aircraft is not registered within sixty days after the assignment as required by this section, the department shall collect an annual penalty of twenty-five dollars for the first month and five dollars for each succeeding month of delinquency in addition to the registration fee, unless the aircraft is exempt pursuant to section 28–8322.

§ 28–8333. **Registration; use tax payment**

The department shall not issue or transfer a registration certificate for an aircraft to a person who is subject to the use tax under title 42, chapter 8, article 2 unless the applicable tax has been paid as shown by a receipt from the collecting officer.

§ 28–8334. **Aircraft loss or destruction**

If an aircraft registered under this article is lost or destroyed, the owner of the aircraft or the owner's legal representative if the owner is dead shall inform the department in writing of the loss or destruction of the aircraft within thirty days after it occurs.

§ 28–8335. **License tax; tax rate**

A. An annual license tax is imposed on all aircraft that is based in this state and that is required to be registered pursuant to this article, unless an exemption for the aircraft is established pursuant to this article. The license tax is payable to the department on initial registration and annually on or before the last day of February.

B. Except as provided in sections 28–8336 through 28–8341, the department shall determine and assess the license tax prescribed by subsection A of this section on the basis of one-half per cent of the average fair market value of the particular make, model and year of aircraft. The tax assessed under this subsection shall not be less than twenty dollars for a full year of registration.

§ 28–8336. **Nonresident; license tax rate**

The license tax for a nonresident whose aircraft is based in this state for more than ninety days but less than two hundred ten days in a calendar year is equal to one-tenth of one per cent of the average fair market value of the particular make, model and year of aircraft if the aircraft is not engaged in any intrastate commercial activity.

§ 28–8337. **Stored or repaired aircraft; license tax rate**

A. The annual license tax for aircraft that is in storage or that is being repaired is twenty dollars for each aircraft, except for an aircraft taxed under section 28–8341.

B. To qualify for the tax under this section, the aircraft owner shall annually file a sworn affidavit on a form provided by the department with the department not later than the last day of February or within sixty days after the aircraft is placed in storage or under repair on entry into this state.

C. The owner of an aircraft that is subject to the tax under this section shall notify the department within ten days of the date the aircraft is returned to use and shall pay the appropriate license tax, if any, prorated on the basis of one-twelfth for each month remaining in the calendar year beginning with the first month the aircraft is restored to use.

§ 28–8338. **Salvage aircraft; license tax rate; definition**

A. The annual license tax for a salvage aircraft that is in storage or that is being restored is five dollars for each aircraft, and the tax shall not be prorated.

B. To qualify for the tax under this section, the salvage aircraft owner shall annually file a sworn affidavit on a form provided by the department with the department not later than the last day of February or within sixty days after the aircraft is placed in storage or under restoration on entry into this state.

C. The salvage aircraft owner who is subject to the tax under this section shall notify the department within ten days of the date the aircraft is returned to use and shall pay the appropriate license tax, if any, prorated on the basis of one-twelfth for each month remaining in the calendar year beginning with the first month the aircraft is returned to use.

D. For the purposes of this section, "salvage aircraft" means an aircraft that is being restored and that is not meant to be flown.

§ 28–8339. **Special aircraft; license tax rate; definitions**

A. The annual license tax for an antique, classic, warbird, glider, experimental, homebuilt or balloon aircraft is twenty dollars for each aircraft.

B. To qualify for the tax under this section, the aircraft owner shall annually apply on a form provided by the department to the department not later than the last day of February or within sixty days after entry into this state.

C. For the purposes of this section:

1. "Antique aircraft" means an aircraft built and originally federally certified by its manufacturer before January 1, 1941.

2. "Balloon" means either:

(a) An aircraft that is a flexible, nonporous bag inflated with a gas lighter than air.

(b) A hot air balloon.

3. "Classic aircraft" means an aircraft that is built and originally federally certified by its manufacturer after January 2, 1941 and before January 1, 1956.

4. "Experimental aircraft" means an aircraft that is designated as experimental on its federal aviation administration airworthiness certificate.

5. "Glider aircraft" means a light, engineless aircraft that is designed to glide after being towed aloft or launched from a catapult.

6. "Homebuilt aircraft" means an aircraft that is constructed primarily by an individual for the individual's personal use excluding an aircraft that is constructed primarily by a for profit aircraft manufacturing business.

7. "Warbird aircraft" means an aircraft that is built before January 1, 1948 expressly for the purpose of military service.

§ 28-8340. **Manufacturer's aircraft; definition**

A. The annual license tax for a manufacturer's aircraft is twenty dollars for each aircraft.

B. To qualify for the tax under this section, the manufacturer's aircraft owner shall annually file a sworn affidavit on a form provided by the department with the department not later than the last day of February or within sixty days after entry into this state.

C. For the purposes of this section, "manufacturer's aircraft" means an aircraft that is both:

1. Manufactured under a production certificate issued by the federal aviation administration under federal air regulations part 21.

2. Owned by the manufacturer for purposes of completing manufacture or sale.

§ 28-8341. **Maintenance aircraft; license tax rate; definition**

A. The annual license tax for a maintenance aircraft owned by a nonresident is twenty dollars for each aircraft, unless an exemption is established pursuant to this article. The tax shall not be prorated.

B. To qualify for the tax under this section, the nonresident owner or representative of the owner shall annually file a sworn affidavit on a form provided by the department with the department not later than the last day of February or within ninety days after the maintenance aircraft enters this state.

C. For the purposes of this section, "maintenance aircraft" means an aircraft that is based in this state but that is present in this state solely for the purpose of maintenance, repair or servicing at a federal certified maintenance facility.

§ 28-8342. **Fair market value determination**

For the calendar year, the department shall annually determine the fair market value required by section 28-8335 as established by the dealer price guides or other recognized reliable source of information.

§ 28-8343. **Aircraft total loss; violation; classification**

A. If a company that insures an aircraft determines the aircraft is a total loss, the insurer shall provide to the department an affidavit stating that a total loss occurred.

B. If the aircraft is a total loss, is transferred to another person, business or organization and is not insured, the person, business or organization shall provide an affidavit to the department stating the aircraft to be a total loss.

C. On receipt of the affidavit, the director shall:

1. Determine the amount of registration fee and license tax under this article.

2. Reduce the amount of the registration fee and license tax by one-twelfth for each full month of the registration period that has not yet expired.

3. Allow a tax credit to the owner for the appropriate amount of taxes previously paid on verified written application by the owner of the aircraft at the time the total loss occurred. The owner may use the tax credit on the next or several succeeding aircraft registration fees or license taxes that may be owed by the owner.

D. A person who violates this section is guilty of a class 2 misdemeanor.

§ 28–8344. **Aviation fuel tax; rate**

A. In addition to all other taxes provided by law, each distributor shall pay to this state a tax of five cents for each gallon of aviation fuel possessed, refined, manufactured, produced, blended or compounded in this state by the distributor or imported by the distributor, whether in the original package or container in which it was imported or otherwise.

B. The department shall collect the tax as prescribed in chapter 16, article 1 of this title.

§ 28–8345. **Registration fees; penalties; taxes; distribution**

A. Monies received from the registration and penalties collected pursuant to this article shall be transmitted to the state treasurer for deposit in the state aviation fund.

B. Not later than the fifteenth day of each month, the department shall transmit monies received from the taxes imposed under this article to the state treasurer who shall deposit the monies in the state aviation fund for use in the construction, development and improvement of airports.

§ 28–8346. **Filing by mail; date of filing**

A. On receipt of any notice, affidavit, application, registration or other document that must be filed with the department pursuant to this article after the date on which the document is required to be filed and received, the department shall treat the document as if it had been received on the required date if both:

1. It is transmitted through the United States mail.

2. The envelope in which the document is enclosed has a post office cancellation mark dated on or before the required date.

B. If the sender disputes the dates contained on the mark or if a mark does not appear or is not legible, the mailing date may be established by competent evidence introduced by the sender.

§ 28–8347. **Civil penalties**

The director may impose a civil penalty against a person required to register an aircraft under this article as follows:

1. In an amount of not more than five hundred dollars against a person who wilfully makes or gives under oath or affirmation a false statement regarding aircraft owned by, leased by or under the control of the person.

2. By assessment of twice the value of the license tax imposed on the aircraft for that year against a person who wilfully conceals, removes, transfers or misrepresents the ownership of the aircraft by the owner or agent of the owner with the purpose of evading taxation.

3. In an amount of not more than two hundred dollars against a person who either:

(a) Gives the registrar or deputy registrar a false name.

(b) Fails or refuses to give the person's name or a list of aircraft owned by, leased by or under the control of the person.

(c) Refuses to swear or affirm to the list.

4. If a statement is required to be made for imposing an assessment or tax, in an amount of not more than two hundred dollars against a person who wilfully makes an oral or written false statement that is not made under oath.

ARTICLE 5. AIRCRAFT DEALERS

§ 28–8381. Definition of aircraft dealer

In this article, unless the context otherwise requires, "aircraft dealer" means a person who is either:

1. Engaged in the business of buying, selling or exchanging aircraft.

2. Offering to assist another person with the purchase, sale or exchange of an aircraft for compensation.

§ 28–8382. License requirement; application; renewal; license tax; liability

A. A person shall not act as an aircraft dealer without first obtaining a license from the director that authorizes the person to engage in the business of an aircraft dealer.

B. A person shall apply for a license on forms prescribed and furnished by the director. The person shall accompany the application with any required documents and the bond or cash deposit prescribed by section 28–8384. On approval of the application the director shall issue the license.

C. A license issued to an aircraft dealer is valid for one year and only for the person in whose name it is issued. The aircraft dealer:

1. Shall display the license conspicuously in the principal place of business of the aircraft dealer.

2. Shall annually renew the license.

3. May not assign the license.

D. If an aircraft dealer changes the dealer's place of business, the dealer shall notify the director in writing within ten days after the change.

E. In addition to any other penalties provided by statute, a person who acts as an aircraft dealer without first obtaining a license is liable for both:

1. The license tax imposed by section 28–8335 on aircraft owned by the person or held by the person on consignment for sale or exchange.

2. Any transaction privilege tax or similar excise tax on the sale of any aircraft sold, exchanged or brokered by the person that is not reported and paid as required by law.

§ 28–8383. Aircraft dealer duties

A. An aircraft dealer shall both:

1. Obtain a tax privilege license from this state.

2. Notify the department within ten days after the purchase or sale of an aircraft or after accepting an aircraft on consignment and file this notification whether or not the aircraft dealer takes title to the aircraft. If the notification is not filed in a timely manner, the aircraft is subject to the license tax imposed by section 28–8335.

B. An aircraft purchased by a dealer for resale or exchange may be flown only for the purpose of demonstrating it to a prospective buyer. Any other use of the aircraft subjects the aircraft to the license tax prescribed by section 28–8335. The aircraft dealer shall notify the department and register the aircraft within fifteen days after any other use of the aircraft occurs.

§ 28–8384. Bond or cash deposit

A. The aircraft dealer shall file with the department a continuous corporate surety bond for the benefit of this state or a cash deposit as prescribed in section 35–155 in the sum of ten thousand dollars that is conditioned on the faithful

performance of all sales contracts or agreements and that guarantees payment of all outstanding taxes and fees.

B. The surety of this bond may cancel the bond on giving notice in writing to the department and the aircraft dealer sixty days before the cancellation date. After cancellation the surety is relieved of liability for any breach of conditions occurring after the cancellation date.

C. If a surety has any cause to cancel the bond of an aircraft dealer and gives notice of the cancellation, the department shall immediately notify the aircraft dealer by certified mail addressed to the last known address of the aircraft dealer that the aircraft dealer shall discontinue sales until such time as a new bond or cash deposit meeting the qualifications of this section is filed with the department.

D. This section does not apply to aircraft dealers engaged primarily in the sale of new or used lighter-than-air aircraft. For the purposes of this subsection, "lighter-than-air aircraft" means an aircraft that can rise and remain suspended by using contained gas whose molecular weight is less than the molecular weight of the air displaced by the gas.

§ 28-8385. **Records**

A. An aircraft dealer shall make and retain for three years records that the director may prescribe as being reasonably necessary to substantiate the reports required by this article.

B. The records may include copies of inventories, receipts or consignment contracts.

C. The director may inspect and copy these reports during normal business hours.

§ 28-8386. **Violation; classification**

A person is guilty of a class 6 felony if the person either:

1. Acts as an aircraft dealer without obtaining an aircraft dealer's license.

2. Knowingly fails to give the notification prescribed by section 28-8383, subsection B.

ARTICLE 6. AIRPORTS IN GENERAL

§ 28-8411. **Authority of cities, towns and counties; limitation**

A. The governing body of a city or town or the board of supervisors of a county may:

1. Acquire, establish, construct, own, control, lease, equip, improve, maintain, operate and regulate airports for the use of aircraft within or outside the limits of the city, town or county.

2. For the purpose described in paragraph 1 of this subsection, use property that is suitable and that is or may hereafter be owned or controlled by the city, town or county.

B. This section does not:

1. Authorize the governing body of a city or town or the board of supervisors of a county to restrict or limit the length or width of an airstrip or runway used for the landing and takeoff of aircraft, and any such restriction or limitation is void.

2. Affect the zoning authority of a county, city or town pursuant to other provisions of law.

§ 28–8412. **Airports; public purpose**

Lands that are acquired, owned, controlled or occupied by the department, in the operation and maintenance of the Grand Canyon national park airport, or a city, town or county for the purposes prescribed in section 28–8411 are for a public purpose and for a public necessity.

§ 28–8413. **Acceptance by state, cities, towns or counties of federal or other aid**

A. This state or a county, city or town may:

1. Accept and receive federal and other monies, either public or private, for the acquisition, construction, enlargement, improvement, maintenance, equipment or operation of airports, other air navigation facilities and sites for airports and other navigational facilities.

2. Comply with laws and regulations of the United States for the expenditure of federal monies on airports and air navigation facilities.

B. The governing body of a city or town or the board of supervisors of a county may:

1. Designate the department as its agent to:

(a) Accept and receive federal monies in its behalf for airport and other air navigation facility purposes.

(b) Contract for acquisition, construction, enlargement, improvement, maintenance, equipment or operation of the airports or other air navigation facilities.

2. Enter into an agreement with the authority prescribing the terms and conditions of the agency prescribed in paragraph 1 of this subsection in accordance with federal laws and regulations and applicable laws of this state.

C. Monies paid by the United States shall be paid to the city, town or county under the terms and conditions that are imposed by the United States in making the grant.

D. Contracts for acquisition, construction, enlargement, improvement, maintenance, equipment or operation of airports or other air navigation facilities that are made by the state, county, city or town itself or that are made through the department:

1. Shall be made pursuant to the laws governing the making of like contracts.

2. If the acquisition, construction, improvement, enlargement, maintenance, equipment or operation is financed wholly or partly with federal monies, may be let in the manner prescribed by the federal authorities acting under the laws and regulations of the United States, notwithstanding any state law.

§ 28–8414. **City and town airport disposal**

By resolution, the governing body of a city or town:

1. May sell, lease and dispose of an airport acquired under this article.

2. If an airport acquired under this article is sold, leased or disposed of to the county in which the airport is located, to the state or to the United States or any of its agencies, may sell, lease or dispose of the airport for a nominal consideration without advertising and without holding a special election as prescribed by sections 9–402 and 9–403.

§ 28–8415. **Real property interests; airport purposes**

A. The department, in the operation and maintenance of the Grand Canyon national park airport, or a city, town or county may accept and hold real property or any interest in the property by gift, trust or purchase or any other manner for the

purpose of establishing, constructing, operating or maintaining airports or for uses incidental to these purposes, subject to terms and agreements of the governing body.

B. Real property or any interest in the property held by the department in the operation and maintenance of the Grand Canyon national park airport shall be held in the name of this state.

§ 28–8416. **Private property acquisition; airport purposes**

A. A city, town or county that acquires private property for an airport shall acquire the property by purchase, if the city, town or county can agree with the owner on the terms of purchase.

B. If unable to agree, the city, town or county may acquire the property by condemnation in the manner provided by law authorizing cities, towns and counties to acquire real property for public purposes other than street purposes, or if there is no such law, the city, town or county may acquire the property in the manner provided by general law for condemnation of private property.

§ 28–8417. **Payment for real property; bonds**

The purchase price for real property acquired for an airport may be paid from either:

1. Monies available for the purchase.

2. Wholly or partially from proceeds of the sale of bonds of the city, town or county as the governing body determines, subject to the adoption of a proposal for and the approval of the sale of bonds at an election and in the manner provided for the authorization and issuance of bonds for public purposes generally.

§ 28–8418. **Airport construction and operation; charge**

A. The governing body of a city or town or the board of supervisors of a county that has established an airport and that has acquired, leased or set apart real property for an airport may either:

1. Construct, improve, equip, maintain and operate it.

2. Vest jurisdiction for the construction, improvement, equipment, maintenance and operation of the airport in a suitable officer, board or body of the city, town or county.

B. Expenses of construction, improvement, equipment, maintenance and operation are a city, town or county charge.

C. A city, town or county to which this article applies may annually appropriate and cause to be raised by taxation monies sufficient to carry out this article.

§ 28–8419. **Rules; airport fees and charges; limitation**

A. The department, in the operation and maintenance of the grand canyon national park airport, and the governing body of a city or town or the board of supervisors of a county may adopt rules and establish fees or charges for use of airport facilities.

B. The governing body of a city or town or the board of supervisors of a county may authorize an officer, board or body of the city, town or county to adopt rules and establish fees and charges, subject to approval by the governing body before the fees and charges are effective.

C. This section does not:

1. Authorize the governing body of a city or town or the board of supervisors of a county to restrict or limit the length or width of an airstrip or runway used for the landing and takeoff of aircraft, and any such restriction or limitation is void.

2. Affect the zoning authority of counties, cities or towns pursuant to other provisions of law.

§ 28-8420. **Agreements; joint airport operations**

The department, in the operation and maintenance of the Grand Canyon national park airport, or a city, town or county may enter into agreements on terms the director or the governing body deems advisable with agencies of the United States or with a person, firm or corporation engaged in the air transportation industry for the establishment, construction, operation or maintenance of airports and incidental uses either by the department, by the city, town or county or by the other contracting party.

§ 28-8421. **Exercise of powers**

The powers, rights and authority granted by this article to a city, town or county may be exercised by either:

1. Two or more cities, towns or counties.

2. A joint powers airport authority formed pursuant to article 8 of this chapter, if in connection with the closing of a military facility.

3. This state and a city, town or county acting jointly, either within or outside the territorial limits of the city, town or county.

4. Either within or outside this state, by this state or by this state and a city, town or county of this state, acting jointly with another state or with another state and a city, town or county in such state if the laws of the other state permit the joint action.

§ 28-8422. **Adjoining state monies for airports**

A. This state or a county, city or town may spend monies received from an adjoining state for the purpose of enlarging, improving, maintaining, operating or equipping an existing airport in this state.

B. The department may enter into an agreement with an adjoining state for the acceptance, receipt and expenditure by the state, county, city or town of monies received from the adjoining state and for the joint exercise of power in the enlargement, improvement, maintenance, operation or equipment of an airport.

C. Monies received from an adjoining state shall be paid to the state, county, city or town under terms and conditions imposed by the laws of the adjoining state and of this state and by an agreement authorized by this section. An agreement made with an adjoining state under this section shall be submitted to the attorney general who shall determine whether the agreement is in proper form and is within the powers and authority of the laws of this state.

D. An agreement under this section does not relieve the state, county, city or town of any obligation or responsibility imposed on it by law.

E. The governing body of a city or town or board of supervisors of a county may designate the department as its agent to accept and receive monies pursuant to this section in its behalf and to enter into an agreement with an adjoining state on its behalf pursuant to this section.

§ 28-8423. **Airport land lease; nonprofit corporation**

A. If the department, in the operation and maintenance of the Grand Canyon national park airport, or if a city, town or county has leased or leases land owned by it to a nonprofit corporation for airport or air terminal purposes pursuant to a lease agreement that provides that title to all buildings, structures and additions made or added to the leased premises by the nonprofit corporation vests in the state, city,

town or county in the manner and subject to the restrictions contained in the agreement, the agreement as it exists or as it may be amended, renewed or extended is binding and effective pursuant to its terms.

B. An amendment, renewal or extension to the agreement is binding and effective if the agreement complies with section 28–8425, subsection A, paragraph 1 whether or not:

1. It resulted or results in a renewal or extension of the original term in excess of twenty-five years.

2. Any bidding, notice or other requirements of section 28–8425 have or have not been met.

§ 28–8424. Nonprofit corporation lessees; status; authority

A nonprofit corporation that is a lessee as provided in section 28–8423:

1. Is a validly organized and existing body politic and corporate exercising its powers for the benefit of the people, for the improvement of the people's health and welfare and for the increase of the people's traffic and prosperity.

2. Is engaged in a public purpose essential to transportation and communication.

3. Performs an essential governmental function as an agency or instrumentality of the city, town, county or state.

4. Is exempt from property taxation by this state or an agency of this state.

5. Possesses and may exercise police powers and other governmental powers on the terms, conditions, limitations, restrictions and agreements provided in the lease agreements.

6. May issue bonds, incur obligations and pledge its revenues as security for the payment of bonds and obligations for airport and air terminal purposes to the extent provided by the lease agreement as it exists or as it may be amended, without regard to any statutory limitation of indebtedness of corporations having authorized capital stock.

§ 28–8425. Lease authority; airport or air terminal purposes

A. The department, in the operation and maintenance of the Grand Canyon national park airport, or a city, town or county may lease land owned by it or under its control to a person, partnership, association or corporation for airport or air terminal purposes pursuant to a lease agreement that:

1. Provides that title to all buildings, structures and improvements added to the leased premises by the lessee vests in the department, city, town or county in the manner and subject to the restrictions contained in the lease.

2. As it exists or as it may be amended, is declared to be binding and effective pursuant to its terms.

3. Is for a term of not more than twenty-five years and may contain an option to renew the lease for an additional period of not more than twenty-five years.

4. Is let to the highest and best bidder.

B. In a county with a population of less than four hundred thousand persons, as determined by the most recent United States decennial census or the most recent special census as provided in section 28–6532, during the lease period the department or a city, town or county may extend the existing lease for an airport or airport terminal purposes with a person, partnership, association, corporation or political subdivision for an additional period of not more than twenty-five years after notice and a public hearing. The department or a city, town or county shall:

1. Publish a notice of intent to consider an extension of the lease twice in a daily or weekly newspaper of general circulation in the county. The notice shall contain

the name of the lessee, a description of the leased property, the current expiration date of the lease, the amount of time the lease is proposed to be extended and the date, time and place of the public hearing on the extension request.

2. Publish the first notice not more than thirty days before the date set for the public hearing.

3. Post a copy of the notice of the intent to extend the lease on the leasehold site and at five public places in the county.

4. Hold a public hearing on the extension request.

5. Grant the extension of an existing lease only if the department or a city, town or county determines that the extension request is in the best interest of the state, city, town or county and on a majority vote of the governing body acting on the request for an extension.

6. Grant a second and any subsequent extension request pursuant to this subsection only after bids are received that comply with subsections A and D of this section.

C. A notice of intent to lease land under this section shall be advertised twice in a daily or weekly newspaper of general circulation in the county. The first notice shall be published at least thirty days but not more than sixty days before the date set for the submission of bids. The department or a city, town or county may also publish the notice in any other newspaper that the department or city, town or county determines appropriate.

D. This section does not limit the application of section 28-8423.

§ 28-8426. Airport police; powers; qualifications

A. The governing body of a public airport operating pursuant to sections 28-8423 and 28-8424 may appoint one or more persons to be designated by the airport as airport police officers to aid and supplement the law enforcement agencies of this state in the protection of persons and property. While engaged in the conduct of this employment, an airport police officer possesses and shall exercise law enforcement powers of peace officers in this state.

B. A person appointed as an airport police officer under this section shall have the minimum qualifications established by the Arizona law enforcement officer advisory council for peace officers and police officers pursuant to section 41-1822. The airport shall file the name of each airport police officer on the date of the police officer's appointment with the director of the department of public safety.

C. If the appointee meets the minimum qualifications established by the Arizona law enforcement officer advisory council, the director of the department of public safety shall issue the appointee a certificate of authority to act as a peace officer. The director of the department of public safety may revoke a certificate for good cause shown.

§ 28-8427. Police aides

A. Whether or not airport police officers have been appointed pursuant to section 28-8426, the governing body may appoint unarmed airport police aides who are employed by the governing body.

B. The police aides:

1. Are authorized to enforce ordinances regulating the standing or parking of vehicles.

2. May commence an action or proceeding before a court having jurisdiction for any violation of the ordinances described in paragraph 1.

§ 28-8428. **Liability; airport police and aides**

A. The governing body of each airport appointing an airport police officer or airport police aide is liable for any and all acts of the airport police officer or airport police aide that are within the scope of the officer's or aide's employment.

B. This state or any political subdivision is not liable for any act or failure to act by an airport police officer or airport police aide, unless this state or a political subdivision is the governing body of the airport.

ARTICLE 7. AIRPORT ZONING AND REGULATION

§ 28-8461. **Definitions**

In this article, unless the context otherwise requires:

1. "Airport" means an area of land or water that is designed and set aside for the landing and taking off of aircraft and that is utilized or to be utilized in the interest of the public for those purposes.

2. "Airport hazard" means a structure, tree or use of land that obstructs the air space required for flight of aircraft in taking off or landing at an airport or that is otherwise hazardous to aircraft taking off or landing.

3. "Airport hazard area" means an area of land or water on which an airport hazard might be established if not prevented as provided in this article.

4. "Airstrip" means a strip of ground that is artificially or naturally surfaced and that is designed and used at an airport or landing field for the landing and takeoff of aircraft.

5. "Military airport" means an airport that is operated by the United States and that is primarily used for military fixed wing jet aircraft operations, excluding a runway or airstrip that is not immediately adjacent to facilities primarily used for operational control, maintenance and permanent parking of aircraft.

6. "Person" means an individual, firm, partnership, corporation, company, association, joint stock association or body politic, including any trustee, receiver, assignee or other representative of a trustee, receiver or assignee.

7. "Political subdivision" means a city, town or county.

8. "Runway" means an artificially surfaced strip of ground that is designed and used at an airport for the landing and takeoff of aircraft.

9. "Structure" means an object that is constructed or installed by a human including a building, tower, smokestack or overhead transmission line.

10. "Tree" means an object of natural growth.

§ 28-8462. **Airport hazard; public nuisance; prevention and elimination**

A. It is declared that:

1. The creation or establishment of an airport hazard is a public nuisance and a public injury to the community served by an airport.

2. It is necessary in the interest of the public health, public safety and general welfare that the creation or establishment of an airport hazard be prevented.

3. Prevention of an airport hazard should be accomplished to the extent legally possible by exercise of the police power without compensation.

B. The prevention of the creation or establishment of an airport hazard and the elimination, removal, alteration, mitigation or marking and lighting of an existing airport hazard are public purposes for which a political subdivision may raise and spend public monies and acquire land or interests in land.

§ 28–8463. **Acquisition of facilities or nonconforming property; exception**

A. If it is desired to remove, lower or otherwise terminate a nonconforming structure or use, if the approach protection necessary cannot be accomplished by airport zoning regulations under this article because of constitutional limitations or if it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the political subdivision within which the property or nonconforming use is located or the political subdivision owning the airport or served by it may acquire by purchase, grant or condemnation in the manner provided by law under which political subdivisions are authorized to acquire real property for public purposes the air right, navigation easement or other estate or interest in the property or nonconforming structure or use in question as necessary to fulfill the purposes of this article.

B. Land owned or held for use for and in connection with the transportation of United States mail and transportation of property in interstate commerce and all structures on the land are not subject to this article.

§ 28–8464. **Political subdivisions; airport zoning regulations**

To prevent an airport hazard, a political subdivision that has an airport hazard area within its territorial limits may adopt, administer and enforce airport zoning regulations for the airport hazard area, under the police power, in the manner and on the conditions prescribed in this section. The airport zoning regulations may:

1. Divide the area into zones.

2. Specify land uses permitted within the zones.

3. Regulate and restrict the height to which a structure may be erected or tree allowed to grow.

§ 28–8465. **Joint airport zoning board**

A. If an airport is owned or controlled by a political subdivision and an airport hazard area is located outside its territorial limits, the political subdivision that owns or controls the airport and the political subdivision within which the airport hazard area is located may establish a joint airport zoning board by ordinance or resolution that has the same power to adopt, administer and enforce airport zoning regulations applicable to the airport hazard area as that vested by section 28–8464 in the political subdivision within which the area is located.

B. The joint board consists of two representatives appointed by each political subdivision participating in its establishment and a chairman selected by a majority of the members who are appointed.

§ 28–8466. **Zoning regulations; relationships**

A. If a political subdivision has adopted or adopts a comprehensive zoning ordinance regulating the height of buildings, an airport zoning regulation applicable to the same area or portion of the same area may be:

1. Incorporated in and made a part of the comprehensive zoning regulation.

2. Administered and enforced in connection with the comprehensive zoning regulation.

B. If there is a conflict between an airport zoning regulation adopted under this article and another regulation applicable to the same area, the more stringent limitation or requirement governs and prevails, whether either:

1. The conflict is with respect to the height of structures or trees, use of land or any other matter.

2. The other regulation was adopted by the political subdivision that adopted the airport zoning regulations or by some other political subdivision.

§ 28–8467. **Airport zoning regulations; procedure; airport zoning commission**

A. In adopting, amending and repealing an airport zoning regulation under this article, the political subdivision or joint airport zoning board shall follow the procedure prescribed by law for the adoption, amendment and repeal of comprehensive zoning regulations.

B. Before the initial zoning of an airport hazard area under this article, the political subdivision or joint airport zoning board shall appoint an airport zoning commission. If a city planning commission or comprehensive zoning commission exists, that commission may be appointed as the airport zoning commission.

C. The airport zoning commission shall:

1. Recommend the boundaries of zones to be established and the regulations to be adopted for the zones.

2. Make a preliminary report and hold public hearings on the preliminary report before submitting a final report.

D. The political subdivision or the joint airport zoning board shall not hold a public hearing or take other action until it has received the final report of the airport zoning commission.

§ 28–8468. **Airport zoning regulations; criteria; limitations**

A. Airport zoning regulations adopted under this article shall be reasonable and shall not impose a requirement or restriction that is not reasonably necessary to effectuate the purposes of this article.

B. In determining what regulations it may adopt, a political subdivision and joint airport zoning board shall include the following in its consideration:

1. The character of the flying operations expected to be conducted at the airport.

2. The nature of the terrain within the airport hazard area.

3. The character of the neighborhood.

4. The uses to which the property to be zoned will be put and is adaptable.

C. An airport zoning regulation adopted under this article shall not:

1. Require the removal, lowering or other change or alteration of a structure or tree that does not conform to the regulation when it is adopted or amended.

2. Otherwise interfere with the continuance of a nonconforming use, except as provided by section 28–8472.

§ 28–8469. **Airport zoning regulations; administrative agency; duties**

A. Airport zoning regulations adopted under this article shall provide for the administration and enforcement of the regulations by either:

1. An administrative agency that may be an agency established by the regulations.

2. Any official, board or other existing agency of the political subdivision adopting the regulations.

3. One of the political subdivisions that participated in the establishment of the joint airport zoning board adopting the regulations, if satisfactory to that political subdivision.

B. The administrative agency shall not be or include a member of the board of adjustment.

C. The duties of an administrative agency designated pursuant to this article:

1. Include hearing and deciding applications for permits under section 28–8470.

2. Do not include exercise of a power delegated in this article to the board of adjustment.

§ 28–8470. **Permit**

A. An airport zoning regulation adopted under this article may require that a permit be obtained before a new structure or use may be constructed, established, substantially changed, altered or repaired.

B. The airport zoning regulation provided in subsection A shall also provide that before a nonconforming structure or tree may be replaced, substantially altered, repaired, rebuilt, allowed to grow higher or replanted, a permit shall be obtained from the administrative agency authorized to administer and enforce the regulation authorizing the replacement, change or repair.

C. A permit shall not be granted that will allow the establishment or creation of an airport hazard or permit a nonconforming structure or tree or nonconforming use to be made or become higher or a greater hazard to air navigation than it was when the applicable regulation was adopted or than it is when an application for a permit is made.

D. Except as provided in this section, all applications for permits shall be granted.

§ 28–8471. **Variance**

A. A person who wants to erect or increase the height of a structure, permit the growth of a tree or otherwise use the person's property in violation of an airport zoning regulation adopted under this article may apply to the board of adjustment for a variance from the airport zoning regulation in question.

B. A variance shall be allowed if a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest, would do substantial justice and would be in accordance with the spirit of the regulation and this article.

C. A variance may be allowed subject to any reasonable conditions the board of adjustment deems necessary to fulfill the purposes of this article.

§ 28–8472. **Permit; variance; condition; hazard indicators**

In granting a permit or variance under section 28–8470 or 28–8471, the administrative agency or board of adjustment, if it deems the action advisable to fulfill the purposes of this article and reasonable in the circumstances, may place a condition on the permit or variance that requires the owner of the structure or tree in question to permit the political subdivision, at its own expense, to install, operate and maintain markers and lights on the structure or tree as necessary to indicate the presence of an airport hazard.

§ 28–8473. **Airport zoning regulations; board of adjustment; powers; composition; proceedings**

A. Airport zoning regulations adopted under this article shall provide for a board of adjustment that exercises the following powers:

1. Hear and decide appeals from an order, requirement, decision or determination made by the administrative agency in the enforcement of the airport zoning regulations as provided in section 28–8474.

2. Hear and decide special exceptions to the terms of the airport zoning regulations on which the board may be required to pass under the regulations.

3. Hear and decide specific variances under section 28–8471.

B. If a zoning board of appeals or adjustment exists, it may be appointed as the board of adjustment. If not, the board of adjustment consists of five members who are appointed for a term of three years by the authority adopting the regulations and who may be removed by the appointing authority for cause, on written charges and after a public hearing.

C. The concurring vote of a majority of the members of the board of adjustment is sufficient to:

1. Reverse an order, requirement, decision or determination of the administrative agency.

2. Decide in favor of the applicant on any matter on which it is required to act under the airport zoning regulations.

3. Make variations in the regulations.

D. The board shall:

1. Adopt regulations in accordance with provisions of the ordinance or resolution by which it is established.

2. Hold meetings at the call of the chairman and at other times as the board determines.

3. Have the chairman, or in the chairman's absence, the acting chairman, administer oaths and compel the attendance of witnesses.

4. Hold only public hearings.

5. Keep minutes of its proceedings showing the vote of each member on each question, or if a member is absent or fails to vote, indicating that fact.

6. Keep records of its examinations and other official actions as public records and file them in the office of the board.

§ 28–8474. Board of adjustment; appeals

A. A person who is aggrieved or a taxpayer who is affected by a decision of an administrative agency made in the administration of airport zoning regulations adopted under this article, or a governing body of a political subdivision or a joint airport zoning board that is of the opinion that a decision of the administrative agency is an improper application of airport zoning regulations, may appeal to the board of adjustment authorized to hear and decide appeals from the decisions of the administrative agency.

B. An appeal taken under this section shall be taken within a reasonable time as provided by the rules of the board and by filing a notice of appeal specifying the grounds of the appeal with the agency from which the appeal is taken and with the board. The agency from which the appeal is taken shall immediately transmit to the board all papers constituting the record on which the action appealed from was taken.

C. An appeal stays all proceedings unless the agency from which the appeal is taken certifies to the board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would cause imminent peril to life or property. Proceedings shall not be stayed except by order of the board on notice to the agency from which the appeal is taken and for cause shown.

D. The board shall:

1. Fix a reasonable time for hearing appeals.

2. Give public notice and notice to the parties in interest.

3. Render a decision within a reasonable time.

E. On the hearing, a party may appear in person or by an agent or attorney.

F. In conformity with this article, the board may:

1. Reverse or affirm, wholly or partially, or modify the order, requirement, decision or determination that is appealed.

2. Make an appropriate order, requirement, decision or determination and for that purpose the board has all of the powers of the administrative agency from which the appeal is taken.

§ 28-8475. Appeals; superior court

A. A person who is aggrieved or a taxpayer who is affected by a decision of a board of adjustment, or a governing body of a political subdivision or a joint airport zoning board that is of the opinion that a decision of a board of adjustment is invalid, may file a verified petition in the superior court setting forth that the decision is invalid, wholly or partially, and specifying the grounds. The petition shall be filed within thirty days after the decision is filed in the office of the board.

B. On presentation of the petition, the court may allow a writ of certiorari directed to the board of adjustment to review the decision of the board. The allowance of the writ does not stay proceedings on the decision appealed from, but on application and on notice to the board and on good cause shown, the court may grant injunctive relief.

C. The board of adjustment is not required to return the original record acted on. It is sufficient for the board of adjustment to return certified or sworn copies of the record or parts of the record as may be called for by the writ. The return shall concisely set forth other facts that are material to show the grounds of the decision appealed from and shall be verified.

D. The court has exclusive jurisdiction to:

1. Affirm, modify or set aside the decision reviewed, wholly or partially.

2. If necessary, order further proceedings by the board of adjustment.

E. The court shall accept findings of fact by the board as conclusive if they are supported by substantial evidence. The court shall not consider an objection to a decision of the board unless the objection has been urged before the board, or if it was not urged, unless there are reasonable grounds for failure to do so.

F. The court shall not allow costs against the board of adjustment unless it appears to the court that the board of adjustment acted with gross negligence, in bad faith or with malice in making the decision that is appealed.

G. In a case in which the court holds that airport zoning regulations adopted under this article, although generally reasonable, interfere with the use or enjoyment of a particular structure or parcel of land to such an extent or are so onerous in their application to the structure or parcel of land as to constitute a taking of property in violation of the constitution of this state or the United States, the holding does not affect application of the regulations to other structures and parcels of land.

§ 28-8476. Violation; classification

A violation of this article or of a regulation, order or ruling made pursuant to this article is a class 3 misdemeanor. Each day a violation continues is a separate offense.

§ 28–8477. **Remedies**

A. The political subdivision or agency adopting airport zoning regulations under this article may institute in a court of competent jurisdiction an action to restrain, correct or abate a violation of this article, an airport zoning regulation adopted under this article or an order or ruling made in connection with the administration or enforcement of this article or the regulations.

B. The court shall award relief in an action brought under this section by injunction or otherwise as is proper to fully effectuate the purposes of this article and the regulations, orders and rulings made pursuant to this article.

§ 28–8478. **Resolutions; ordinances; vehicle operations in airports**

A. If an airport that is operated by a nonprofit corporation, as authorized by this article, is located outside the corporate limits of a city or town, the board of supervisors of the county in which the airport is located may adopt and enforce resolutions governing the parking and speed of motor vehicles, other than aircraft, at the airport. A resolution authorized by this subsection:

1. May restrict the operation of the motor vehicles to the portion of the airport designated by the nonprofit corporation for operation of the motor vehicles.

2. May restrict or prohibit the operation and parking of the motor vehicles on any part of the airport that is not designated by the nonprofit corporation for operation and parking.

3. Shall provide that the violation of the resolution is either a misdemeanor or a civil offense punishable as provided in the resolution.

B. If the airport is owned by a municipal corporation and leased to a nonprofit corporation, the legislative body of the municipal corporation shall concur in the enactment of the resolution authorized by subsection A by enacting an ordinance that provides that all violations of the resolution shall be enforced either:

1. Under the authority of the municipal corporation and prosecuted by the municipal corporation under procedures prescribed by the municipal corporation for prosecuting violations of similar ordinances.

2. By the authority of the county and prosecuted by the county in justice court.

C. If an airport that is operated by a nonprofit corporation, as authorized by this article, is located on land owned by a county, the governing body of the airport may adopt resolutions and enforce ordinances governing the parking and speed of motor vehicles, other than aircraft, at the airport. A resolution authorized by this subsection:

1. May restrict the operation of motor vehicles to the portion of the airport designated by the nonprofit corporation for operation of motor vehicles.

2. May restrict or prohibit the operation and parking of the motor vehicles on any part of the airport that is not designated by the nonprofit corporation for operation and parking.

3. Shall provide that the violation of the resolution is either a misdemeanor or a civil offense punishable as provided in the resolution.

D. The county board of supervisors shall concur in the adoption of the resolution authorized by subsection C by enacting the resolution as an ordinance. The county shall enforce all violations of the ordinance authorized by subsection C and prosecute the violations in justice court.

§ 28–8479. **Regulation; limitation**

A. This article does not authorize the governing body of a city or town or the board of supervisors of a county to restrict or limit the length or width of an airstrip

or runway used for the landing and takeoff of aircraft. Any such restriction or limitation is void.

B. This section does not affect the zoning authority of counties, cities or towns pursuant to other provisions of law.

§ 28-8480. Military airport continuation; land acquisition

In addition to authority granted pursuant to other provisions of law, a political subdivision may acquire, by exchange, purchase, lease, donation, devise or condemnation, land or interests in land for the continued operation of a military airport.

§ 28-8481. Planning and zoning; military airport operation compatibility

A. A political subdivision with territory in the vicinity of a military airport shall adopt land use plans and adopt and enforce zoning regulations to assure development compatible with the high noise and accident potential generated by military airport operations that have or may have an adverse effect on public health and safety.

B. A political subdivision shall adopt, administer and enforce the zoning regulations authorized by subsection A in the same manner as the comprehensive zoning ordinance of the political subdivision as provided by law, except that a variance shall not be granted without a specific finding that the purpose of military airport compatibility is preserved.

C. This section does not affect the existing authority of a political subdivision to plan and zone on the basis of noise or accident potential in the vicinity of an airport owned or controlled by the political subdivision.

D. A political subdivision shall notify a property owner who would be impacted by a high noise and accident potential zone identified by the land use plan or zoning regulations. The political subdivision shall send both:

1. A notice by first class mail to the property owner at the address shown on the records of the county assessor thirty days before final approval of the change in the land use plan or zoning regulation.

2. A notice by first class mail immediately following the final approval of such a change in the plan or regulation.

E. The property owner described in subsection D shall notify potential purchasers of the property and any potential lessees or renters of the impact described in subsection D.

ARTICLE 8. JOINT POWERS AIRPORT AUTHORITY

§ 28-8521. Joint powers airport authority; agreement; board of directors

A. In connection with the closing of a military facility, two or more cities, towns or counties may enter into an agreement to establish a joint powers airport authority. A board of directors shall operate and govern the airport authority. The board of directors is composed of persons appointed by the governing body of the cities, towns or counties that are members of the airport authority.

B. The agreement pursuant to this section shall specify the following:

1. The property to be owned and operated by the airport authority.

2. The appointment of members to the board of directors by each member of the airport authority.

3. The voting method of the board of directors, including whether the board members will have weighted or equal voting.

4. The method for adoption of the airport authority's annual operating budget by the members of the airport authority and the proportion of the airport authority's annual operating budget to be provided by each member, including any adjustment to the proportion if a member withdraws from the airport authority or another city, town or county subsequently joins the airport authority.

5. Termination of the airport authority and the disposal of property and indebtedness on the termination of the airport authority.

6. Procedures for withdrawals from and admissions to membership in the airport authority.

7. Amendments or modifications to the agreement.

8. The airport authority's fiscal year.

9. Other terms as the members of the airport authority deem necessary, appropriate or convenient.

C. The chairperson of the board of directors of the airport authority shall annually present a report of the activities of the airport authority to the house of representatives ways and means committee and the senate finance committee or their successor committees.

§ 28-8522. Joint powers airport authority classification

On its formation, the joint powers airport authority is all of the following:

1. A special purpose district for purposes of article IX, section 19, Constitution of Arizona.

2. A tax levying public improvement district for the purposes of article XIII, section 7, Constitution of Arizona.

3. A municipal corporation for all purposes, including the purposes of title 35, chapter 3, articles 3.2, 3.3, 4, 5 and 7.

§ 28-8523. Annual operating budget

A. Before June 1 or at an earlier time as may be specified in the agreement described in section 28-8521, the joint powers airport authority's board of directors shall recommend to the members of the airport authority an annual operating budget for the airport authority for the next fiscal year. Before the determination by the airport authority board of directors as to the amount of the budget allocation for each member that may require a levy of taxes, the airport authority board of directors shall take into account all revenues and fees of the airport and other monies legally available to fund the operations of the airport and airport authority.

B. The governing bodies of the airport authority's members, including any new members who are admitted pursuant to section 28-8526, shall approve and adopt, in the manner specified in the agreement described in section 28-8521, an operating budget for the airport authority before August 1 or at an earlier time as may be specified in the agreement described in section 28-8521.

§ 28-8524. Allocation of monies; sources; public hearing; reuse, development and capital improvement plans

A. Each member of the airport authority and any new member shall make a pro rata allocation of monies, as specified in the agreement described in section 28-8521, to the airport authority's operating budget from one or any combination of the following sources:

1. If the member is a city or town, either:

(a) An ad valorem tax levied by the governing body of the member within its jurisdiction.

(b) A transaction privilege tax levied by the governing body of the member within its jurisdiction.

2. If the member is a city, town or county, either:

(a) General monies of the member.

(b) Other monies legally available to the member.

B. The tax prescribed by subsection A of this section shall be designated as an airport authority tax. Any property tax levied pursuant to subsection A of this section shall be a secondary tax.

C. The governing body of each airport authority member shall hold a public hearing on both:

1. The question of whether to approve and adopt the annual operating budget of the airport authority.

2. The method of funding the member's annual budget allocation.

D. Notice of a public hearing held pursuant to this section shall be given in a newspaper of general circulation within the member's jurisdiction at least once a week for two weeks before the hearing.

E. On receipt of the recommendation of the airport authority board as to the budget allocation, each member shall consider the amount of monies legally available to it to fund its budget allocation before its determination of the amount of taxes it shall levy to meet its budget allocation.

F. The airport authority shall adopt and periodically amend a reuse and development plan and a capital improvements plan. Expenditures for or by the airport authority shall be both:

1. Consistent with the plans prescribed in this subsection.

2. Limited to those items that directly relate to or benefit the operation and development of the airport and the airport authority.

G. Any member of the airport authority that fails or refuses to approve and adopt the operating budget for the airport authority shall withdraw from membership in the airport authority as provided in section 28-8525. The remaining members and any new members of the airport authority are responsible for the total operating budget as adopted and shall make their allocation as prescribed in subsection A of this section.

§ 28-8525. Joint powers airport authority; withdrawal

A. If written notice to the members of the joint powers airport authority is given at least thirty days before an operating budget must be adopted, any member of the airport authority may withdraw from membership in the airport authority both:

1. For any reason specified in the agreement described in section 28-8521.

2. On final payment of its pro rata budget allocation for the airport authority's current fiscal year and its pro rata share of any outstanding obligations of the airport authority to which the withdrawing member has obligated itself.

B. Withdrawal from membership is effective on the date specified in the agreement described in section 28-8521, if any, but not later than the thirtieth day before an operating budget must be adopted.

C. Any obligations of the withdrawing member remain outstanding until fully paid and satisfied.

§ 28-8526. Joint powers airport authority; admission

A. On written request to the current members of the joint powers airport authority and on the approval, in the manner specified in the agreement described in

section 28–8521, of the current members of the joint powers airport authority before the adoption of the airport authority's operating budget for the next fiscal year but not before the operating budget is recommended by the board of directors, a city, town or county may be admitted to the airport authority.

B. Membership is effective on the receipt of the required approval.

§ 28–8527. **Joint powers airport authority; powers; duty**

A. Acting through its board of directors, the joint powers airport authority may:

1. Own, operate and maintain property and facilities related to aviation, air navigation and aerospace.

2. Own and lease property and facilities that are not related to aviation, air navigation and aerospace.

3. Prescribe user fees and charges.

4. Operate facilities and construct improvements.

5. If authorized by the members of the airport authority, exercise the right of eminent domain in the names of the members.

6. Engage employees and consultants.

7. Enter into contracts, leases and development agreements.

8. Enter into agreements with this state, any political subdivision of this state or the federal government.

9. Prepare and recommend annual operating budgets.

10. Borrow money and issue revenue and refunding bonds.

11. Sue and be sued.

12. Exercise incidental powers if necessary to the exercise of the powers prescribed in this article and articles 6 and 7 of this chapter.

B. A joint powers airport authority shall submit a written report annually to the joint legislative airport reuse of closed military facilities committee established by section 28–8528. The airport authority shall submit the first report one year after the date the airport authority is established. The report shall describe the activities of the airport authority.

§ 28–8528. **Joint legislative airport reuse of closed military facilities committee**

A. If a joint powers airport authority is established under this article, the president of the senate and the speaker of the house of representatives shall establish a joint legislative airport reuse of closed military facilities committee consisting of the following members:

1. The chairpersons of the house of representatives committees on transportation, ways and means and commerce or their successor committees.

2. The chairpersons of the senate committees on transportation, finance and commerce and economic development or their successor committees.

3. Five members of the senate who are appointed by the president of the senate, three of whom are members of the minority party.

4. Five members of the house of representatives who are appointed by the speaker of the house of representatives, three of whom are members of the minority party.

B. The joint legislative airport reuse of closed military facilities committee shall:

1. Select a chairperson from among its members.

2. Meet at least once each year and at additional times on the call of the chairperson or a majority of its members.

3. Review the report submitted pursuant to section 28-8527.

4. Make recommendations to the president of the senate, the speaker of the house of representatives and the board of directors of the joint powers airport authority to assist in the reuse of closed military facilities in this state.

§ 28-8529. **Financing authority**

A. Property, facilities or projects to be constructed or acquired by the joint powers airport authority may be financed from any source, including proceeds from the issuance by the airport authority of revenue bonds in the manner described in this article.

B. Bonds issued by the airport authority are not outstanding obligations of the airport authority until the bonds are issued and delivered.

§ 28-8530. **Revenue bonds; fees and charges**

A. The board of directors of the joint powers airport authority may pass a resolution to issue and sell airport authority revenue bonds.

B. If the revenue bonds are to be sold in a public offering, bonds may not be issued by the airport authority unless the bonds receive one of the four highest investment grade ratings by a nationally recognized bond rating agency.

C. The board of directors of the airport authority may pledge to the payment of its revenue bonds any revenues of the airport authority or revenues to be collected by the members of the airport authority in trust for the airport authority and returned to the airport authority.

D. The airport authority shall prescribe fees and charges and shall revise them as necessary to generate revenue sufficient to pay when due the principal and interest of all revenue bonds for the payment of which revenue has been pledged. The annual operating budget recommended by the airport authority shall identify the establishment or revision of any rates, fees and charges.

E. If in the resolution of the board of directors of the airport authority the revenues to be pledged are limited to certain types of revenues, only those types of revenues may be pledged and only those revenues must be maintained.

F. A holder of the revenue bonds issued under this section shall not compel either:

1. Any exercise of the taxing power of the airport authority, if any.

2. The members of the airport authority to pay the bonds or the interest on the bonds.

G. Revenue bonds issued under this section are not a debt of the airport authority or the members of the airport authority, and the payment of the revenue bonds is not enforceable out of any monies other than the revenue pledged to the payment of the bonds.

§ 28-8531. **Refunding bonds**

The airport authority may issue and sell refunding bonds to refund any airport authority revenue bonds.

§ 28-8532. **Bond terms**

A. With respect to bonds issued pursuant to this article, the board of directors of the joint powers airport authority shall:

1. Prescribe the denominations of the bonds, the size of each issue and the form of the bonds.

2. Establish the maturities, interest payment dates and interest rates, whether fixed or variable, not exceeding the maximum rate stated in the resolution of the board of directors of the airport authority.

B. The bonds may contain terms, conditions, covenants and agreements as the board of directors of the airport authority deems proper.

C. The bonds may be sold by competitive bid or negotiated sale for public or private offering at, below or above par. If the bonds are sold below par, the aggregate amount of discount and interest to be paid on the bonds shall not exceed the amount of interest that would have been payable on those bonds pursuant to the maturity schedule prescribed by the board of directors of the airport authority at the maximum rate provided in the bond resolution.

D. The proceeds of sales shall be deposited with the treasurer or with a trustee or agent designated by the board of directors of the airport authority to the credit of the airport authority to be withdrawn for the purposes provided by this article. Pending that use, the proceeds may be invested as determined by the airport authority.

§ 28–8533. **Bond validity**

A. A bond that is issued pursuant to this article and that bears the signature of officers in office on the date the bond is signed is a valid and binding obligation, notwithstanding that before delivery of the bond, any of the persons whose signatures appear on the bond have ceased to be officers of the joint powers airport authority.

B. A member of the board of directors of the airport authority or officer or employee of the airport authority is not personally liable on the bonds.

§ 28–8534. **Bonds; legal investments**

Bonds and refunding bonds issued pursuant to this article are:

1. Securities in which all of the following may properly and legally invest:

(a) Public officers and bodies of this state and of political subdivisions of this state.

(b) Companies, associations and other persons carrying on an insurance business.

(c) Financial institutions, investment companies and other persons carrying on a banking business.

(d) Fiduciaries.

(e) Other persons who are authorized to invest in government obligations.

2. Securities that may be deposited with public officers or bodies of this state and political subdivisions of this state for purposes that require the deposit of government bonds or obligations.

§ 28–8535. **Federal income tax considerations**

The joint powers airport authority may make any covenant, order any rebate, file any tax return, report any information and order the limitation on the yield of any investment made with the proceeds from the sale of its bonds or with taxes, revenues or other income pledged, held in trust or otherwise used to pay principal, interest and premium, if any, on its bonds in consideration for retaining the exclusion from gross income for federal income tax purposes of the interest income on any bond.

§ 28–8536. Bond proceeds; application

The joint powers airport authority may apply the proceeds from the sale of its bonds to further any of its lawful purposes, including to pay:

1. Costs and estimated costs of the issuance of the bonds.

2. Costs of feasibility studies.

3. Engineering, inspection, fiscal and legal expenses.

4. Costs of interest estimated to accrue on money borrowed or that will be borrowed as the board of directors may determine.

5. Reserve funds, including those for debt service and working capital.

6. Costs and fees related to credit enhancement.

7. Costs of the services of agents, consultants or experts retained or employed in planning, preparing, supervising, financing and completing the undertaking.

Sec. 4. Title 38, chapter 3, Arizona Revised Statutes, is amended by adding article 10, to read:

ARTICLE 10. DESIGNATION OF STATE AND POLITICAL SUBDIVISION MOTOR VEHICLES

§ 38–538. Designation of state and political subdivision motor vehicles; definition

A. Except as provided in section 38–538.03, a motor vehicle owned or leased for six months or more by this state shall:

1. Bear the designation "state of Arizona—(name of department or agency)" in letters that are at least one inch in height and that are placed on each side of the body of the motor vehicle.

2. Have placed above the legend appearing on each side of the motor vehicle in letters at least one inch in height the designation "for official use only".

B. A motor vehicle owned or leased for six months or more by a political subdivision of this state shall:

1. Bear the designation of the name of the political subdivision of this state and the department or agency of the political subdivision that owns or leases the motor vehicle in a visible manner as determined by the political subdivision.

2. Have placed on the motor vehicle in a visible manner as determined by the political subdivision the designation "for official use only".

C. For the purposes of this section, "political subdivision" includes an organization that is tax exempt as a political subdivision under the constitution or laws of this state.

§ 38–538.01. State and political subdivision vehicles; patterns and insignias; violation; classification

A. The state highway engineer shall approve a uniform pattern for use in the designation of state motor vehicles. A state agency or department may use a distinctive insignia, other than the uniform pattern, on approval of the insignia by the governor.

B. The governing body of each political subdivision shall approve a uniform pattern for use in designating the political subdivision motor vehicles.

C. A person who knowingly places a pattern or insignia approved for use as a designation for motor vehicles of this state or a political subdivision on a motor

vehicle not owned or leased by this state or a political subdivision is guilty of a class 2 misdemeanor.

§ 38–538.02. Use of state motor vehicles; personal vehicle reimbursement; definition

A. A motor vehicle owned or leased by this state shall not be provided to an employee, including an elected official, for the employee's personal use except as provided in subsection D of this section.

B. This state shall restrict the use of all motor vehicles owned or leased by it for motor pool use only. An employee may use a motor vehicle in the motor pool for business purposes only.

C. Reimbursement for travel for business purposes with an employee's own motor vehicle shall only be based on actual miles traveled.

D. This section does not apply to a person who is exempt under section 38–538.03.

E. For purposes of this section, "use for business purposes" does not include normal commuting to and from the employee's residence at any time unless the employee is on duty or on call for duty during the time that the employee is at the employee's residence.

§ 38–538.03. Exemptions

A. This article does not apply to a motor vehicle designated for the use of the governor.

B. The head of a state department or agency with the power and duty to conduct rehabilitation or social service programs, felony investigations or activities of a confidential nature may apply to the governor, or the head of a department or agency of a political subdivision may apply to the governing body of the political subdivision, for an exemption from this article for a motor vehicle used in this service. The application shall state the nature of the service and the year, make, model and identification number of the motor vehicle and shall provide other information the governor or political subdivision governing body requires. The governor or political subdivision governing body may grant the exemption for not more than one year.

§ 38–538.04. Violation; classification

Failure to comply with this article is a class 2 misdemeanor unless another classification is specifically prescribed in this article.

Sec. 5. Title 41, chapter 12, article 3, Arizona Revised Statutes, is amended by adding sections 41–1752 through 41–1755, to read:

§ 41–1752. Arizona highway patrol fund

A. An Arizona highway patrol fund is established in the state treasury.

B. The Arizona highway patrol fund consists of:

1. Monies distributed to the fund from the Arizona highway user revenue fund by the legislature subject to section 28–6537.

2. Miscellaneous service fees.

3. Rewards.

4. Awards.

5. Insurance recoveries.

6. Receipts from the sale or disposal of any property held by the Arizona highway patrol or purchased with Arizona highway patrol monies.

7. Monies received from the public safety personnel retirement system pursuant to section 20-224.01.

C. The patrol superintendent shall administer and spend monies in the Arizona highway patrol fund in conformity with the laws governing state financial operations.

D. Monies in the Arizona highway patrol fund:

1. Do not revert to the state general fund or Arizona highway user revenue fund.

2. Are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

E. Monies in the Arizona highway patrol fund shall be used to administer the provisions of law relating to the highway patrol and the Arizona highway patrol reserve and all matters pertaining to those laws, except that monies received pursuant to subsection B, paragraph 7 of this section shall be used for the department of public safety.

§ 41-1753. Limitation on number of highway patrol officers

There shall not be more than one highway patrol officer for each two thousand five hundred motor vehicles or fraction of that number of motor vehicles registered in this state during the preceding calendar year.

§ 41-1754. Impersonation of highway patrol officer; classification

A person is guilty of a class 1 misdemeanor who either:

1. Without authority, wears the badge of a member of the highway patrol or a badge of similar design that would tend to deceive.

2. Impersonates a member of the highway patrol with the intent to deceive.

§ 41-1755. Protection for governor

The director of the department of public safety shall provide transportation, security and protection for the governor and security and protection for the governor's family to the extent and in the manner the director of the department of public safety and the governor deem appropriate and adequate.

Sec. 6. Title 41, chapter 12, Arizona Revised Statutes, is amended by adding article 10, to read:

ARTICLE 10. LAW ENFORCEMENT MERIT SYSTEM COUNCIL

§ 41-1830.11. Law enforcement merit system council; composition

A. The governor shall appoint a law enforcement merit system council. The council consists of three persons chosen on the basis of experience in and sympathy with merit principles of public employment. The members of the council shall not have held elective public office within one year before appointment and shall not hold any other political office while serving on the council.

B. The governor shall fill a vacancy on the same basis as the original appointment.

C. Members of the council are not eligible to receive compensation for their services.

D. A member serves for a term of six years. The governor may remove a member only for cause.

E. The chairman of the council serves as an ex officio member of the state personnel board without voting privileges.

§ 41–1830.12. **Law enforcement merit system council; duties; authority; rules**

A. The law enforcement merit system council shall:

1. Select a chairman and secretary.

2. Hold meetings necessary to perform its duties on call of the chairman.

3. Pursuant to recognized merit principles of public employment, periodically:

(a) Classify or reclassify all positions in the department of public safety from a list of necessary employees prepared by the director of the department of public safety.

(b) Establish standards and qualifications for all classified positions.

(c) Provide a plan for fair and impartial selection, appointment, retention and separation or removal from service by resignation, retirement or dismissal of all classified employees.

4. Adopt rules for hours of employment, annual and sick leave and special leaves of absence, with or without pay or with reduced pay.

5. Pursuant to recognized merit principles, hear and review appeals from any order of the director of the department of public safety in connection with suspension, demotion or dismissal of a classified employee. The council's determination is final, except on appeal as provided in section 41–1830.13.

6. Prepare an annual recommendation to the legislature and joint legislative budget committee of a salary plan and adjustments to the plan for employees subject to the jurisdiction of the law enforcement merit system council. The council shall make the recommendation on or before December 1 of each year. The council shall transmit the recommendation to the legislature and joint legislative budget committee through the department of administration.

B. The council may meet with the state personnel board to discuss matters of mutual concern.

C. The rules provided under subsection A, paragraph 4 of this section shall provide for the transfer of accumulated annual leave from one employee to another employee in the same agency. The transfers may occur if the employee to whom the leave is transferred has a seriously incapacitating and extended illness or injury that is not job related or a member of the employee's immediate family has a seriously incapacitating and extended illness or injury and the employee has exhausted all available leave balances. Transferred annual leave shall be increased or reduced proportionally by the difference in the salaries of the employees as determined by a rule of the council.

§ 41–1830.13. **Appeal right; reinstatement**

A. A classified employee who is suspended, demoted or dismissed pursuant to this article, after a fair hearing and review before the law enforcement merit system council and confirmation of the suspension, demotion or dismissal by the agency head, may appeal the determination of the council pursuant to title 12, chapter 7, article 6.

B. If the court overrules the determination of the council, the employee shall be reinstated in his position and shall receive full compensation for any salary withheld pending the determination by the council and court.

§ 41-1830.14. Status of persons employed before merit system institution

All employees of the department on November 22, 1948 shall continue in their respective positions without examination, until removed from the positions under the provisions of the merit system established pursuant to this article.

Sec. 7. Title 48, Arizona Revised Statutes, is amended by adding chapters 29 and 30, to read:

CHAPTER 29

REGIONAL PUBLIC TRANSPORTATION AUTHORITY

ARTICLE 1. GENERAL PROVISIONS

§ 48-5101. Definitions

In this chapter, unless the context otherwise requires:

1. "Authority" means a regional public transportation authority organized under this chapter.

2. "Board" means the board of directors of a regional public transportation authority.

3. "Fiscal agent" means a bank or trust company authorized to do business in this state or the county treasurer as designated by the board.

4. "Municipality" means an incorporated city or town.

5. "Operating area" means the area in which the authority provides transportation service, the boundaries of which are established pursuant to this chapter.

6. "Population" means the population determined in the most recent United States decennial census or the most recent special census as provided in section 28-6532.

7. "Public agency" includes this state and any county, city, town, district or other public agency or entity established under the laws of this state or the federal government.

8. "Public transportation" means local transportation of passengers by means of a public conveyance.

§ 48-5102. Regional public transportation authority in counties with population of one million two hundred thousand or more persons; establishment

A. Beginning January 1, 1986, a regional public transportation authority is established in a county that has a population of one million two hundred thousand or more persons and that approves a transportation excise tax under section 42-1482.

B. An authority is a tax levying public improvement district for all purposes of article XIII, section 7, Constitution of Arizona, and has the powers, privileges and immunities specifically granted by law. The authority's property, bonds, debts and other obligations and interest on and transfer of its bonds and obligations are free from taxation.

C. The authority may operate both within and outside the corporate limits of the member municipalities.

§ 48-5103. Public transportation fund

A. A public transportation fund is established for the authority. The fund consists of:

1. Monies appropriated by each municipality that is a member of the authority or the county, if it elected to enter into the authority. Each member municipality and

member county shall appropriate monies to the public transportation fund in an amount determined by the board.

2. Monies appropriated by a county that has not elected to enter into the authority in an amount determined by the county board of supervisors.

3. Transportation excise tax revenues that are allocated to the fund pursuant to section 42–1482.01, subsection C.

4. Monies distributed under title 28, chapter 17, article 1.

5. Grants, gifts or donations from public or private sources.

6. Monies granted by the federal government or appropriated by the legislature.

7. Fares or other revenues collected in operating a public transportation system.

8. Local transportation assistance monies that are distributed to each member under section 28–8102 and as provided in section 48–5104.

9. Local transportation assistance monies that are distributed to a member pursuant to section 28–8102 and that must be used for public transportation.

10. After the first June 30 following voter approval of the tax as provided in section 42–1482.01, monies appropriated for public transportation by each municipality that is a member of the authority shall not be less than the total amount of general monies spent for public transportation in that municipality for fiscal year 1984–1985 adjusted by the annual percentage change for the previous calendar year in the GDP price deflator as defined in section 41–563.

B. On behalf of the authority, the fiscal agent shall administer monies paid into the public transportation fund. Monies in the fund may be spent pursuant to or to implement the regional public transportation system plan adopted pursuant to section 48–5121.

C. Monies in the fund shall not be spent to promote or advocate a position, alternative or outcome of an election, to influence public opinion or to pay or contract for consultants or advisors to influence public opinion with respect to an election regarding taxes or other sources of revenue for the fund or regarding the regional public transportation system plan, except that monies may be spent:

1. In the manner authorized by this section to determine public opinion before the election is called.

2. To print, publish and distribute publicity pamphlets as required by law containing arguments favoring and opposing issues presented in the election.

§ 48–5104. Municipality and county participation; withdrawal

A. A municipality located in a county eligible to establish an authority may elect to enter into the authority by adopting an ordinance declaring its participation. If an ordinance is adopted, the municipality shall annually apply for monies from the local transportation assistance fund as provided in section 28–8102 and shall use a portion of the local transportation assistance monies for public transportation each fiscal year.

B. If a municipality with a population of less than sixty thousand persons is unable to use three-fourths of its local transportation assistance monies for public transportation each fiscal year, it shall appropriate any remaining amount of the three-fourths of its local transportation assistance monies to the public transportation fund as provided in section 48–5103. If a municipality with a population of sixty thousand persons or more is unable to use one-third of its local transportation assistance monies for public transportation each fiscal year, it shall appropriate any remaining amount of the one-third of its local transportation assistance monies to the public transportation fund as provided in section 48–5103.

C. The county may elect to enter into the authority by adopting a resolution declaring its participation. The county shall represent persons residing in the unincorporated areas of the county.

D. A member municipality or member county may withdraw from the authority at the end of a fiscal year by adopting an ordinance or resolution not later than ninety days before the end of the fiscal year that states its intention to withdraw. The withdrawal from the authority shall not result in the cancellation of a contractual agreement entered into between the withdrawing member and the authority.

§ 48–5105. Board of directors

A. A board composed of the following members shall govern the authority:

1. From each municipality that enters into the authority, one elected official who is appointed by the respective governing body of the municipality.

2. One county supervisor who is appointed by the county board of supervisors, if the county enters into the authority.

B. The term of each member is two years unless the member is no longer serving in his elected capacity, in which case the membership is vacant. The respective governing body shall fill a vacancy under subsection A of this section.

C. Each municipality or county may provide for an alternate board member who is also an elected official. Section 11–211, subsection A does not apply to a county supervisor serving on the board. If an elected official of a municipality is prohibited from serving on the board, the governing body of the municipality shall appoint an official of the municipality who is not prohibited from serving on the board.

D. The voting members of the authority are entitled to one vote for each member unless a voting member requests a weighted vote. If a weighted vote is requested, the following apply:

1. Each member of the board is entitled to a percentage vote based on the proportion of the population the member represents to the total population represented by all members of the board, except as provided in paragraph 4 of this subsection.

2. If a municipality is a member of the board, its proportion of the population shall be calculated on the basis of the population in the incorporated area of the municipality.

3. If the county is a member of the board, its proportion of the population shall be calculated on the basis of the population in the unincorporated area of the county.

4. The weighted vote of any single member shall not exceed forty per cent of the total weighted vote. If any member's proportion of the population as calculated in this subsection entitles it to a weighted vote in excess of forty per cent, the limitation on its percentage does not affect the calculation of the weighted vote of each other member.

E. For the purpose of preliminary approval of a regional public transportation system plan, the voting provisions of subsection D of this section apply, except that if a weighted vote is requested, in addition to the provisions provided in subsection D of this section relating to a weighted vote, a minimum of one-third of the voting members is also required for preliminary approval of the plan.

ARTICLE 2. PLANNING

§ 48–5121. Regional public transportation system plan

A. In counties with a population of one million two hundred thousand persons or more, the board shall develop a regional public transportation system plan.

B. Among other things, the regional public transportation system plan shall:

1. Define and identify regional public transportation corridors.

2. Define the public transportation problems, goals and needs for each corridor.

3. Define land use goals.

4. Determine environmental, economic, energy and social policies to guide public transportation investment decisions.

5. Order the priority of regional public transportation corridors for development.

6. Determine the mix of alternative public transportation modes appropriate for development in light of the public transportation goals and needs for each corridor.

7. Select appropriate public transportation technology including high occupancy vehicle lanes and related facilities.

8. Determine the capacity for exclusive public transportation technology.

9. Determine operating performance criteria and costs for public transportation systems.

10. Locate routes and access points to the public transportation systems.

11. Determine the ridership of public transportation systems.

C. The regional public transportation system plan shall include, in addition to the appropriate items prescribed in subsection B of this section, the following items presented on an individual fiscal year basis:

1. The capital and operating costs of the planned regional public transportation system.

2. The revenue needed by source, according to section 48–5103, to fund the regional public transportation system plan.

D. The plan may include as a proposed source of revenue a tax levied pursuant to section 42–1482.01.

E. If the plan includes a rail component and if the board adopts estimates of capital and maintenance and operation costs of the rail system, each member municipality in which the rail system is constructed shall pay to the public transportation fund amounts by which the actual capital, maintenance and operation costs exceed the estimated costs by more than fifteen per cent, computed in constant dollars. The excess costs shall be allocated among the affected member municipalities according to the proportion of the rail system facilities that are located in each municipality. The affected member municipalities shall:

1. Pay the monies from their respective general funds to the public transportation fund in the fiscal year following the fiscal year in which the excess costs were incurred.

2. Not pay to the public transportation fund under this subsection monies that it received from any source pursuant to title 28.

3. Not reduce its support of transportation projects funded by any source pursuant to title 28 in order to make payments under this subsection.

F. The board may modify the regional public transportation system plan to reflect changes in population density or technological advances in the approved public transportation modes. A majority of the members of the board voting at a public hearing called for that purpose must approve a modification to the plan.

§ 48–5122. Board powers and duties

The board shall:

1. Determine the exclusive public transportation systems to be acquired and constructed, the means to finance the systems and whether to operate the systems or to let contracts for their operation.

2. Adopt an annual budget and fix the compensation of its employees.

3. Adopt an administrative code by ordinance that:

(a) Prescribes the powers and duties of the employees of the authority that are not inconsistent with this chapter.

(b) Prescribes the method of appointing board employees.

(c) Prescribes methods, procedures and systems of operating and managing the board.

(d) May provide for, among other things, appointing a general manager and organizing the employees of the board into units for administration, design and construction, planning and operation, property acquisition and community relations and other units as the board deems necessary.

4. Cause a postaudit of the financial transactions and records of the board to be made at least annually by a certified public accountant.

5. Adopt all ordinances and make all rules proper or necessary to:

(a) Regulate the use, operation and maintenance of its property and facilities, including its public transportation systems and related transportation facilities and services operating in its area of jurisdiction.

(b) Carry into effect the powers granted to the board.

6. Appoint advisory commissions as it deems necessary.

7. Do all things necessary to carry out the purposes of this chapter.

§ 48–5123. Contracts; eminent domain

A. The board may contract and enter into stipulations of any nature and do all acts necessary and convenient for the full exercise of the powers granted in this chapter, except that the board shall not exercise the power of eminent domain.

B. The cities and towns or county may exercise the right of eminent domain pursuant to title 12, chapter 8, article 2 for the purposes prescribed in this chapter, in behalf of the authority, and sell or lease to the authority any property acquired through eminent domain proceedings.

ARTICLE 3. REGIONAL BUS SYSTEM

§ 48–5141. Regional bus system

A. The board shall establish and operate a regional bus system. The monies distributed under section 28–6305, subsection C shall be spent for incremental increases in a regional bus system and for community funded transportation services including dial-a-ride programs and special needs transportation services and shall not be used to supplant any existing sources of monies currently being used in operating an existing bus system. The monies shall only be spent for community funded transportation services including dial-a-ride programs and special needs transportation services and to establish and operate a regional bus system, including extending existing bus routes into regional routes, adding new regional routes, increasing the service on existing regional routes and capital expenditures.

B. The board may contract with a public agency or with a person on the terms and conditions the board finds in its best interest to operate a regional bus system.

ARTICLE 4. FINANCING

§ 48–5161. Definitions

In this article, unless the context otherwise requires:

1. "Any public transportation purpose" includes any one or more of the following purposes:

(a) The payment of public transportation obligations.

(b) The cost of acquiring, constructing, reconstructing, equipping, maintaining and repairing a public transportation system.

(c) The acquisition of real property for public transportation needs.

(d) The payment of bond related expenses.

2. "Bond related expenses" means expenses incurred by the authority to issue and administer its bonds, including underwriting fees and costs, trustee fees, financial consultant fees, printing and advertising costs, paying agent fees, transfer agent fees, legal, accounting, feasibility consultant and other expert fees and expenses, cost of credit enhancement fees, attorney and accounting fees and expenses related to credit enhancement, bond insurance or liquidity enhancement, remarketing fees, rating agency fees and costs, travel and telephone expenses and all other fees deemed necessary by the board in order to market and administer the bonds.

3. "Bonds" means bonds of the authority issued pursuant to this article.

4. "Real property for public transportation needs" means real property and any appurtenances to the real property that are designated or may be designated by the board as a location for the construction of a public transportation system project, including all lands or interests in lands, the use or occupancy of which are necessary or appropriate in the construction, reconstruction, repair, maintenance, extension, development, improvement or operation of public transportation facilities and improvements.

§ 48–5162. Bond authority

Subject to this article the board may:

1. Issue negotiable bonds in a principal amount that, in the opinion of the board, is necessary to provide sufficient monies for any public transportation purpose, to establish reserves to secure the bonds and to provide for the payment of all other expenditures of the board incidental, necessary and convenient to carry out these purposes.

2. Issue refunding bonds if the board deems refunding expedient.

3. Refund any bonds issued by the board if the bonds are secured from the same source of revenues as the bonds authorized in this article by the issuance of new bonds, whether or not the bonds to be refunded have matured.

4. Issue bonds partly to refund bonds then outstanding and partly for any public transportation purpose consistent with this article. Regardless of whether or not the bonds are of such form or character as to be negotiable instruments under the terms of the uniform commercial code, the bonds are fully negotiable within the meaning and for all purposes of the uniform commercial code.

§ 48–5163. Bond requirements

The bonds authorized by this article shall:

1. Be authorized by resolution of the board.

2. Bear such date or dates and shall mature at such time or times as the resolution or resolutions may provide.

3. If the transportation excise tax has a final termination date, mature at or before the final termination date.

4. Bear interest at such rate or rates, whether fixed or variable, be in such denominations, be in such form, be executed in such manner, be payable in such

medium of payment at the office of the fiscal agent or at such other place or places and be subject to such terms of redemption as the resolution or resolutions may provide.

5. Be sold at public or private sale at the price and on the terms the board determines, except that bonds to fund or refund other bonds may be either sold or exchanged with the holders of bonds being funded or refunded on terms the board determines.

§ 48–5164. Bond payment; security

In connection with the issuance of the bonds authorized by this article to secure the payment of the bonds and interest on the bonds, the board by resolution may:

1. Provide that bonds issued under this article may be secured by a first lien on all or any part of the monies paid into the public transportation fund from the transportation excise tax provided in section 42–1482.01.

2. Establish and segregate one or more bond accounts in the public transportation fund to set aside monies to be used to pay principal, interest and premium, if any, on the bonds and provide conditions and terms for the use of the accounts.

3. Pledge and assign to or in trust for the benefit of the holder or the holders of the bonds all or any part of the monies that are paid into the public transportation fund from the transportation excise tax pursuant to section 42–1482.01 and that will be necessary to pay the principal of and interest on the bonds as the bonds become due.

4. Set aside, regulate and dispose of reserves and sinking funds.

5. Provide that sufficient amounts of the proceeds from the sale of the bonds may be used to fully or partly fund all reserves or sinking funds set up in the bond resolution.

6. Prescribe the procedure, if any, by which the terms of a contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent to and the manner in which the consent may be given.

7. Provide for payment of bond related expenses from the proceeds of the sale of the bonds or other monies available to the authority.

8. Do any other matters, of like or different character, that may in any way affect the security and protection of the bonds or affect interest on the bonds.

§ 48–5165. Pledges; liens

A. A pledge made pursuant to this article is valid and binding from the time when the pledge is made. The monies pledged pursuant to this article and placed in a bond account of the public transportation fund are immediately subject to the lien of the pledge without any future physical delivery or further act.

B. A lien of any pledge is valid or binding against all parties having claims of any kind in tort, contract or otherwise against the board, regardless of whether the parties have notice. When placed in the records of the board, the official resolution or trust indenture or any instrument by which this pledge is created is notice to all concerned of the creation of the pledge, and these instruments are not required to be recorded in any other place to perfect the pledge.

§ 48–5166. Liability; bond validity

A. The members of the board or a person executing the bonds is not personally liable for the payment of the bonds.

B. The bonds are valid and binding obligations of the authority notwithstanding the fact that before the delivery of the bonds any of the officers whose signatures appear on the bonds cease to be officers of the authority.

C. From and after the sale and delivery of the bonds, the bonds are incontestable by this state, the county or the authority.

§ 48–5167. **Bond purchase; cancellation**

The board may purchase bonds out of any monies available and cancel these bonds.

§ 48–5168. **Financial interest prohibited; violation; classification**

A. A member of the board or an employee of the authority shall not have a financial interest in any real property for public transportation needs that is purchased from monies made available by the issuance of bonds.

B. A person who violates this section is guilty of a class 2 misdemeanor.

§ 48–5169. **Public transportation bond proceeds fund**

A. The public transportation bond proceeds fund is established. After deducting the necessary costs and expenses of the issuance and sale of the bonds, the authority shall promptly transfer the proceeds received from the sale and delivery of the bonds to the fiscal agent for deposit in the public transportation bond proceeds fund. The fiscal agent shall maintain the fund separate and apart from all other funds, except that the authority's treasurer or fiscal agent shall first apply those amounts of the bond proceeds provided in the resolution issuing the bonds to all reserve and sinking funds created in the bond resolution. The authority may spend monies in the fund for any public transportation purpose not inconsistent with the resolutions authorizing the bonds.

B. The board may order the investment of monies in any of the following:

1. The public transportation bond proceeds fund by the fiscal agent in United States treasury obligations.

2. Interest bearing United States bonds.

3. Consolidated farm loan bonds.

4. Obligations issued by the federal intermediate credit banks or by banks for cooperatives on the authority of the farm act of 1933 and any other obligations guaranteed by the United States government.

5. Any investments that are authorized by any other agencies of the United States government and that are now authorized for use to secure public deposits or state, county or municipal bonds issued in this state on which the payments of interest have not been deferred.

C. The order directing the fiscal agent to invest the monies shall provide the approximate time when the proceeds from the sale of the bonds shall be used for the purposes directed in the bond resolution, and the fiscal agent shall invest the proceeds from the sale of the bonds prescribed in subsection B in such a way as to mature at the specified date.

D. The board shall use the monies or securities in the public transportation bond proceeds fund solely for the purposes provided in the bond resolution, except that, if the revenues pledged to secure the bonds ever are insufficient to pay the annual principal and interest on the bonds, the board shall order:

1. The liquidation of the securities remaining in the fund.

2. The fiscal agent to apply all such monies in the fund as necessary to make current all payments then due on the bonds.

E. Title 35, chapter 3, article 7 applies to the bonds and the authority.

§ 48–5170. Regional public transportation authority monies; treasurer; investments

A. Monies derived from the sale of bonds issued under this article or pledged or assigned to or in trust for the benefit of the holder or holders of the bonds:

1. Are not required to be paid into the state or county treasury.

2. May be held, deposited or invested by a treasurer or fiscal agent who the authority may appoint.

3. May be invested in obligations issued or guaranteed by the United States or any department, agency or instrumentality of the United States or shall be deposited by the treasurer or other fiscal officer of the board in the banks or trust companies as designated by the board and shall be secured by obligations of the United States.

4. Shall be disbursed as the board may direct and according to the terms of any agreements with the holder or holders of any bonds.

B. This section does not limit the power of the board to agree in connection with the issuance of any of its bonds as to the custody and disposition of the monies received from the sale of the bonds or from the income and revenues pledged or assigned to or in trust for the benefit of the holder or holders of the bonds.

§ 48–5171. Agreement of state

A. This state pledges to and agrees with the holders of the bonds that this state will not limit or alter the rights vested in the board to collect the revenues pledged for repayment of the bonds as may be necessary to produce sufficient revenue to fulfill the terms of any agreements made with the holders of the bonds or in any way impair the rights and remedies of the bondholders, until all bonds issued under this article, interest on the bonds, interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders are fully met and discharged.

B. The board as agent for this state may include this pledge and undertaking by this state in its resolutions and indentures securing its bonds.

§ 48–5172. Taxation exemption

The board is regarded as performing a governmental function in carrying out the purposes of this article and is not required to pay taxes or assessments on any of the property acquired or constructed or on the activities of the board in maintaining and caring for the real property or in the monies derived from the real property. The bonds, their transfer and the income from the bonds are at all times free from taxation in this state.

§ 48–5173. Attorney general bond certification

A. The board may submit to the attorney general any bonds to be issued under this article after all proceedings for the authorization of the bonds have been taken. On the submission of the proceedings to the attorney general, the attorney general shall investigate and determine the validity of the bonds and the regularity of all proceedings in connection with the issuance.

B. If the proceedings conform to this article and if the bonds when delivered and paid for will constitute binding and legal obligations of the board enforceable according to the terms of the bonds, the attorney general shall certify in substance on the back of each of the bonds that it is issued in accordance with the constitution and laws of this state.

§ 48–5174. **Bond obligations of the board**

A. Bonds issued pursuant to this article:

1. Are obligations of the board issuing the bonds.

2. Are payable only pursuant to the terms of the bonds.

3. Are not obligations that are general, special or otherwise of this state.

4. Are not a legal debt of this state.

5. Are not enforceable against this state.

B. Payment of the bonds issued pursuant to this article is not enforceable out of any monies of the authority other than the income and revenue pledged and assigned to or in trust for the benefit of the holder or holders of the bonds.

§ 48–5175. **Bonds; legal investments**

Bonds issued under this article are made securities:

1. In which all of the following may properly and legally invest monies including capital in their control or belonging to them:

(a) Public officers and bodies of this state.

(b) Municipalities and political subdivisions of this state.

(c) Insurance companies and associations and other persons carrying on an insurance business.

(d) Banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business.

(e) Administrators, guardians, executors, trustees and other fiduciaries.

(f) Other persons authorized to invest in bonds or other obligations of this state.

2. That may be deposited with and may be received by all public officers and bodies of this state and all municipalities and political subdivisions of this state for any purpose for which the deposit of bonds or other obligations of this state is authorized.

CHAPTER 30

REGIONAL TRANSPORTATION AUTHORITY

ARTICLE 1. GENERAL PROVISIONS

§ 48–5301. **Definitions**

In this chapter, unless the context otherwise requires:

1. "Arterial street or highway" means a street or highway that is used primarily for through traffic such that vehicular traffic from intersecting streets and highways is required by law to stop or yield before entering or crossing the street or highway.

2. "Authority" means a regional transportation authority organized under this chapter.

3. "Board" means the board of directors of a regional transportation authority established pursuant to section 48–5303.

4. "Controlled access highway" has the same meaning prescribed in section 28–2001.

5. "County" means a county with a population of more than four hundred thousand but less than one million two hundred thousand persons.

6. "Fiscal agent" means a bank or trust company authorized to do business in this state or the county treasurer as designated by the board.

7. "Municipality" means an incorporated city or town.

8. "Population" means the population determined in the most recent United States decennial census or the most recent special census as provided in section 28-6532.

9. "Public transportation" means local transportation of passengers by means of a public conveyance, including para-transit.

§ 48-5302. Regional transportation authority in counties with population of more than four hundred thousand but less than one million two hundred thousand persons; establishment

A. A regional transportation authority is established in a county with a population of more than four hundred thousand but less than one million two hundred thousand persons.

B. An authority is a public, political, tax levying public improvement and taxing subdivision of this state and a municipal corporation to the extent of the powers and privileges conferred by this chapter or granted generally by the constitution and laws of this state, including immunity of its property and the interest income and gain on its bonds from taxation.

C. The membership of the authority consists of each municipality in the county and the county. The authority may operate in all areas of the county in which it is organized.

D. The executive director of the regional council of governments acts as the executive director of the authority and serves in that specific role until replaced at the discretion of the board of the regional council of governments.

§ 48-5303. Board of directors

A. In a county, the government of the authority is vested in a board of directors composed of the members of the member jurisdictions of the regional council of governments with one vote each when determining transportation policy as the regional transportation authority.

B. The members of the board shall:

1. Appoint a chairman from among the members at the first official meeting of the board.

2. By rule determine its officers, terms and procedures of appointment.

§ 48-5304. Board duties

The board shall:

1. Determine the exclusive public transportation systems to be acquired and constructed, the means to finance the systems and whether to operate the systems or to let contracts for their operation. In the operation of the public transportation system the board may use public transportation facilities used by a municipality, subject to section 48-5308, subsection F.

2. Approve a request for an election to the board of supervisors contingent on formal approval, including approval of proposed elements for the ten year regional transportation plan, of the request by the county and the city with the largest population in the county for submission of the following issues to the electorate:

(a) Approval of a transportation excise tax authorized by section 42-1483.

(b) Approval of elements of the ten year regional transportation plan developed pursuant to section 48-5309 as the ten year regional transportation plan.

(c) Approval of changes in the ten year regional transportation plan pursuant to section 48–5309, subsection C.

3. Produce annually a five year transportation improvement program that is consistent with the ten year regional transportation plan elements approved by a majority of the qualified electors and that contains the following:

(a) Projects financed with monies from the regional transportation fund.

(b) A description of each project, including a schedule of expenditures and sources of funding for each project.

(c) The political subdivision with responsibility for project implementation.

4. Assure that projects proposed for federal, state or local funding appear in the regional transportation authority's transportation improvement program and in the transportation improvement program of the regional council of governments.

5. Not later than January 1 of each year for publication in at least two newspapers of the county in January, assess and analyze the status and implications of the transportation improvement program with respect to the occurrence of substantial change as defined in section 48–5309 and with respect to the potential for or occurrence of the following conditions:

(a) An actual project expenditure that exceeds the project budget amount shown in the first year of the transportation improvement program by five per cent or more.

(b) A project cost amount that exceeds by ten per cent or more the project budget amount that appears in the first year of the transportation improvement program.

(c) First year and five year cumulative projected expenditures for all elements of the ten year expenditure plan in the five year transportation improvement program that exceed revenue estimates for corresponding periods by twenty per cent or more.

6. Provide for development of a supplement to the ten year regional transportation plan developed pursuant to section 48–5309 and approved as the ten year regional transportation plan by a majority of the qualified electors voting that encompasses a period of such duration as is necessary to be coterminous with the effective period of a transportation excise tax approved pursuant to section 42–1483. Provision for development of the supplement shall be made not earlier than the fourth year and not later than the second year before the expiration of the ten year regional transportation plan.

7. Adopt an annual budget, hire employees and fix the compensation of its employees.

8. Cause a postaudit of the financial transactions and records of the board to be made at least annually by a certified public accountant.

9. Adopt rules that are proper or necessary to regulate the use, operation and maintenance of its property and facilities, including its public transportation systems and related transportation facilities and services operating in its area of jurisdiction, and to carry into effect the powers granted to the board.

10. Appoint advisory committees as it deems necessary.

11. Have sole authority to implement the elements of the ten year regional transportation plan approved by a majority of the qualified electors voting, including authority to contract for, absorb or acquire existing public transportation services as it deems necessary.

12. Coordinate the implementation of the regional transportation plan among the local jurisdictions.

13. Contract for financial, administrative, underwriting and trust services necessary to issue bonds pursuant to sections 48-5341 through 48-5347 and administer the regional transportation fund pursuant to section 48-5307, subsection B.

14. Hire legal counsel to represent the authority in any legal proceeding, accountants and other professional personnel as it deems necessary.

15. Set the priorities of the plan and administer and facilitate the distribution of monies in the regional transportation authority fund.

16. Delegate to the general manager any of the administrative functions, powers or duties that the board believes the general manager can competently, efficiently and properly perform.

17. Contract and enter into stipulations of any nature necessary and convenient for the full exercise of the powers granted in this chapter.

18. Do all things necessary to carry out the purposes of this chapter.

§ 48-5305. Board powers

The board may:

1. Adopt an administrative code that:

(a) Prescribes the powers and duties of the employees of the authority that are not inconsistent with this chapter, the method of appointing board employees and methods, procedures and systems of operating and managing the board.

(b) May provide for, among other things, appointing a general manager and organizing the employees of the board into units for administration, design and construction, operation, property acquisition and community relations and other units as the board deems necessary.

2. Sue and be sued.

§ 48-5306. Court; fees

A. In addition to any costs that are awarded as prescribed by statute, a court shall award fees of not more than ten thousand dollars and other expenses to any party, other than this state or a city, town or county, on the merits in an action brought by the party against the authority to challenge right-of-way actions conducted by or on behalf of the authority.

B. In determining the award provided for in this section, the court shall deny or reduce the award if it finds that any of the following applies:

1. During the course of the proceeding the beneficiary of the award unduly and unreasonably protracted the final resolution of the matter.

2. The award is attributable to an intervening change in the applicable law.

3. The beneficiary of the award refused an offer of civil settlement that was at least as favorable to the party as the relief ultimately granted.

§ 48-5307. Regional transportation fund

A. A regional transportation fund is established for the authority. The fund consists of:

1. Monies received from the county transportation excise tax as provided in section 42-1483.

2. Monies appropriated by each municipality or the county.

3. Grants, gifts or donations from public or private sources.

4. Monies granted by the federal government or appropriated by the legislature.

5. Fares or other revenues collected by the authority in operating a public transportation system.

6. Monies from bonds issued by the board pursuant to article 2 of this chapter.

B. Subject to the powers granted to the board in article 2 of this chapter, the fiscal agent on behalf of the authority shall administer monies paid into the regional transportation fund.

C. The department of revenue shall collect all transportation excise tax monies pursuant to section 42–1483 and shall transfer them monthly pursuant to section 42–1322 to the state treasurer who shall immediately deposit the monies in a fund designated for the regional transportation authority as the regional transportation fund.

D. Except as provided in this section, the beneficial interest in the fund is the authority that levied the transportation excise tax. This state or the county does not have a beneficial interest, either legal or equitable, in the fund, except for the repayment of election expenses.

E. Monies and investments in the regional transportation fund may be used and spent only as provided in this chapter. An appropriation of any nature is not required before the expenditure of any monies from the fund. The state treasurer may make a payment from the regional transportation fund by check without the necessity of a warrant or voucher.

F. The regional transportation fund shall be divided into three separate accounts, designated as the bond account, the construction account and the bond proceeds account. Transfers between accounts shall be made only as provided in this section or in article 2 of this chapter.

G. Before the issuance of any bonds payable from the regional transportation fund as provided in article 2 of this chapter, transportation excise tax revenues transferred to the state treasurer shall be deposited in the construction account and spent as provided in this article. After the issuance of any bonds payable from the regional transportation fund as provided in article 2 of this chapter, transportation excise tax revenues shall be deposited in the bond account first until the bond account contains monies sufficient to meet all principal, interest or redemption requirements for the current period as required by any resolution of the board pertaining to the issuance of bonds. After all current period requirements for all of the bonds are deposited in the bond account, the balance of transportation excise tax revenues received by the treasurer for the current period shall be deposited in the construction account.

§ 48–5308. Distribution from regional transportation fund

A. All monies in the bond account of the regional transportation fund shall be held in trust for the owners of the bonds. Monies in the bond account:

1. Shall be paid out to paying agents or directly to the owners of the bonds pursuant to the resolution or resolutions of the board authorizing the issuance of the bonds.

2. May be used to pay bond related expenses or recurring expenses pertaining to administration and payment of the bonds.

B. Monies in the bond proceeds account of the regional transportation fund may be obligated or spent as directed by the board for the purposes provided by subsection C of this section.

C. Except as provided in subsection D of this section, monies in the construction account of the regional transportation fund shall be spent, pledged or accumulated for the design, right-of-way purchase, construction, operation, maintenance and contiguous open space preservation purchase compatible with local environmental ordinance, within the expenditure limits for each element of the ten year expenditure

plan, of each element approved by a majority of the qualified electors voting at a special or general election.

D. Notwithstanding any other law, from the monies deposited in the construction account of the regional transportation fund in each fiscal year, the board shall distribute:

1. To each municipality, excluding the municipality that has the largest population in the county, the greater amount of one per cent of the revenues collected from the transportation excise tax authorized pursuant to section 42–1483 or three hundred thousand dollars, to be used for purposes consistent with subsection C of this section.

2. An amount of not more than three hundred thousand dollars to the regional council of governments to hire professional planning, technical and administrative staff required to accomplish plan development for the authority pursuant to section 48–5309 and the responsibilities as the authority may require.

E. The three hundred thousand dollar distribution prescribed by subsection D of this section is subject to:

1. Proration for any fiscal year in which a transportation excise tax authorized pursuant to section 42–1483 is collected for less than a full fiscal year.

2. Adjustment by the annual percentage change for the previous calendar year in the GDP price deflator, as defined in section 41–563, for each fiscal year after the first full fiscal year in which the transportation excise tax is collected.

F. After the first June 30 following voter approval of the plan as provided in section 42–1483, monies appropriated for each of the following purposes, if approved by a majority of the qualified electors voting at a special or general election, by each municipality or the county of the authority shall not be less than the total amount of general monies spent for those purposes in that municipality or county for fiscal year 1989–1990 adjusted by the annual percentage change for the previous calendar year in the GDP price deflator as defined in section 41–563:

1. Roadway improvements, including controlled access highways, parkways and controlled access arterials, arterial upgrades and related grade separations.

2. Transit improvements for buses, including expansion of the bus fleet and its associated maintenance facility, expansion of express routes and associated connecting terminals, ridesharing, van pool fleet acquisition, including special projects for the handicapped and elderly, and park and ride lots.

3. An express and light rail system.

4. Bicycle projects, including striped lanes on arterials, neighborhood bike routes and planning of bikeways focused on major regional activity center destinations.

5. Pedestrian projects on arterial and collector streets, neighborhood walkways and walkways focused on major regional activity center destinations.

§ 48–5309. Planning; definition

A. The authority shall develop a ten year regional transportation plan for implementation that is financed by a transportation excise tax approved pursuant to section 42–1483 and bonds issued pursuant to sections 48–5341 through 48–5347. The ten year regional transportation plan:

1. Shall include a public transportation component.

2. May:

(a) Define and identify regional transportation corridors.

(b) Define the transportation problems, goals and needs for each corridor.

(c) Determine environmental, economic, energy and social policies to guide transportation investment decisions.

(d) Determine the impact of the plan on air quality, with one of the goals of the plan being the improvement of air quality.

(e) Order the priority of regional transportation corridors for development.

(f) Determine the mix of alternative transportation modes appropriate for development in light of the transportation goals and needs for each corridor, including sidewalks, rail service, buses, vans, para-transit, park and ride lots, bicycle facilities and any other facility or service reasonably related to transportation.

(g) Select appropriate public transportation technology.

(h) Determine the capacity for exclusive public transportation technologies.

(i) Determine operating performance criteria and costs for public transportation systems.

(j) Locate routes and access points to the public transportation systems.

(k) Determine the ridership of public transportation systems.

(l) Determine the need for landscape buffers, noise barriers, pedestrian bypasses, multi-use paths and other environmental impact mitigation measures relating to the regional transportation plan.

B. A ten year regional transportation plan that is approved by a majority of the qualified electors voting on submission of the plan adopted by the regional planning agency may not be amended to add or delete an element or substantially change an element without prior approval of the electorate at a general or special election. Voter approval of an amendment or a substantial change shall be sought pursuant to subsection F of this section.

C. The prior approval of the electorate required by subsection B of this section is waived if a political subdivision causing changes within its jurisdiction to the ten year regional transportation plan incurs the incremental costs of implementing the proposed changes.

D. Within the time intervals specified by this subsection from the date of approval of a transportation excise tax as provided in section 42-1483, the regional transportation authority shall not distribute from the aggregate of transportation excise tax monies received at any time by the regional transportation fund an amount of monies that exceeds the percentage share of the transportation excise tax approved by a majority of the qualified electors voting for a transportation element of the ten year regional transportation plan by a relative percentage in excess of the percentage specified for the following time intervals:

1. Three years or less, fifteen per cent.

2. More than three years but not more than five years, ten per cent.

3. More than five years but not more than seven years, five per cent.

4. More than seven years but not more than nine years, two per cent.

5. More than nine years but not more than ten years, zero per cent.

E. The proposition for a revised ten year expenditure plan considered at an election held pursuant to subsection F of this section shall adhere to the format applicable to the ballot proposition approved by a majority of the qualified electors voting on the initial ten year expenditure plan.

F. If one or more of the conditions specified by subsection H of this section occur, the board of the authority shall request the county board of supervisors to provide a ballot proposition for consideration of a revised ten year expenditure plan on or before the date of the next general election. If the board of supervisors fails to provide the proposition at the next general election or if a majority of the qualified electors voting at the election does not approve a proposition for a revised ten year regional transportation plan, expenditures authorized pursuant to section

48–5308, subsection C, except those obligated as of the date of the general election, are prohibited.

G. In this section, "substantial change" means a change that, based on data in the transportation improvement program developed pursuant to section 48–5304, paragraph 3, results in one or more of the following conditions:

1. A present worth of estimated expenditures required to complete all elements of the ten year regional transportation plan that exceeds the present worth of estimated revenues available to the regional transportation authority fund during the comparable period by ten per cent or more, except that estimated revenues from bond proceeds, if any, shall not exceed the bond capacity, less associated expenses, supported by estimates of unencumbered revenues for the initial ten years of authorization for the transportation excise tax. The preceding five year average of the GDP price deflator as defined in section 41–563 shall be used to discount the respective series of estimated revenues and expenditures to a present worth.

2. An estimated cost to complete one or more elements of the ten year regional transportation plan as approved by a majority of the qualified electors voting that exceeds the expenditure limitations of the ten year regional transportation plan as adjusted by the GDP price deflator as defined in section 41–563 by the following or greater percentages:

(a) Ten per cent for a single element of the plan.

(b) Fifteen per cent for any two elements of the plan.

(c) Twenty per cent for three or more elements of the plan.

§ 48–5310. Five year transportation facilities construction program update

The director of the department of transportation shall develop and annually update as a component of the five year transportation facilities construction program provided in section 28–6954 the use of monies expected to accrue to the county's regional transportation fund as provided in this article that are dedicated for street and highway purposes and that are in the state highway system.

§ 48–5311. Transportation corridor priority

Through their regional planning agency, the county and municipalities in the county shall list transportation corridors by priority in the regional transportation plan. The regional transportation plan may also provide a suggested construction schedule for the transportation corridors contained in the plan.

§ 48–5312. Highway construction and maintenance

A. The department of transportation shall construct and maintain the controlled access highways approved by a majority of the qualified electors voting at a special or general election and financed pursuant to section 48–5308, subsection C.

B. The authority may contract with municipalities in the county and with the county to allow the municipalities and county to construct the streets or highways approved by a majority of the qualified electors voting at a special or general election and funded by monies distributed pursuant to section 48–5308, subsection C.

C. On completion of construction, the municipality or county in which monies are spent for a project approved by a majority of qualified electors voting at a special or general election and funded by monies distributed pursuant to section 48–5308, subsection C is responsible for maintaining the project.

§ 48–5313. Eminent domain

The cities and towns or county may:

1. Exercise the right of eminent domain pursuant to title 12, chapter 8, article 2 for the purposes prescribed in this chapter on behalf of the authority.

2. Sell or lease to the authority property acquired through eminent domain proceedings.

ARTICLE 2. FINANCING

§ 48–5341. Bonds payable from transportation excise taxes

The board is designated as the body having sole and exclusive power to authorize and issue bonds or incur long-term obligations payable in whole or in part from monies collected from the transportation excise tax authorized pursuant to section 42–1483. The board may:

1. Issue negotiable bonds in a principal amount of not more than twenty-five million dollars payable solely from monies paid into the bond account of the regional transportation fund in the principal amount that in the opinion of the board is necessary to provide sufficient monies for any lawful purpose for which the regional transportation fund monies may be spent, to establish reserves to secure the bonds and to provide for the payment of all other expenditures of the board incidental, necessary and convenient to carry out these purposes.

2. Issue refunding bonds if the board deems refunding expedient.

3. Refund any bonds issued by the board and payable from regional transportation fund income as authorized in this article by the issuance of refunding bonds, whether the bonds to be refunded have or have not matured. Proceeds of refunding bonds may be used to pay principal, interest or redemption premiums on refunded bonds.

4. Issue bonds partly to refund bonds then outstanding and partly for any other purpose consistent with this article. Regardless of whether or not the bonds are of such form or character as to be negotiable instruments under the terms of the uniform commercial code, the bonds are fully negotiable within the meaning of and for all purposes of the uniform commercial code.

§ 48–5342. Bond requirements

A. The bonds authorized by this article shall:

1. Be authorized by resolution of the board.

2. Bear such date or dates and shall mature at such time or times, not exceeding the earlier of twenty years from their respective dates or the date the transportation excise taxes securing the bonds cease, as the resolution or resolutions may provide.

3. Bear interest at such rate or rates, including rates that may vary, pursuant to parameters set by the board in the authorizing resolution.

4. Be in the denomination, be in the form, either coupon or registered, be executed in the manner, be payable as to principal, interest or premium in the medium of payment at the office of the state treasurer of this state or at such other place as the board provides either by automatic deposit, wire transfer or mail.

5. Be subject to such terms of redemption, at the option of either the board or the owner of the bond, as the resolution or resolutions may provide.

B. The bonds may be sold at either public or private sale, above, at or below par and on terms the board determines. Bonds to fund or refund other bonds may be exchanged with the holders of bonds being funded or refunded on terms the board determines.

§ 48–5343. **Bond payment; security**

In connection with the issuance of the bonds authorized by this article or to secure the payment of the bonds and interest on the bonds, the board by resolution may:

1. Provide that bonds issued under this article may be paid with and secured by a pledge on all or any part of the monies paid into the bond account of the regional transportation fund, and if monies in the bond account are ever insufficient, then from any other unobligated monies in the construction account or the bond proceeds account. The board may:

(a) Set the priority of lien or claim of any series or issue of bonds against any other series or issues.

(b) Not abrogate or change the priority unless the affected series or issue is to be fully paid or fully provided for by the issuance of refunding bonds or the holders of the bonds affected agree in writing to the change.

2. Pledge and assign to or in trust, with a trustee appointed by the board, for the benefit of the holder or holders of the bonds all or any part of the monies paid into the bond account of the regional transportation fund as will be necessary to pay the principal of, interest on and premium, if any, on the bonds as the bonds become due.

3. Set aside, regulate and dispose of reserves and sinking funds.

4. Provide that sufficient amounts of the proceeds from the sale of the bonds may be used to fully or partly fund any and all reserves or sinking funds set up by the bond resolution.

5. Prescribe the procedure, if any, by which the terms of a contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent to and the manner in which the consent may be given.

6. Provide for payment from the proceeds of the sale of the bonds of all legal and financial expenses incurred by the board in the issuance, sale, delivery and payment of the bonds.

7. Do any other matters, of like or different character, that may in any way affect the security and protection of the bonds.

§ 48–5344. **Pledges; liens**

A. A pledge made pursuant to this article is valid and binding from the time when the pledge is made. The monies pledged pursuant to this article when placed in the bond account, bond proceeds account or construction account of the regional transportation fund are immediately subject to the lien of the pledge without any future physical delivery or further act.

B. A lien of any pledge is valid or binding against all parties having claims of any kind in tort, contract or otherwise against the board, regardless of whether the parties have notice. When placed in the records of the board, the official resolution or trust indenture or any instrument by which this pledge is created is notice to all concerned of the creation of the pledge, and these instruments are not required to be recorded in any other place. A filing or recording of the resolution of the board creating or extending the lien or pledge in order for the pledge or lien to become fully effective is not required in any office other than in the office of the board.

§ 48–5345. **Liability; bond validity**

A. The members of the board or a person executing the bonds is not personally liable for the payment of the bonds.

B. The bonds are valid and binding obligations of the board notwithstanding the fact that before the delivery of the bonds any of the officers whose signatures appear on the bonds cease to be officers of the board.

C. From and after the sale and delivery of the bonds, the bonds are incontestable by the board or the county.

§ 48–5346. **Bond purchase**

The board may purchase bonds out of any monies available and cancel these bonds.

§ 48–5347. **Notice; bond issuance**

A. The board shall publish a notice of its intention to issue bonds under this article for at least five consecutive days in a newspaper published in this state. The last day of publication shall be at least ten days before the issuance of the bonds.

B. The notice shall state the amount of the bonds to be sold and the intended date of issuance.

§ 48–5348. **Bond proceeds; distribution; expenditures**

A. After deducting the necessary costs and expenses of the issuance and sale of the bonds, the board shall promptly transfer the proceeds received from the sale and delivery of bonds issued pursuant to this article to the state treasurer for deposit in the regional transportation fund. The state treasurer or the fiscal agent shall first apply those amounts of the bond proceeds provided in the resolution issuing the bonds to all reserve and sinking funds created in the bond resolution.

B. The board shall use the bond proceeds solely for the purposes provided in the bond resolution, except that, if the revenues pledged to secure the bonds ever become insufficient to pay the annual principal and interest on the bonds, the board shall order:

1. The liquidation of any investments.

2. The state treasurer or the fiscal agent to apply all of the receipts as necessary to make current all payments then due on the bonds.

§ 48–5349. **Agreement of state and county**

A. This state pledges to and agrees with the holders of the bonds that this state will not limit or alter the transportation excise taxes in a way that adversely affects the rights of the holders of the bonds, limit or alter the authority of the board levying a transportation excise tax in a way that prevents the imposition of sufficient transportation excise taxes to fulfill the terms of any agreements made with the holders of the bonds, or in any way impair the rights and remedies of the bondholders, until all bonds issued under this article, interest on the bonds, interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders are fully met and discharged.

B. The board as agent for this state may include this pledge and undertaking by this state in its resolutions and indentures securing its bonds.

C. A county shall not take any action to lower or terminate any transportation excise tax.

§ 48–5350. **Taxation exemption**

The board is regarded as performing a governmental function in carrying out the purposes of this article and is not required to pay taxes or assessments on any of the property acquired or constructed or on the activities of the board in maintaining and caring for the real property or in the monies derived from the real property. The bonds, their transfer and the income from the bonds are at all times free from taxation in this state.

§ 48-5351. Attorney general bond certification

A. The board may submit to the attorney general any bonds to be issued under this article after all proceedings for the authorization of the bonds have been taken. On the submission of the proceedings to the attorney general, the attorney general shall investigate and determine the validity of the bonds and the regularity of all proceedings in connection with the issuance.

B. If the proceedings conform to this article and if it is determined that the bonds when delivered and paid for will constitute binding and legal obligations of the board enforceable according to the terms of the bonds, the attorney general shall certify in substance on the back of each of the bonds that it is issued in accordance with the constitution and laws of this state.

§ 48-5352. Bond obligations of the board

Bonds issued pursuant to this article:

1. Are obligations of the board issuing the bonds.

2. Are payable only pursuant to the terms of the bonds.

3. Are not obligations that are general, special or otherwise of this state or the county.

4. Are not a legal debt of this state or of the county.

5. Are not enforceable against this state or that county out of any monies other than the income and revenue pledged and assigned to or in trust for the benefit of the holder or holders of the bonds.

§ 48-5353. Bonds; legal investments

Bonds issued under this article are made securities:

1. In which all of the following may properly and legally invest monies including capital in their control or belonging to them:

(a) Public officers and bodies of this state.

(b) Municipalities and political subdivisions of this state.

(c) Insurance companies and associations and other persons carrying on an insurance business.

(d) Banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business.

(e) Administrators, guardians, executors, trustees and other fiduciaries.

(f) Other persons authorized to invest in bonds or other obligations of this state.

2. That may be deposited with and may be received by all public officers and bodies of this state and all municipalities and political subdivisions of this state for any purpose for which the deposit of bonds or other obligations of this state is authorized.

§ 48-5354. Federal income tax considerations

Title 35, chapter 3, article 7 applies to the bonds and the authority.

Sec. 8. Legislative findings

The legislature finds that:

1. The public safety necessitates the continuous development, modernization and implementation of standards and requirements of law relating to vehicle equipment in accordance with expert knowledge and opinion.

2. The public safety further requires that the standards and requirements be uniform from jurisdiction to jurisdiction, except to the extent that specific and compelling evidence supports variation.

3. The director of the department of transportation acting on recommendations of the vehicle equipment safety commission and pursuant to the vehicle equipment safety compact provides a just, equitable and orderly means of promoting the public safety in the manner and within the scope contemplated by title 28, chapter 7, article 2, Arizona Revised Statutes.

Sec. 9. Declaration of purpose and policy

The legislature declares and finds that:

1. The development of an adequate state highway system in this state is vital for the well-being, health and prosperity of the people of this state.

2. By reason of the state's right and obligation to construct a comprehensive system of modern highways, it is essential to the continued well-being, health and prosperity of the people of this state that the state proceed promptly to acquire real property to constitute the right-of-way for future highway construction and be placed in a credit position to meet highway needs.

3. Construction of an adequate system of state highways at the earliest possible time is necessary for the well-being, health and prosperity of this state.

4. Current revenues available for construction of an adequate system of state highways are insufficient to cause the orderly completion of the system.

5. The state transportation board must be empowered to issue bonds for any lawful highway purpose to provide monies to complete the system.

Sec. 10. Declaration of purpose and policy

The legislature declares and finds that:

1. Development of an adequate highway system including controlled access highways and arterial streets or highways within a reasonable time frame in counties of this state with populations of more than four hundred thousand persons requires the infusion of additional monies over and above the amounts available from the Arizona highway user revenue fund or from transportation excise taxes and therefore requires that the legislature authorize the issuance of bonds payable from anticipated excise taxes imposed pursuant to sections 42–1482, 42–1482.01 and 42–1483, Arizona Revised Statutes.

2. Through the issuance of bonds as provided in title 28, chapter 21, article 2, Arizona Revised Statutes, the needed highways and streets can be constructed and acquired earlier, more efficiently and at less cost.

Sec. 11. Conforming legislation

The legislative council staff shall prepare proposed legislation conforming the Arizona Revised Statutes to the provisions of this act for consideration in the forty-second legislature, second regular session.

Sec. 12. Delayed effective date

This act is effective from and after December 31, 1996.

Approved by the Governor April 17, 1995.

Filed in the Office of the Secretary of State April 18, 1995.

LABOR—WAGES—DESIGNATION OF PAYDAYS

CHAPTER 133

S.B. 1056

AN ACT AMENDING SECTION 23-351, ARIZONA REVISED STATUTES; RELATING TO PAYMENT OF WAGES.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 23-351, Arizona Revised Statutes, is amended to read:

§ 23-351. Designation of paydays for employees; payment; exceptions; violation; classification

A. Each employer in this state shall designate two or more days in each month, not more than sixteen days apart, as fixed paydays for payment of wages to his employees.

B. Notwithstanding the provisions of subsection A, each employer in this state whose principal place of business is located outside the state of Arizona and whose payroll system is centralized outside the state of Arizona, may designate one or more days in each month as fixed paydays for payment of wages to the following employees:

1. Professional, administrative or executive employees or employees employed in the capacity of an outside salesman as those terms are defined under the fair labor standards act of 1938, as amended.

2. Employees employed in a supervisory capacity as defined under the national labor relations act.

C. Each employer shall, on each of the regular paydays, pay to his employees, in lawful money of the United States, or in negotiable bank checks or, in the case of the state or any political subdivision thereof, warrants payable on demand and bearing even date with the payday or, with the written consent of the employee, by deposit on the payday to the employee's credit at a financial institution of his choice which is a member of the federal deposit insurance corporation or of any other comparable federal or state agency, all wages due the employees up to such date, except:

1. In the case of employees remaining in the service of any such employer, all wages ~~for~~ other than overtime or exception pay not to exceed five days of labor may be withheld. An employer may satisfy the requirements of this paragraph by either:

(a) Personally delivering the wages to the employee no later than five days after the end of the most recent pay period.

(b) Depositing the wages in the United States mail no later than five days after the end of the most recent pay period for delivery to an address specified by the employee.

(c) Overtime or exception pay shall be paid no later than fifteen days after such wages are earned.

2. In the case of employees of school districts or of the Arizona state school for the deaf and the blind, the annual salary may be prorated in any number of payments, and the employee may select whether to have the salary prorated or paid during the actual months worked. If the employee's salary is prorated, all such payments still due at the close of the school attendance year or fiscal year may at the option of the employee be paid in either a lump sum or paid within a period of two months after the close of the fiscal year.

D. When an employee's wages are paid by deposit in a financial institution he shall be furnished with a statement of his earnings and withholdings. Any wage deposit plan adopted by an employer shall entitle the employee to one withdrawal for each deposit, free of any service charge to the employee. The consent of an employee for payment of wage by deposit shall not constitute a prior assignment of wages to the financial institution and is revocable at any time prior to the transmittal to the financial institution by the employer. No person shall be denied employment nor discharged for refusal to consent to payment of wage by deposit in a financial institution.

E. Subsection B shall not apply to employees whose salaries are subject to provisions of collective bargaining agreements.

F. Any employer who violates a provision of this section is guilty of a petty offense.

Approved by the Governor April 17, 1995.

Filed in the Office of the Secretary of State April 18, 1995.

PUBLIC OFFICERS AND EMPLOYEES—STATE RETIREMENT SYSTEM

CHAPTER 134

S.B. 1108

AN ACT AMENDING SECTIONS 38–651.01, 38–713, 38–715, 38–721, 38–743, 38–744, 38–756, 38–767, 38–771, 38–782 AND 41–2996.02, ARIZONA REVISED STATUTES; AMENDING TITLE 38, CHAPTER 5, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 38–747 AND 38–773; REPEALING SECTION 38–781, ARIZONA REVISED STATUTES; AMENDING TITLE 38, CHAPTER 5, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 2.1; RELATING TO THE ARIZONA STATE RETIREMENT SYSTEM.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 38–651.01, Arizona Revised Statutes, is amended to read:

§ 38–651.01. Group health and accident coverage for retired public employees and elected officials and their dependents

A. The department of administration shall, by rule, adopt standards to establish group health and accident coverage for former employees who worked for the state of Arizona and who opt upon retirement to enroll or continue enrollment in the group health and accident coverage for active employees working for the state of Arizona, or disabled, and receiving either income from a retirement program of this state or long-term disability income benefits pursuant to section 38–651.03 or ~~38–781~~ chapter 5, article 2.1 of this title and their dependents and to establish eligibility for retired or disabled state employees to participate in such coverage. The department of administration may adopt rules which provide that if a retired or disabled insured dies before an insured surviving dependent, the insured surviving dependent is entitled to extended coverage at group rates if the insured surviving dependent elects to continue in the coverage within six months of the retired or disabled insured's death and the insured surviving dependent agrees to pay the cost of the premium for group health and accident insurance. Upon notification of the retired or disabled insured's death, the department of administration shall immediately notify an insured surviving dependent of the provisions of this section. The

department of administration may enter into agreements with disabled former state employees and their dependents who elect to obtain the coverage provided by this section. Such agreements may include provisions for the payment of amounts sufficient to pay for the premium and administrative expense of providing such coverage. The department of administration may adopt rules which provide that upon the death of a state employee who at the time of death was eligible for normal retirement pursuant to section 38–757 under the Arizona state retirement system, the insured surviving spouse and eligible dependent children are entitled to continue coverage under group rates provided that the deceased insured state employee, spouse and dependent children were insured at the time of the employee's death. The insured surviving spouse shall be charged an amount sufficient to pay the full premium for such coverage.

B. The department of administration may, by rule, adopt standards to establish group health and accident coverage for former elected officials of this state or its political subdivisions and their dependents and to establish eligibility for such former elected officials to participate in such coverage. Qualifications for eligibility shall include that such former elected official has at least five years of credited service in the elected officials' retirement plan pursuant to chapter 5 of this title, had been covered under a group health or group health and accident plan while serving as an elected official and had been serving as an elected official on or after January 1, 1983. The department of administration may adopt rules which provide that upon the death of an elected official or insured former elected official, the insured surviving spouse is entitled to coverage at group rates provided that the deceased insured former elected official met or would have met the qualifications for eligibility pursuant to this subsection or that the deceased elected official would have met the qualifications for eligibility had the deceased not been in office at the time of death. Except as provided in subsection J of this section, the insured former elected official or the insured surviving spouse shall be charged amounts which are sufficient to pay for the premium and state administrative expense of providing such coverage. Notwithstanding subsection J of this section, such standards shall provide that all or any portion of such former state employees or former elected officials or their dependents shall be grouped with officers and employees of the state and its departments and agencies or their dependents as necessary to obtain health and accident coverage at favorable rates.

C. The state retirement system board may enter into agreements with retired and disabled state employee members of the system and plan who elect to obtain the coverage provided pursuant to subsection A of this section. Such agreements may include provision for the deduction from the retirement benefits of participants of a retirement program of this state who elect to obtain such coverage of amounts sufficient to pay for the premium not covered under retirement benefits and state administrative expense of providing such coverage.

D. Retired state employee or disabled state employee members of the public safety personnel retirement system, the elected officials' retirement plan, the corrections officer retirement plan or the optional retirement programs authorized pursuant to section 15–1628 who opt upon retirement to enroll or continue enrollment in the group health and accident coverage for active employees working for the state of Arizona and their dependents and who are receiving benefits from the public safety personnel retirement system, the elected officials' retirement plan, the corrections officer retirement plan or the optional retirement programs authorized pursuant to section 15–1628 may participate in group health and accident coverage provided pursuant to this section. The department of administration shall adopt rules which are necessary for the implementation of this subsection.

E. The fund manager of the public safety personnel retirement system may enter into agreements with retired state employee members and their dependents who elect to obtain the coverage provided pursuant to this section. Such agree-

ments may include provision for the deduction from the retirement benefits of participants of a retirement program of this state who elect to obtain such coverage of amounts sufficient to pay for the premium not covered under retirement benefits and state administrative expense of providing such coverage.

F. The fund manager of the public safety personnel retirement system may enter into agreements with retired judges and retired elected officials and their dependents who elect to obtain the coverage provided pursuant to this section. Such agreements may include provision for the deduction from the retirement benefits of participants of a retirement program of this state who elect to obtain such coverage of amounts sufficient to pay for the premium not covered under retirement benefits and state administrative expense of providing such coverage.

G. The fund manager of the public safety personnel retirement system may contract with an insurance carrier and adopt standards to establish a group health and accident insurance coverage program for retired members of the public safety personnel retirement system, their dependents and their spouses. Any members or spouses who elect to obtain the group health and accident coverage provided under this subsection shall agree to a deduction from their monthly retirement benefits of an amount sufficient to pay for the premium not covered under retirement benefits and the administrative expense of providing such coverage.

H. A county board of supervisors may enter into agreements to establish group health and accident coverage for retired or disabled county employees and their dependents who elect to obtain the coverage provided pursuant to section 11–263, subsection B. The agreements may include provision for the deduction from the retirement benefits of participants of a retirement program of this state who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under retirement benefits and the administrative expense of providing for the coverage.

I. Nonmedicare eligible retirees who live in this state, who enroll in a qualifying plan under this section and who reside outside the area of a qualifying health maintenance organization shall be offered the option to enroll with a qualified health maintenance organization offered through their provider under the same premiums as if they lived within the area boundaries of the qualified health maintenance organization provided that:

1. All medical services are rendered and received at an office designated by the qualifying health maintenance organization or at a facility referred by the health maintenance organization.

2. All nonemergency or nonurgent travel, ambulatory and other expenses from the residence area of the retiree to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization are the responsibility of and at the expense of the retiree.

3. All emergency or urgent travel, ambulatory and other expenses from the residence area of the retiree to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization shall be paid pursuant to any agreement between the health maintenance organization and the retiree living outside the area of the qualifying health maintenance organization.

J. No public funds shall be expended to pay all or any part of the premium of such insurance pursuant to this section except for monies authorized to be paid for any insured from the retirement plan from which the insured is receiving benefits.

Sec. 2. Section 38–713, Arizona Revised Statutes, is amended to read:

§ 38–713. ASRS board; qualifications; term; compensation

A. The ASRS board is established consisting of the following seven members appointed by the governor pursuant to section 38–211:

1. Four members from among the members of ASRS to represent the members of ASRS as follows:

(a) An educator.

(b) An employee of a political subdivision.

(c) A retired member.

(d) An employee of this state.

2. Three members who are not members of ASRS to represent the public.

B. Each member shall have not less than five years of administrative management experience.

C. Two of the seven members shall also serve as members of the investment advisory council established pursuant to section 38–716. A member of the board who is also a member of the investment advisory council shall not serve as the presiding officer of the meetings of the board and the council during the same time period.

D. A member may be reappointed. Vacancies occurring other than by expiration of a term shall be filled for the balance of the term in the same manner as for initial appointment. On the expiration of any term, the governor shall appoint a successor for a full term of three years that expires on the third Monday in January of the appropriate year.

E. Board members are eligible to receive compensation for performing their duties in an amount of fifty dollars ~~for each~~ a day ~~the board meets~~, but not more than one thousand dollars in any one fiscal year, and are eligible for reimbursement of expenses pursuant to chapter 4, article 2 of this title.

Sec. 3. Section 38–715, Arizona Revised Statutes, is amended to read:

§ 38–715. Director; powers and duties

A. The board shall appoint a director. ~~to serve at the pleasure of the board.~~ The term of the director is one year and expires on June 30. On expiration of a director's term, the board may reappoint the director for another term. The board may remove the director at any time for cause.

B. The director shall appoint assistant directors with the approval of the board.

C. The director, under the supervision of the board, shall:

1. Administer this article, except the investment powers and duties of investment management.

2. Hire employees and services the director deems necessary and prescribe their duties.

3. Prescribe procedures to be followed by members and their beneficiaries in filing applications for benefits.

4. Be responsible for:

(a) Income and the collection of income and the accuracy of all expenditures.

(b) Maintaining books and maintaining and processing records of ASRS.

(c) The investment of temporary surplus monies only in obligations of the United States government or agencies whose obligations are guaranteed by the United States government, commercial paper or banker's acceptances for a term of not more than fifteen days.

(d) Providing continuing education programs for the board and the investment advisory council to keep them informed of current issues and information needed to carry out their duties.

5. Provide or procure necessary materials and services for the investment advisory council to administer its duties and responsibilities under this article.

6. Perform additional powers and duties as may be prescribed by the board and delegated to the director.

D. The director, under the supervision and approval of the board, may:

1. Delegate duties and responsibilities to such state departments as the director deems feasible and desirable to administer this article.

2. Appoint a custodian for the safekeeping of all investments owned by ASRS and register stocks, bonds and other investments in the name of a nominee.

3. Invest marketable securities owned by ASRS by entering into security loan agreements. For the purpose of this paragraph:

(a) "Marketable securities" means securities that are freely and regularly traded on recognized exchanges or marketplaces.

(b) "Security loan agreement" means a written contract under which ASRS, as lender, agrees to lend specific marketable securities for a period of not more than one year. ASRS, under a security loan agreement, shall retain the right to collect from the borrower all dividends, interest, premiums and rights and any other distributions to which ASRS otherwise would have been entitled. During the term of a security loan agreement ASRS shall waive the right to vote the securities that are the subject of the agreement. A security loan agreement shall provide for termination by either party on terms mutually acceptable to the parties. The borrower shall deliver collateral to ASRS or its designated representative in the form of cash. At all times during the term of any security loan agreement the collateral shall be in an amount equal to at least one hundred per cent of the market value of the loaned securities. A security loan agreement shall provide for payment of additional collateral on a daily basis, or at such other less frequent intervals as the value of the loaned securities increases. Each security loan agreement shall be subject to a custodial agreement between ASRS and the custodian appointed pursuant to paragraph 2 of this subsection. The custodial agreement shall contain the terms and conditions of the fees to be paid to the custodian for servicing the security loan agreement. ASRS shall pay the fees approved by the board to the custodian for servicing the security loan agreements from the income of the investment of marketable securities pursuant to this paragraph.

4. Establish one or more reserve holding accounts, into which the board shall close periodically the account balances of inactive accounts. If any person files a claim and furnishes proof of ownership of any amounts in any inactive account the claim shall be paid from the reserve holding account on the same basis as if no action had been taken under this paragraph. Interest and supplemental credits shall be allocated to each reserve holding account on June 30 of each year, as determined by the board. For the purposes of this paragraph, "inactive account" means ~~either:~~

~~(a)~~ an account to which contributions have not been paid for six months or more.

~~(b) An account with less than five years of credited service.~~

~~(c) An account with a balance of less than one thousand dollars and on which the member has failed to contact ASRS for three years or more.~~

5. Make retirement under this article effective retroactively to on or after the day following the date employment is terminated if both of the following conditions are met:

(a) The member was unable to apply before the retroactive effective date through no fault of the member.

(b) The retroactive effective date is not more than sixty days before the date the director receives the retirement application.

E. The director, under supervision of the governing committee for tax deferred annuity and deferred compensation plans, may hire and supervise employees and obtain services the director deems necessary to administer article 5 of this chapter.

The tax deferred annuity and deferred compensation programs established pursuant to article 5 of this chapter shall bear the costs for these employees and services.

Sec. 4. Section 38–721, Arizona Revised Statutes, is amended to read:

§ 38–721. **Administration account**

A. ASRS shall maintain an administration account consisting of all monies for administrative purposes. The following monies shall be deposited in the administration account:

1. All monies appropriated by the legislature to pay administrative expenses of ASRS.

2. All monies received for proportionate shares of administrative expenses from departments that pay the salaries of their officers and employees wholly or in part from monies received from sources other than appropriations from the state general fund.

3. All monies received for proportionate shares of administrative expenses from political subdivisions paying employer contributions.

4. Monies that the director transfers from the investment account and that are necessary for the payment of expenditures made pursuant to subsections C and D of this section.

B. All expenditures from the administration account shall be made in accordance with board directives.

C. Expenditures for investment management fees and related consulting fees necessary to meet the investment advisory council's investment objectives shall be paid from the administration account in the amount deemed necessary by the investment advisory council with approval of the board.

D. With the approval of the board, the director:

1. May expend monies from the administration account for staff, expenses and related consulting fees necessary to implement section 38–714, subsection E, paragraphs 1 and 6 and subsection G, paragraphs 2 and 3 and sections 38–755 and 38–756.

2. Shall pay from the administration account the costs for administering the health insurance program for retired members pursuant to section 38–782, ~~the contract fees of the administrator of the long-term disability program established pursuant to section 38–781,~~ the cost of continuing education programs for the board and the investment advisory council and the cost of legal counsel.

Sec. 5. Section 38–743, Arizona Revised Statutes, is amended to read:

§ 38–743. **Out of state service credit**

A. ~~At the time of retirement~~ A teacher, professor, instructor or administrator of a school district, community college or university who is an active member of the ASRS, who previously was a member of a public employee retirement system in another state while employed as a teacher, professor, instructor or school administrator of a school district, community college or university ~~and who is not receiving retirement benefits as a result of that employment~~ may receive up to five years of credited service for this prior employment if the teacher, professor, instructor or administrator pays into ASRS the amount prescribed in subsection B.

B. A teacher, professor, instructor or administrator who elects to receive credit for service outside this state shall pay to ASRS the amount equal to the increase in the actuarial present value of projected benefits ~~computed at the time of retirement that results~~ resulting from adding the number of years or partial years of credited service received under subsection A.

C. A teacher, professor, instructor or administrator of a school district, community college or university who is a member of ASRS, who previously was a member of a public employee retirement system in another state while employed as a teacher, professor, instructor or school administrator of a school district, community college or university and who receives or is eligible to receive retirement benefits from that system for any period of employment is ineligible to receive retirement benefits from ASRS for the same period.

Sec. 6. Section 38–744, Arizona Revised Statutes, is amended to read:

§ 38–744. **Leave of absence; credit for leave without pay**

A. Any active member of ASRS who is officially granted a leave of absence from employment without pay may elect to be credited with service for retirement purposes for not more than one year of the leave by paying to ASRS the amounts as provided in subsection B, if the member has not withdrawn contributions from ASRS and the member's employer has certified that the leave of absence benefits or is in the best interests of the employer.

B. An active member of ASRS who elects to be credited with a leave period as provided in subsection A shall pay to ASRS, within ~~one hundred eighty days~~ five years after terminating the leave and resuming employment, unless employment could not be resumed because of disability or nonavailability of a position with the same employer, the amount equal to the employer and member contributions for the leave period together with interest at the interest rate assumption approved by the board for actuarial equivalency, based on the salary received by the member before the leave of absence began.

C. For the purposes of subsection A, each employer shall adopt rules establishing guidelines for a leave of absence that benefits or is in the best interests of the employer.

Sec. 7. Title 38, chapter 5, article 2, Arizona Revised Statutes, is amended by adding section 38–747, to read:

§ 38–747. **Purchase of credited service; payment; definition**

A. A member who purchases credited service pursuant to section 38–742, 38–743, 38–744, 38–745 or 38–771 shall make payments in a lump sum to ASRS.

B. In any one limitation year, payments shall not exceed the lesser of either:

1. Thirty thousand dollars or one-fourth of the dollar limitation prescribed in section 38–769, subsection A, paragraph 1, as adjusted by the board as provided in section 38–769, whichever is more.

2. Twenty-five per cent of the member's compensation for the limitation year.

C. If the member's payments due to ASRS under this section exceed the limits prescribed in subsection B of this section when taking into account other member and employer contributions to ASRS on behalf of the member for the limitation year, the amount to be paid by the member shall be reduced to not exceed the limits prescribed in subsection B of this section and the reduced amount shall be carried forward to the next limitation year, unless the limits are exceeded in the next limitation year. If the limits are exceeded in the next limitation year, the procedure prescribed by this subsection shall be repeated until all payments have been made.

D. If the member retires before all payments are made pursuant to this section, ASRS shall calculate the member's benefits based only on the payments actually made.

E. On satisfaction of the requirements of this section, ASRS shall adjust the member's credited service history and add any additional service credits acquired.

F. For the purposes of this section, the terms "limitation year" and "compensation" have the same meaning prescribed in section 38–769.

Sec. 8. Section 38–756, Arizona Revised Statutes, is amended to read:

§ 38–756. Outreach education program

A. ~~Until October 1, 1995~~ The director shall develop, implement and maintain an outreach education program for members of ASRS that is designed to provide basic information on retirement planning.

B. The outreach education program prescribed in subsection A shall include at least the following:

1. Information on the benefits available to members before retirement.

2. Information on the financial benefits available at retirement including a detailed explanation of the benefits and benefit options under ASRS.

3. Information on how ASRS is organized.

4. Information on how the benefits of the members are funded.

5. Information on the social issues related to retirement.

6. The use of audiovisual, electronic and other educational aids that are designed to provide information on retirement education and planning.

7. The development of a creative promotional program using available media outlets.

C. ASRS shall present the outreach education program prescribed in subsection A at least once each year in each county of this state. Attendance of active members at outreach education program presentations is voluntary.

Sec. 9. Section 38–767, Arizona Revised Statutes, is amended to read:

§ 38–767. Benefit increases

A. Effective July 1 of each year, all retired members or beneficiaries of retired members who were fifty-five years of age or older on the respective applicable date and who were receiving benefits on or before June 30 of the previous calendar year ~~and members receiving long-term disability benefits pursuant to section 38–781 on or before June 30, 1995~~ are entitled to receive a permanent benefit increase in their base benefit equal to the amount determined in subsection D of this section. Beneficiaries of retired members are entitled to receive annual permanent benefit increases in their base benefit as provided in this subsection regardless of the beneficiary's age if the retired member attained at least age fifty-five before the retired member's death and if the beneficiary was receiving benefits on or before June 30 of the previous year. The annual permanent benefit increases shall be paid on a monthly basis. The benefit increase shall commence the following January 1 with retroactive payments from July 1 through December 31.

B. The total amount of the percentage increase provided in subsection A of this section, not to exceed three per cent in aggregate for all persons eligible for an increase, is equal to the lesser of:

1. One-half of the percentage change in the all items component of the consumer price index for all urban consumers as published by the United States department of labor, bureau of labor statistics, for the calendar year preceding the year for which the increase is being calculated.

2. The percentage payable from excess investment earnings determined as follows:

(a) Determine the excess investment earnings account balance on the accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section.

(b) Determine the total excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section as provided in subsection C of this section.

(c) Add the amount determined in subdivision (a) of this paragraph to the amount determined in subdivision (b) of this paragraph.

(d) Determine the actuarial present value of a one per cent benefit increase for each person entitled to receive an increase pursuant to subsection A of this section.

(e) Divide the amount determined in subdivision (c) of this paragraph by the amount determined in subdivision (d) of this paragraph. If the quotient is equal to or more than three, the percentage increase payable from excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section is three per cent. If the quotient is one or more but less than three, the percentage increase payable from excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section is that per cent rounded to the nearest tenth of a per cent. If the quotient is less than one, no benefit increases shall be granted.

C. The excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section are equal to the average of the actuarial present value of accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section during the fiscal year that ended June 30 of the year prior to the year for which an increase is being granted multiplied by the positive difference, if any, between the yield rate on the actuarial value of ASRS assets for the fiscal year that ended June 30 of the year prior to the year for which an increase is being granted and nine per cent. The excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section are zero if the yield rate on ASRS assets is less than or equal to nine per cent.

D. The permanent benefit increase for each person entitled to receive an increase pursuant to subsection A of this section shall be determined based on years of credited service as follows:

1. Multiply the percentage determined in subsection B, paragraph 2, subdivision (e) of this section by the actuarial present value of the base benefits being received, as of June 30 of the year prior to the year for which an increase is being granted, by all persons entitled to receive an increase pursuant to subsection A of this section.

2. Determine the actuarial present value of a one dollar per year of credited service annual increase in the base benefit amounts as of June 30 of the year prior to the year for which an increase is being granted, received by all persons entitled to receive an increase pursuant to subsection A of this section.

3. Divide the amount determined in paragraph 1 of this subsection by the amount determined in paragraph 2 of this subsection.

4. Multiply the amount determined in paragraph 3 of this subsection by the number of years of credited service for each retired member or member receiving long-term disability benefits and the number of years of credited service earned by a retired member for each beneficiary entitled to receive an increase pursuant to subsection A of this section.

E. Any excess investment earnings on accounts associated with those persons eligible for an annual benefit increase pursuant to subsection A of this section from any year that are not used for benefit adjustments for that year are available for future benefit increases in the following years.

F. A member of the defined contribution program administered by ASRS is only eligible for the benefit increases pursuant to this section if the member elects to

transfer irrevocably from the defined contribution program administered by ASRS to the defined benefit program established by this article.

G. The cost of the benefit increases granted pursuant to this section shall be added to the existing liabilities of ASRS.

Sec. 10. Section 38–771, Arizona Revised Statutes, is amended to read:

§ 38–771. Benefit options for transferred defined contribution program members; definitions

A. On or before December 31, 1995 ~~an~~ a nonretired ASRS member who was a member of the defined contribution program administered by ASRS and who was transferred to the defined benefit program established by this article on July 1, 1981 ~~may~~ shall elect to receive either retirement benefits provided under this section or retirement benefits as otherwise provided by this article. An election under this subsection is irrevocable. A member who fails to make an election under this subsection is deemed to have elected to receive retirement benefits provided under this section. ~~one of the following benefit options at the time of retirement or termination:~~

~~1. Retirement benefits provided under this article.~~

~~2. Retirement benefits provided by the defined contribution program administered by ASRS.~~

B. A member who elects to receive retirement benefits provided under this section is eligible only for those benefits.

~~B.~~C. If a member elects to receive retirement benefits ~~pursuant to subsection A, paragraph 2~~ provided under this section, the member shall elect to receive retirement benefits based on either of the following:

1. The contributions paid by the member and member's employer, plus all earnings attributed to the member's retirement account, through the member's retirement date.

2. Contributions paid by the member and member's employer at the contribution rate in effect before July 1, 1975 and an employee and employer contribution rate of seven per cent calculated from July 1, 1975 ~~to the date of retirement or termination as provided in subsection C~~ , plus all earnings attributed to the member's retirement account, through the member's retirement date.

D. Beginning January 1, 1996 and notwithstanding sections 38–736 and 38–737, members who elect to receive retirement benefits provided under this section and their employers shall each make contributions at a rate of seven per cent of the member's compensation.

~~C.~~ E. Subject to subsection F of this section, if a member ~~chooses~~ elects to receive retirement benefits ~~pursuant to~~ based on subsection ~~B~~ C, paragraph 2 of this section, both the member and the member's employer shall pay to ASRS on or before December 31, 1995 or the member's retirement date, whichever is earlier, the difference between the ~~contribution~~ contributions made and seven per cent of the member's gross ~~salary~~ compensation from July 1, 1984 ~~to the date the member retires or terminates~~ through December 31, 1995 or the member's retirement date, whichever is earlier. Interest and supplemental credits for the additional contributions shall be credited to the member's retirement account and charged to the assets of ASRS at the time the additional contributions are paid.

F. Contributions made to ASRS by a member and the member's employer pursuant to subsections D and E of this section shall not exceed, in any one limitation year, the limits of section 38–747. If for any reason, the member and employer contributions to ASRS made pursuant to subsections D and E of this section would, at the time such contributions are due, taking into account other employer and member contributions due to ASRS for the limitation year, exceed the

limits of section 38–747, the amount to be paid by the member and the member's employer under subsection E of this section shall be proportionately reduced and such reduction carried into the succeeding limitation year and paid by the member and the member's employer within thirty days of the beginning of such limitation year, unless the limits of section 38–747 would again be exceeded, in which event this procedure will be repeated until all such contributions have been made. If more than one employer is contributing on behalf of a member, the reduction and contributions in succeeding years shall be proportionately allocated among the employers. If a member retires prior to making all contributions under subsections D and E of this section because of the limitations of section 38–747, the member's benefits under this section shall be calculated only with reference to the contributions actually made. If a retired member is engaged to work and commences active membership in ASRS as provided in subsection G, paragraph 5 of this section, the member shall not be eligible to again make contributions under subsection D of this section. On the termination of employment of the member, the member's benefits under this section shall be reinstated as provided in subsection G, paragraph 6 of this section. For purposes of this subsection, the term "limitation year" has the same meaning prescribed in section 38–769.

G. A member who elects to receive retirement benefits provided under this section is subject to conditions that are equivalent to those imposed before the member's transfer from the defined contribution program administered by ASRS to the defined benefit program established by this article. Those conditions include the following:

1. A member who attains sixty-five years of age may retire and, on application, shall receive a life pension payable in equal installments derived from the member's prior service credit, if any, together with a life annuity derived from the member's retirement account. The annuity is payable in equal monthly installments. The amount of the installments is based on the age of the member at the date of commencement of retirement and is determined by the interest and life expectancy tables applicable at the date of the commencement of retirement. If a retired member who is receiving retirement benefits provided under this section dies before receipt of annuity payments in an amount equal to the member's retirement account balance immediately before retirement, ASRS shall pay the member's designated beneficiary or estate in a lump sum the difference between the retirement account balance and the total amount of annuity payments received.

2. A member who attains sixty-five years of age with at least five years of creditable service may retire and, on application, may elect to receive in lieu of the member's prior service pension, if any, and the annuity payments from the member's retirement account as provided in paragraph 1 of this subsection the actuarial equivalent of those retirement benefits under one of the options established by the board.

3. A member who attains sixty years of age with at least five years of creditable service may retire and, on application, receive a life annuity derived from the member's retirement account and the actuarial equivalent of the member's prior service pension payable concurrently with the life annuity. The pension and annuity shall be determined and paid in the manner set forth in this subsection.

4. In lieu of the retirement benefits provided under this subsection, on application, a member may elect to receive the actuarial equivalent of those retirement benefits under one of the options established by the board.

5. If a retired member who is receiving retirement benefits provided under this section is engaged to work by an employer for twenty or more weeks in a fiscal year and twenty hours or more per week and is required or elects to be covered by the defined benefit program established by this article, the retired member commences active membership in the defined benefit program and the member's retirement

benefit payments under this section are suspended until the member terminates employment.

6. On termination of employment of a retired member previously receiving retirement benefits provided under this section, ASRS shall reinstate the member's retirement benefits provided under this section and the member is entitled to receive retirement benefits as provided in section 38-760 for the credited service earned by the member after the member's active membership in the defined benefit program established pursuant to this article commenced.

H. ASRS shall handle all retirement accounts of members who elect retirement benefits provided under this section and all member and employer contributions attributable to those members in the same manner as retirement accounts and contributions that are part of the defined contribution program administered by ASRS. Retirement accounts of members who elect to receive retirement benefits provided under this section are eligible for interest and supplemental credits on the same basis as members who retired under the defined contribution program administered by ASRS.

~~D.~~ I. The election of retirement benefits by a member pursuant to this section is a waiver of all claims and demands by the member that the retirement benefits are less than the amount of retirement benefits payable to the member under the defined contribution program administered by ASRS if the member had remained a member of the defined contribution program administered by ASRS.

~~E.~~ J. For purposes of this section~~,~~:

1. "Creditable service" means service after April 8, 1953 in a position not subject to the defined contribution program administered by ASRS, prior service and membership service.

2. "Member's employer" means ~~the~~ an employer who compensated the member during a period when the member's contributions were less than seven per cent.

3. "Pension" means equal monthly installments that are derived from a member's prior service credits and that are payable during the member's lifetime after retirement.

4. "Prior service" means service for this state or a political subdivision before membership in the defined contribution program administered by ASRS.

5. "Prior service credits" means the amount that is allowed for services before membership in the defined contribution program administered by ASRS and that is payable as a pension on retirement.

6. "Retirement account" means the combined member and employer contributions with interest or earnings on the contributions including any allocations credited as employer contributions.

7. "Service" means any compensated employment by the state or a political subdivision and includes periods of nonpaid leave including military leave, provided employment has not been terminated at the commencement of the leave period, and employment is state service for retirement purposes, or service for any political subdivision establishing a defined contribution program administered by the ASRS.

Sec. 11. Title 38, chapter 5, article 2, Arizona Revised Statutes, is amended by adding section 38-773, to read:

§ 38-773. Benefit payments to alternate payee under acceptable domestic relations order; termination of marriage; revocation of beneficiary designation; definition

A. The board shall review any domestic relations order to which a member is a party and that is submitted to the board to determine if the domestic relations order is acceptable under this section. After a determination that a domestic relations

order is acceptable under this section, the board shall notify the member and the named alternate payee of its acceptance of the domestic relations order and ASRS shall pay benefits in accordance with the applicable requirements of the order.

B. An acceptable domestic relations order shall not require the board to provide any type, form or time of payment of severance, survivor or retirement benefits or any severance, survivor or retirement benefit option that is not provided under this article.

C. An acceptable domestic relations order shall specify all of the following:

1. The name and last known mailing address of the member.

2. The name and last known mailing address of each alternate payee covered by the order.

3. The method of determining the amount of the member's severance, survivor or retirement benefits to be paid by ASRS to each alternate payee covered by the order.

4. The number of payments or period to which the order applies.

D. Except as provided by the express terms of a domestic relations order, the divorce or annulment of a member's marriage revokes any revocable:

1. Disposition or appointment of benefits made by a divorced member to that member's former spouse or to a relative of the divorced member's former spouse in an instrument executed by the member before the divorce or annulment of the member's marriage to the former spouse.

2. Provision in an instrument executed by the member before the divorce or annulment of the member's marriage to the former spouse conferring any power or right on the divorced member's former spouse or on a relative of the divorced member's former spouse.

E. ASRS shall give effect to provisions of an instrument executed by a member before the divorce or annulment of the member's marriage to a former spouse as follows:

1. In the case of disposition or appointment of benefits, as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section.

2. In the case of a revoked power or right, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

F. Provisions of an instrument revoked solely as provided by this section are revived by the divorced member's remarriage to the former spouse or by a nullification of the member's divorce or annulment.

G. For the purposes of this section:

1. "Domestic relations order" means any judgment, decree, order or approval of a property settlement agreement entered in a court of competent jurisdiction that:

(a) Relates to marital property rights of a spouse or former spouse.

(b) Creates or recognizes in the spouse or former spouse the existence of an alternate payee's right to severance, survivor or retirement benefits.

(c) Assigns the spouse or former spouse as alternate payee the right to receive all or part of the severance, survivor or retirement benefits payable to the member.

2. "Relative of the divorced member's former spouse" means a person who is related to the divorced member's former spouse by blood, adoption or affinity and who, after the divorce or annulment, is not related to the divorced member by blood, adoption or affinity.

Sec. 12. Repeal

Section 38–781, Arizona Revised Statutes, is repealed from and after October 1, 1995.

Sec. 13. Section 38–782, Arizona Revised Statutes, is amended to read:

§ 38–782. Group health and accident coverage for retired public employees and elected officials and their dependents

A. The board shall establish group health and accident coverage for eligible retired and disabled members and their dependents. Eligible retired and disabled members are those members who are receiving ~~income~~ retirement benefits from ASRS or long-term disability benefits pursuant to section 38–651.03 or ~~38–781~~ article 2.1 of this chapter and who are not eligible to obtain health and accident insurance through their former employer. If an insured retired or disabled member dies before the insured member's dependent beneficiary or an insured surviving dependent, the dependent beneficiary or insured surviving dependent is entitled to coverage at group rates if the dependent beneficiary or surviving dependent elects to continue in the coverage within six months of the insured member's death and the dependent beneficiary or surviving dependent agrees to pay the cost of the premium for group health and accident insurance. On notification of the insured member's death, the board shall immediately notify a dependent beneficiary or an insured surviving dependent of the provisions of this section.

B. Retired members of the public safety personnel retirement system, the elected officials' retirement plan, the corrections officer retirement plan or the optional retirement programs authorized pursuant to section 15–1628 and their dependents who are receiving benefits from the public safety personnel retirement system, the elected officials' retirement plan, the corrections officer retirement plan or the optional retirement programs authorized pursuant to section 15–1628 and who are not covered by section 38–651.01 may participate in group health and accident coverage provided pursuant to this section. On the death of an insured member of the public safety personnel retirement system, the elected officials' retirement plan, the corrections officer retirement plan or the optional retirement program authorized pursuant to section 15–1628, the insured surviving dependent is entitled to coverage at group rates. Except as provided in subsection H of this section, the surviving dependent shall be charged amounts that are sufficient to pay for the premium and administrative expense of providing the coverage.

C. The board may enter into agreements with retired and disabled members of ASRS who elect to obtain the coverage provided pursuant to subsection A of this section. Those agreements may include provision for the deduction from the retirement benefits of the members who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under retirement benefits and the administrative expense of providing the coverage.

D. The fund manager of the public safety personnel retirement system may enter into agreements with retired members of the public safety personnel retirement system, the elected officials' retirement plan, the corrections officer retirement plan and their dependents who elect to obtain the coverage provided pursuant to this section. Those agreements may include provisions for the deduction from the retirement benefits of the members who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under their retirement benefits and the administrative expense of providing the coverage.

E. The board may enter into agreements with retired members of the optional retirement programs authorized pursuant to section 15–1628 and their dependents who elect to obtain the coverage provided pursuant to this section. Those agreements may include provisions for the payment of amounts sufficient to pay for the premium and administrative expense of providing the coverage.

F. If an insured member receiving long-term disability benefits pursuant to ~~section 38–781~~ article 2.1 of this chapter becomes ineligible for the long-term disability benefits, the member and the covered dependents of the member may

continue to participate in the group health and accident coverage provided pursuant to this section subject to the following conditions:

1. Participation in the coverage is limited to twelve months from the date the member ceases eligibility for benefits under ~~section 38-781~~ article 2.1 of this chapter or the member commences employment, whichever occurs first.

2. The member shall pay the full premium cost of the coverage selected, and the member is not eligible for benefits pursuant to section 38-783.

3. If a member who participates in the coverage dies during the twelve month period provided by this subsection, covered dependents of the member are not eligible to continue coverage after the death of the member.

G. Retired or disabled members who are not eligible for medicare, who live in this state, who enroll in a qualifying health maintenance organization under this section and who reside outside the area of a qualifying health maintenance organization shall be offered the option of enrolling with a qualified health maintenance organization offered through their provider under the same premiums as if they lived within the area boundaries of the qualified health maintenance organization provided that:

1. All medical services are rendered and received at an office designated by the qualifying health maintenance organization or at a facility referred by the health maintenance organization.

2. All nonemergency or nonurgent travel, ambulatory and other expenses from the residence area of the member to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization are the responsibility of and at the expense of the member.

3. All emergency or urgent travel, ambulatory and other expenses from the residence area of the member to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization shall be paid pursuant to any agreement between the health maintenance organization and the member living outside the area of the qualifying health maintenance organization.

H. Public monies shall not be spent to pay all or any part of the insurance premium pursuant to this section except for monies authorized to be paid for any insured from the retirement plan from which the insured is receiving benefits.

Sec. 14. Title 38, chapter 5, Arizona Revised Statutes, is amended by adding article 2.1, to read:

ARTICLE 2.1. LONG-TERM DISABILITY PROGRAM

§ 38-797. Definitions

In this article, unless the context otherwise requires:

1. "ASRS" means the Arizona state retirement system established by article 2 of this chapter.

2. "Assets" means the accumulated resources of the LTD program.

3. "Board" means the ASRS board established pursuant to section 38-713.

4. "Compensation" means the gross amount paid to a member by an employer as salary or wages, including amounts that are subject to deferred compensation or tax shelter agreements, for services rendered to or for an employer, or that would have been paid to the member except for the member's election or a legal requirement that all or part of the gross amount be used for other purposes. Compensation does not include:

(a) Lump sum payments on termination of employment for accumulated vacation or annual leave, sick leave, compensatory time or any other form of termination pay

whether the payments are made in one payment or by installments over a period of time.

(b) Damages, costs, attorney fees, interest or other penalties paid pursuant to a court order or a compromise settlement or agreement to satisfy a grievance or claim even though the amount of the payment is based in whole or in part on previous salary or wage levels, except that, if the court order or compromise settlement or agreement directs salary or wages to be paid for a specific period of time, the payment is compensation for that specific period of time.

(c) Payment, at the member's option, in lieu of fringe benefits that are normally paid for or provided by the employer.

(d) Merit awards pursuant to section 38-613 and performance bonuses paid to assistant attorneys general pursuant to section 41-192.

5. "Depository" means a bank in which the monies of the LTD program are deposited and collateralized as provided by law.

6. "Employer" means:

(a) This state.

(b) Participating political subdivisions.

7. "Employer contributions" means all amounts paid into the LTD program by an employer.

8. "Fiscal year" means the period from July 1 of any year to June 30 of the following year.

9. "LTD program" means the long-term disability program established by this article.

10. "Member" has the same meaning prescribed in section 38-711.

11. "Monthly compensation" means one-twelfth of a member's annual compensation paid and payable in the fiscal year during which a member becomes disabled.

12. "Normal retirement date" means the earliest of the following:

(a) A member's sixty-fifth birthday.

(b) A member's sixty-second birthday and completion of at least ten years of credited service.

(c) The first day immediately following the day that the sum of a member's age and years of total credited service equals eighty.

13. "Political subdivision" means any political subdivision of this state.

14. "State" means this state, including any department, office, board, commission, agency, institution or other instrumentality of this state.

§ 38-797.01. LTD program

A. A long-term disability program is established.

B. The program is known as the LTD program.

§ 38-797.02. LTD trust fund

A. A lTD trust fund is established for the purpose of paying benefits under and costs of administering the LTD program.

B. The LTD fund consists of all monies paid into it in accordance with this article, whether in the form of cash, securities or other assets, and all monies received from any other source.

C. Custody, management and investment of the LTD fund are as prescribed by this article and article 2 of this chapter.

§ 38–797.03. **ASRS board; personnel; duties**

A. The board shall administer the LTD program. ASRS officers, contractors and personnel shall perform the duties prescribed by this article.

B. The board may enter into a contract with an insurance company or another entity to administer all or part of the LTD program and to determine eligibility for benefits under the LTD program.

C. The board shall pay from the LTD trust fund the amounts necessary to pay benefits under and costs of administering the LTD program.

§ 38–797.04. **Eligibility**

All members are subject to this article and shall participate in the LTD program.

§ 38–797.05. **Employer and member contributions**

A. Beginning July 1, 1996, employers shall contribute the percentage of the compensation of all of the members under their employment so that the total employer contributions equals the amount that the board determines is necessary to pay half of all benefits under and costs of administering the LTD program.

B. Beginning July 1, 1996, a member shall contribute a percentage of the member's compensation equal to the employer contribution for the member required pursuant to subsection A of this section.

C. The employer shall pay the member contributions required of members on account of compensation earned. All employer and member contributions shall be paid to the board. The board shall allocate the contributions to the LTD trust fund and shall place the contributions in the LTD program's depository.

D. Each employer shall certify on each payroll the amount to be contributed to the LTD program and shall remit that amount to the board. The contributions are irrevocable.

E. Payments due pursuant to this article by employers become delinquent after the due date prescribed in the board's rules and thereafter shall be increased by interest from and after that date until payment is received by the board. The board shall charge interest on the delinquent payments at an annual rate determined monthly as the weighted average annual rate of return on all repurchase agreements or other short-term investment transactions in the ASRS investment account established in article 2 of this chapter during the preceding month. Delinquent payments due under this subsection, together with interest charges as provided in this subsection, may be recovered by an action in a court of competent jurisdiction against an employer liable for payments or, at the request of the director, may be deducted from any monies, including excise revenue taxes, payable to the employer by any department or agency of this state.

F. If more than the correct amount of contributions required is paid by an employer, proper adjustment shall be made in connection with subsequent payments. The board shall return excess contributions to the employer if the employer requests return of the contributions within one year after the date of overpayment.

G. Member contributions are not refundable and are not included in the calculation of survivor benefits pursuant to section 38–762.

§ 38–797.06. **Contribution rate; annual report**

The board shall:

1. After consulting with its actuary, determine an annual contribution rate based on the LTD program experience of the employers and the costs of administering the LTD program.

2. Annually report the current contribution rate to the governor, the president of the senate, the speaker of the house of representatives and each participating political subdivision.

§ 38-797.07. LTD program benefits

A. The LTD program is subject to the following limitations:

1. Except as provided in paragraph 7, monthly benefits shall not exceed two-thirds of a member's monthly compensation at the time disability commences, reduced by:

(a) Sixty-four per cent of social security disability benefits that the member or the member's dependents are eligible to receive.

(b) Eighty-three per cent of social security retirement benefits that the member is eligible to receive.

(c) All of any workers' compensation benefits.

(d) All of any payments for a veteran's disability if both of the following apply:

(i) The veteran's disability payment is for the same condition or a condition related to the condition currently causing the member's total disability.

(ii) The veteran's disability is due to, or a result of, service in the armed forces of the United States.

(e) All of any other benefits by reason of employment that are financed partly or wholly by an employer, including payments for sick leave.

(f) Fifty per cent of any salary, wages, commissions or similar pay that the member receives or is entitled to receive from any gainful employment in which the member actually engages.

2. Monthly benefits are not payable until a member has been totally disabled for a period of six consecutive months.

3. Monthly benefits are not payable to a member who is receiving retirement benefits from ASRS.

4. Monthly benefits are not payable to a member whose disability is due to, or a result of, any of the following:

(a) An intentionally self-inflicted injury.

(b) War, whether declared or not.

(c) An injury incurred while engaged in a felonious criminal act or enterprise.

(d) An injury or sickness for which the member received medical treatment within three months before the date of the member's coverage under the LTD program. This subdivision does not apply to a member who has been a member for twelve continuous months nor to a member who is employed by an employer as of June 30, 1988. For the purposes of this subdivision, "received medical treatment" means that the member consulted with or received the advice of a licensed medical or dental practitioner, including advice given during a routine examination, and it includes situations in which the member received medical or dental care, treatment or services, including the taking of drugs, medication, insulin or similar substances.

5. Monthly benefits cease to be payable to a member at the earliest of the following:

(a) The date the member ceases to be totally disabled.

(b) The date the member ceases to be under the direct care of a doctor or refuses to undergo any medical examination requested by the insurance company selected by the board to administer the LTD program.

(c) The date the member withdraws employee contributions with interest and ceases to be a member.

(d) The later of the following:

(i) The member's normal retirement date.

(ii) The month following sixty months of payments if disability occurs before sixty-five years of age.

(iii) The month following attainment of seventy years of age if disability occurs at sixty-five years of age or after but before sixty-nine years of age.

(iv) The month following twelve months of payments if disability occurs at or after sixty-nine years of age.

6. Monthly benefits are payable under the LTD program only for disabilities that commence on or after July 1, 1988.

7. The minimum benefit for a member who is entitled to receive benefits under the LTD program is fifty dollars per month.

8. Members are eligible to receive the benefits and payments described in paragraph 1, and the reductions provided by paragraph 1 apply even though the benefits are not actually paid as follows:

(a) For primary or dependent social security benefits, the members are eligible for the benefits until the benefits are actually awarded, or if the benefits are denied, until notice of the denial of the appeal of the first denial is received.

(b) For benefits and payments from any other source provided in paragraph 1, the members are eligible for the benefits if it is reasonable to believe that the benefits will be paid on proper completion of the claim or would have been paid except for the failure of the member to pursue the claim in time.

9. A member shall be considered totally disabled if:

(a) During the first thirty months of a period of disability, the member is unable to perform all duties of the position held by the member when the member became totally disabled.

(b) For a member who has received monthly benefits for twenty-four consecutive months, that a member is unable to perform any work for compensation or gain for which the member is reasonably qualified by education, training or experience.

B. A member who receives monthly benefits from the LTD program is entitled to receive service credit pursuant to article 2 of this chapter from the time disability commences until benefits cease to be payable, except that the number of years of service credited to a member's retirement account during the period the member receives LTD benefit payments shall not cause the member's total credited service for retirement benefits to exceed the greater of twenty-five years or the total years of service credited to the member's retirement account on the commencement of disability.

§ 38–797.08. Errors; benefit recomputation

If any change or error in the records results in any member receiving from the LTD program more or less than the member would have been entitled to receive if the records had been correct, the board shall correct the error and shall adjust the payments in a manner so that the equivalent of the benefit to which the member was correctly entitled is paid. The board shall correct any change or error and shall pay the appropriate monies to a member or shall recover monies from the member if the member is overpaid.

§ 38–797.09. Facility of payment

In the case of incapacity of a member receiving LTD program benefits, or in the case of any other emergency as determined by the board, the board may make LTD program benefit payments on behalf of the member to another person or persons the

board determines to be lawfully entitled to receive payment. The payment is payment for the account of the member and all persons entitled to payment and, to the extent of the payment, is a full and complete discharge of all liability of the board or the LTD program, or both, under or in connection with the LTD program.

§ 38–797.10. Assurances and liabilities

A. Nothing contained in this article shall be construed as:

1. A contract of employment between an employer and any employee.

2. A right of any member to continue in the employment of an employer.

3. A limitation of the rights of an employer to discharge any of its employees, with or without cause.

B. A member does not have any right to, or interest in, any LTD program assets on termination of the member's employment or otherwise, except as provided from time to time in the LTD program, and then only to the extent of the benefits payable to the member out of LTD program assets. All payments of benefits shall be made solely out of LTD program assets and neither the employers, the board nor any member of the board is liable for payment of benefits in any manner.

C. Benefits, employer and member contributions, earnings and all other credits payable under this article are not subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary, before actually being received by a person entitled to the benefit, earning or credit, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, garnish, execute or levy or otherwise dispose of any benefit, earning or credit under this article is void. The LTD program is not in any manner liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to any benefit, earning or credit under this article.

D. Neither the employers, the board nor any member of the board guarantees the LTD trust fund established by section 38–797.02 in any manner against loss or depreciation, and they are not liable for any act or failure to act that is made in good faith pursuant to this article. The employers are not responsible for any act or failure to act of the board or any member of the board. Neither the board nor any member of the board is responsible for any act or failure to act of any employer.

E. This section does not exempt benefits of any kind from a writ of attachment, a writ of execution, a writ of garnishment and orders of assignment issued by a court of record as the result of a judgment for arrearages of child support or for child support debt.

§ 38–797.11. Exemptions from execution, attachment and taxation; exception

A. The benefits, the employer and member contributions and the securities in the LTD trust fund established by section 38–797.02 are not subject to execution or attachment and are nonassignable except as specifically provided in this article. The employer and member contributions and the securities in the LTD trust fund established by section 38–797.02 are exempt from state, county and municipal income taxes. Benefits received by a member from the LTD program are subject to tax pursuant to title 43.

B. Interest, earnings and all other credits pertaining to benefits are not subject to execution or attachment and are nonassignable.

§ 38–797.12. **Violation; classification**

A person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the LTD program with an intent to defraud the LTD program is guilty of a class 6 felony.

§ 38–797.13. **Reservation to legislature**

The right to modify, amend or repeal this article, or any provisions of this article, is reserved to the legislature.

Sec. 15. Section 41–2996.02, Arizona Revised Statutes, is amended to read:

§ 41–2996.02. **Arizona state retirement system; termination July 1, 1996**

A. The Arizona state retirement system board and director and investment advisory council terminate on July 1, 1996.

B. Title 38, chapter 5, ~~article 2 is~~ articles 2 and 2.1 are repealed on January 1, 1997.

Sec. 16. Benefit increases

A. Members of the Arizona state retirement system who were eligible to receive long-term disability benefits pursuant to section 38–781, Arizona Revised Statutes, as repealed by this act, on or before June 30, 1995 are eligible to receive an increased benefit equal to the benefit increase provided to retired members pursuant to section 38–767, Arizona Revised Statutes, as amended by this act.

B. The benefit increases provided by subsection A of this section shall be added to the liabilities of the long-term disability program established by title 38, chapter 5, article 2.1, Arizona Revised Statutes, as added by this act.

Sec. 17. Employer and member contributions

A. Notwithstanding sections 38–736 and 38–737, Arizona Revised Statutes, for fiscal year 1995–1996, the contribution rate for the Arizona state retirement system established pursuant to title 38, chapter 5, article 2, Arizona Revised Statutes, is 3.36 per cent of payroll for both employers and members of the Arizona state retirement system.

B. For fiscal year 1995–1996, the contribution rate for employers and members covered by the long-term disability program established by title 38, chapter 5, article 2.1, Arizona Revised Statutes, as added by this act, is .49 per cent of payroll for both employers and members.

Sec. 18. Transfer of members

On October 1, 1995 all members of the Arizona state retirement system who participated in the long-term disability program established by section 38–781, Arizona Revised Statutes, as repealed by this act, shall be transferred to the long-term disability program established by title 38, chapter 5, article 2.1, Arizona Revised Statutes, as added by this act.

Sec. 19. Legislative intent; election; definitions

A. The purpose of section 38–771, Arizona Revised Statutes, as amended by this act, is to preserve the benefit rights of nonretired members of the system who were transferred from the system to the plan pursuant to Laws 1980, chapter 238. Laws 1980, chapter 238 guaranteed that benefits payable under the plan to a member of the system who was transferred to membership in the plan under that act would not be less than the retirement benefits payable to the member under the system if the member had remained a member of the system.

B. The legislature does not intend that the benefit rights of members of the plan who were transferred from the system to the plan be affected by this act.

C. In order to comply with article II, section 25, Constitution of Arizona, the Arizona state retirement system shall hold an election pursuant to section 38–771,

Arizona Revised Statutes, as amended by this act, for members of the plan with benefit rights established by Laws 1980, chapter 238.

D. For the purpose of this section:

1. "Plan" means the defined benefit program established pursuant to title 38, chapter 5, article 2, Arizona Revised Statutes.

2. "System" means the defined contribution program administered by the Arizona state retirement system.

Sec. 20. Emergency

This act is an emergency measure that is necessary to preserve the public peace, health or safety and is operative immediately as provided by law.

Approved by the Governor April 17, 1995.

Filed in the Office of the Secretary of State April 18, 1995.

PUBLIC OFFICERS AND EMPLOYEES—ELECTED OFFICIALS' RETIREMENT PLAN—MEMBERSHIP

CHAPTER 135

S.B. 1132

AN ACT AMENDING SECTION 38–804, ARIZONA REVISED STATUTES; RELATING TO THE ELECTED OFFICIALS' RETIREMENT PLAN.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 38–804, Arizona Revised Statutes, is amended to read:

§ 38–804. Membership; termination; reinstatement of credited service

A. All elected officials are members of the plan.

B. If a member ceases to hold office for any reason other than death or retirement, he may withdraw his accumulated contributions from the plan and shall be paid, within twenty days after filing an application with the fund manager, his accumulated contributions as of the date of termination, less any benefit payments he has received and any amount he may owe to the plan. If the refund includes monies that are an eligible rollover distribution and the member elects to have the distribution paid directly to an eligible retirement plan or individual retirement account or annuity and specifies the eligible retirement plan or individual retirement account or annuity to which the distribution is to be paid, the distribution shall be made in the form of a direct trustee-to-trustee transfer to the specified eligible retirement plan. The distribution shall be made in the form and at the time prescribed by the fund manager. A member who receives a refund of his accumulated contributions from the plan or who elects a transfer pursuant to this subsection forfeits his credited service, and all rights to benefits under the plan and membership in the plan terminate.

C. If an elected official who has terminated his membership in the plan pursuant to subsection B of this section is subsequently elected or otherwise becomes eligible for membership in the plan pursuant to subsection A of this section, credited service only accrues from the date of his most recent eligibility as an elected official.

D. Notwithstanding subsection C of this section, if an elected official files a written election form with the fund manager within ninety days after the day of his reemployment as an elected official and repays the amount of his accumulated

contributions previously withdrawn pursuant to subsection B of this section within one year after the date of his reemployment as an elected official, with interest on that amount at the rate of the net effective yield of the fund as published in the most recent annual report, compounded each year from the date of withdrawal to the date of repayment, credited service shall be restored. Credited service shall not be restored until complete repayment is made to the fund.

E. If a retired member subsequently becomes an elected official, contributions shall not be made by the retired member or his employer and credited service shall not accrue while he is holding office, except that if a retired member subsequently becomes an elected official of the same office from which the member retired, he shall not receive a pension, contributions shall not be made by the member or his employer and credited service shall not accrue while he is holding office. If the elected official ceases to hold the same office, he is entitled to receive the same pension he was receiving when his pension was discontinued pursuant to this subsection. Nothing in this subsection prohibits a retired judge called by the supreme court to active duties of a judge pursuant to section 38–813 from receiving retirement benefits.

Approved by the Governor April 17, 1995.

Filed in the Office of the Secretary of State April 18, 1995.

CLOSE CORPORATIONS—ANNUAL REPORTS—STATEMENT OF FINANCIAL CONDITION

CHAPTER 136

S.B. 1199

AN ACT AMENDING SECTION 10–1622, ARIZONA REVISED STATUTES; RELATING TO CLOSE CORPORATIONS.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 10–1622, Arizona Revised Statutes, is amended to read:

§ 10–1622. Annual report

A. Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to the commission for filing an annual report that sets forth all of the following:

1. The name of the corporation and the state or country under whose law it is incorporated.

2. The address of its known place of business and the name and address of its statutory agent in this state.

3. The address of its principal office.

4. The names and business addresses of its directors and principal officers.

5. A brief description of the nature of its business.

6. The total number of authorized shares, itemized by class and series, if any, within each class.

7. The total number of issued and outstanding shares, itemized by class or series, if any, within each class.

8. A certificate of disclosure containing the information set forth in section 10–202, subsection D.

9. The names of shareholders of record of the corporation holding more than twenty per cent of any class of shares issued by the corporation, including persons beneficially holding the shares through nominees.

10. A statement that all corporate income tax returns required by title 43 have been filed with the department of revenue.

11. A statement of its financial condition, except that a close corporation established pursuant to chapter 18, article 1 of this title does not have to file a statement of its financial condition with the report.

B. Information in the annual report shall be current as of the date the annual report is executed on behalf of the corporation.

C. The annual report for all corporations shall be delivered to the commission for filing, and the annual fee shall be paid on or before the fifteenth day of the third month after the close of the fiscal year adopted by the corporation for the purpose of title 43. If a corporation is unable to file the annual report required by this section on or before the date prescribed by this section, the corporation may file, but only on or before this date, a written request with the commission for an extension of time, not to exceed six months, in which to file the annual report. The request for an extension of time shall be accompanied by the annual registration fee required by law. After filing the request for an extension of time and on receipt of the annual registration fee, the commission shall grant the request.

D. If an annual report does not contain the information required by this section, the commission shall promptly notify the reporting domestic or foreign corporation in writing and shall return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the commission within thirty days after the effective date of notice, it is deemed to be timely filed.

E. Any corporation that is exempt from the requirement of filing an annual report shall deliver annually a certificate of disclosure containing the information set forth in section 10–202, subsection D, executed by any two executive officers or directors of the corporation on or before May 31. If the certificate is not delivered within ninety days after the due date of the annual report or within ninety days after May 31 in the case of any corporation that is exempt from the requirement of filing an annual report, the commission shall revoke the filing of articles of incorporation or application for authority of that corporation in accordance with chapters 1 through 17 of this title.

Sec. 2. Delayed effective date

Section 10–1622, Arizona Revised Statutes, as amended by this act, is effective on January 1, 1996.

Approved by the Governor April 17, 1995.

Filed in the Office of the Secretary of State April 18, 1995.

PROPERTY TAXATION—REAL AND PERSONAL—ASSESSMENT

CHAPTER 137

S.B. 1211

AN ACT AMENDING SECTION 42–221, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1994, CHAPTER 65, SECTION 1, LAWS 1994, CHAPTER 66, SECTION 1, LAWS 1994, CHAPTER 74, SECTION 4 AND LAWS 1994, CHAPTER 239,

SECTION 1; AMENDING TITLE 42, CHAPTER 2, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 42-235.03; AMENDING SECTION 42-604, ARIZONA REVISED STATUTES; RELATING TO PROPERTY TAX ASSESSMENT.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 42-221, Arizona Revised Statutes, as amended by Laws 1994, chapter 65, section 1, Laws 1994, chapter 66, section 1, Laws 1994, chapter 74, section 4 and Laws 1994, chapter 239, section 1, is amended to read:

§ 42-221. **Ascertainment of property subject to taxation**

A. Each county assessor is ~~hereby~~ designated as a deputy director of the department for the purpose of determining the valuation of property within his county for state property tax purposes.

B. Not later than ~~October 31~~ December 15 each year the county assessor shall ascertain by diligent inquiry and examination which includes the use of aerial photography, applicable department of revenue records, building permits and other document sources or technology, all property in his county subject to taxation, and not otherwise provided by law to be valued by the department. He shall determine the names of all persons owning, claiming or having possession or control thereof and determine through the use of the manuals furnished and procedures prescribed by the department the full cash value of all such property, as of January 1 of the next year, and he shall list such property together with the valuation found for use on the roll. In the case of property that is classified as class four, five or six pursuant to section 42-162, the assessor may use the same valuation for up to three consecutive tax years if the assessor files a specific plan for such valuations with the department and the plan is implemented uniformly throughout the county.

C. Not later than ~~October 1~~ November 15 each year each county assessor shall report to the department any parcel of property which has not been appraised during the preceding three years. The assessor shall include a statement of the reasons for the failure to appraise each such parcel of property. The department may direct the county assessor to adjust the valuation of such parcels to reflect their full cash value.

D. Every person who is the owner of record or who is the purchaser under a deed of trust or an agreement of sale of property which by law is valued by the assessor for placement on the roll shall, on ~~or~~ any date before ~~November 15~~ March 1 each year, be notified at the last known mailing address in writing by the assessor as to the full cash value of the property and the limited property value, if applicable, to be used for assessment purposes of such property found by the assessor for placement on the rolls. ~~The director may, upon application of the county assessor, extend the final date for mailing the notice from November 15 to on or before December 15.~~ If the director extends the mailing date, the extension applies to all property valued by the assessor. The assessor shall include in the notice the full cash value found by the assessor for such property for the prior tax year, the classification given the parcel of property pursuant to section 42-162, the mailing date of the notice and the last date upon which the owner may file his appeal from the valuation or classification assigned to his property. Except for property that is listed as class five property pursuant to section 42-162, subsection A, paragraph 5, the notice shall separately list the full cash value of the land and the full cash value of the improvement or improvements associated with the land. Any person owning, claiming or having possession or control of property which by law is to be valued by the assessor for placement on the roll may, after ~~November 15~~ March 1, inquire of and be advised by the assessor as to the valuation of such property found by the assessor for placement on the rolls, but the assessor shall not change the roll except as provided by subsection F of this section or as otherwise provided by law.

E. Beginning with the 1995 tax year, the owner of personal property that is valued by the assessor, that does not exceed a valuation of twenty-five thousand dollars and who has reported personal property in the three immediately preceding tax years may elect to apply a presumptive value to the property for purposes of taxation in lieu of a determination of full cash value under this section. The initial presumptive value of the personal property is the average value of the personal property reported by the owner for the three immediately preceding tax years or, if the value has increased in each of those three years, the value of the personal property in the immediately preceding tax year. The owner may continue to elect the presumptive value for four consecutive tax years if the valuation of the property does not exceed twenty-five thousand dollars in any of those years. In each fifth succeeding tax year the owner shall return a full property report to the assessor, showing additions and deletions of personal property, and the valuation derived from this report is the presumptive value for the succeeding four tax years.

F. Any owner of property which in his opinion has been valued too high or otherwise improperly valued or listed on the roll by the assessor may file a petition with the assessor on a form prescribed by the department. The petition shall set forth in writing the owner's opinion of the full cash value of the property and substantial information which justifies that opinion of value for the assessor to consider for purposes of basing a change in classification or reduction or correction of the valuation. Petitions may include more than one parcel of property if they are part of the same economic unit according to department of revenue guidelines or if they are owned by the same owner, they have the same use, are appealed on the same basis and are located in the same geographic area, as determined pursuant to department of revenue guidelines and are on a form prescribed by the department. The petition shall be filed ~~on or before December 31 unless the notice required by subsection D of this section was not mailed by the assessor by November 15, in which case the petition shall be filed within forty-five days of~~ within sixty days after the date the assessor mailed the notice. United States postal service postmark dates are evidence of the date petitions were filed for purposes of this subsection. ~~If the assessor finds any particular in the matter complained of to be erroneous, the assessor shall submit the necessary correction to the department for approval within fifteen days after filing of the petition.~~ For purposes of this section, the owner provides substantial information to justify the opinion of value by stating the method or methods of valuation on which the opinion is based and:

1. Under the income approach, including the information required in subsection I of this section.

2. Under the market approach, including the full cash value of at least one comparable property in the same geographic area or the sale of the subject property.

3. Under the cost approach, including the cost to build or rebuild the property plus the land value.

G. If a taxpayer who files a petition with the assessor pursuant to subsection F of this section uses the income approach to determine valuation, the taxpayer, an officer of a corporate taxpayer, a general partner or a designated agent shall file a sworn affidavit under penalty of perjury that the information contained in the petition is true and correct to the best of the petitioner's knowledge.

H. If a petition filed with the assessor is rejected because it fails to include substantial information required by this section, the petitioner may file an amended petition with the assessor within fifteen days after notice of the rejection is mailed, if it is mailed on or before ~~March 1~~ June 15, or, if it is mailed after ~~March 1~~ June 15, the petitioner may appeal within fifteen days to the county board of equalization in the manner provided in section 42-241.01, if a county board is established in the county, or to the state board of equalization.

I. A petition filed with the assessor and based upon the income approach to value shall include income and expense data relating to the property for the most recent three consecutive fiscal years of the taxpayer ending on or before September 30 of the previous year. In the event that the income and expense data required to be filed by this subsection are not available to the owner, the owner shall file with the petition such income and expense data as are available. The department may, by rule, establish additional information to be filed in the event that the required income and expense data are not available.

~~J. The assessor may hold informal hearings regarding petitions filed under this section.~~

~~K.~~ J. At the petitioner's request, the assessor shall meet with the petitioner. In all cases the assessor shall consider the petition and shall rule on every petition filed under this section by ~~April 1~~ August 15 of each year. ~~In such cases~~ If the petitioner is unable to appear and meet with the assessor at the time and place set by the assessor, the petitioner may submit written evidence to support the petition if it is submitted before the date of the meeting. If the assessor grants the requested relief, the petitioner may not appeal the ruling. If the petitioner and the assessor reach an agreement within five business days, both parties shall sign the agreement, and both parties waive the right to further appeal.

K. If the request of the petitioner is denied, in whole or in part, the assessor shall, on the date of the ruling, mail to the petitioner at the address shown on the petition notice of the grounds of the refusal to make the change requested together with a copy of the petition. A petitioner whose request is denied may appeal, within twenty-five days after the assessor's decision is mailed, to the county board of equalization, if one is established in the county, or, if one is not established in the county, to the state board of equalization.

L. A person who owns, controls or possesses property valued by the county assessor may each year designate an agent to act on his behalf on any matter relating to the review of the valuation of the property before the assessor and the county board of equalization or the state board of equalization. The designation by such person of an agent under this subsection shall be made annually in writing by such person to the county assessor on a form prescribed by the department and shall expire at the end of the calendar year. The form and the petition shall be filed together with the county assessor and the county board of equalization or the state board of equalization. Thereafter notices issued by the assessor or either board of equalization relating to the review of the valuation of that property shall be sent to the agent.

M. No person owning, controlling or possessing property valued by the assessor may appear before the county board or the state board of equalization without first having filed a petition with the assessor as provided by this section, except as otherwise provided in this article. A person shall not raise any issue if the issue was not included in the petition filed pursuant to subsection F of this section.

N. The written notice of valuation required to be mailed pursuant to subsection D of this section:

1. Shall prominently display a statement informing property owners that if a parcel of property is being used as a rental unit and the property is listed on the written notice as a class five property, as defined in section 42–162, the owner must notify the county assessor of the rental use of the property or he may be subject to a civil penalty as prescribed in section 42–163.

2. Shall include a form with instructions on the procedure and deadlines for appealing the assessed valuation shown on the notice. The appeal form for property that is listed as class five pursuant to section 42–162 shall contain simplified instructions and be separate from the appeal form for other classes of property.

O. If the assessor initially determines the valuation of property under subsection B of this section by using a computerized data processing or valuation program, and if the valuation found by that method constitutes a change in the valuation methodology and the resulting change in valuation in any tax year is more than fifteen per cent above or below the valuation found for the same parcel of property in the preceding tax year, the assessor shall place the parcel on an exception list and shall review the valuation to determine if the change in valuation reflects the current status and conditions affecting each property on the exception list before mailing the notice of valuation. This subsection does not apply in the case of parcel splits or consolidations, construction or destruction or improvements, changes in use or classification of the property, or other occurrences that would account for the change in valuation.

Sec. 2. Title 42, chapter 2, article 2, Arizona Revised Statutes, is amended by adding section 42–235.03, to read:

§ 42–235.03. Reducing minimum value for property in use

In tax years 1996, 1997, 1998 and 1999, the department shall reduce the minimum value prescribed for classes three and four personal property valued by the assessor by two and one-half per cent good each year. Thereafter, the department shall continue to prescribe the finally reduced minimum value for property in use. This section does not require the department to reduce the minimum value for any property in use below ten per cent good.

Sec. 3. Section 42–604, Arizona Revised Statutes, is amended to read:

§ 42–604. Notice of valuation

A. Prior to the first Monday of the month that the unsecured roll is to be certified, the assessor shall deliver to the owner of the property included on such roll, if known, or to the person in whose possession it is found at the time of valuation, a notice of valuation in the form prescribed by the department.

B. The owner of the property valued by the assessor or the person in whose possession it is found may appeal to the assessor within ~~ten~~ thirty days from the date the notice was delivered by filing a petition with the assessor on a form prescribed by the department. The petition shall set forth in writing the owner's opinion of the value of the property and substantial information which justifies the opinion of value in order for the assessor to consider the information for the purpose of basing a change in the valuation. Notice as provided under the provisions of this section shall be made in the same manner as provided in section 42–221, subsection K.

C. The assessor shall rule on every such petition within ~~ten~~ thirty days after the filing thereof, and in such cases where the request of the petitioner is denied, in whole or in part, the assessor shall deliver to the petitioner written notice of the grounds of his refusal to grant the request contained in the petition.

D. Any person appealing to the assessor as provided in this section may appeal, at any time prior to the monthly meeting of the county board held subsequent to the delivery of the assessor's notice of refusal, to the county board in the same manner as provided in section 42–241.01 provided that the date of the assessor's notice of refusal or decision is at least fifteen days prior to the next monthly meeting of the county board of supervisors.

Sec. 4. Emergency

This act is an emergency measure that is necessary to preserve the public peace, health or safety and is operative immediately as provided by law.

Approved by the Governor April 17, 1995.

Filed in the Office of the Secretary of State April 18, 1995.

Senate Engrossed House Bill

State of Arizona
House of Representatives
Forty-third Legislature
First Regular Session
1997

HOUSE BILL 2307

AN ACT

AMENDING SECTION 41-2123, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 15, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 41-2124 AND 41-2124.01; MAKING AN APPROPRIATION; RELATING TO OXYGENATED FUELS.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 41-2123, Arizona Revised Statutes, is amended to read:

41-2123. Area A; sale of gasoline; oxygen content

A. From and after ~~October 15~~ NOVEMBER 1 through March 31 of each year:

1. All leaded gasoline which is supplied or sold by any person and which is intended as a final product for the fueling of motor vehicles within area A or which is consumed in a motor vehicle within area A by a fleet owner shall contain not less than 2.7 per cent by weight of oxygen nor more than 3.7 per cent by weight of oxygen.

2. All unleaded gasoline which is supplied or sold by any person and which is intended as a final product for the fueling of motor vehicles within area A or which is consumed in a motor vehicle in area A by a fleet owner shall, for a gasoline-ethanol blend, contain not less than ten per cent by volume of ethanol nor more than the maximum percentage of oxygen allowed by provisions of a waiver issued or other limits established by the United States environmental protection agency.

3. All unleaded gasoline which is supplied or sold by any person and which is intended as a final product for the fueling of motor vehicles within area A or which is consumed in a motor vehicle within area A by a fleet owner shall, for a blend other than a gasoline-ethanol blend, contain not less than 2.7 per cent by weight of oxygen nor more than the maximum percentage of oxygen allowed by provisions of a waiver issued or other limits established by the United States environmental protection agency.

B. Notwithstanding subsection A of this section, the director of the department of weights and measures in consultation with the director of the department of environmental quality shall approve alternate fuel control measures that are submitted by manufacturers or suppliers of gasoline and that the directors determine will result in motor vehicle carbon monoxide emissions that are equal to or less than emissions that result under compliance with subsection A of this section and section 41-2083. In making this determination, the director of the department of weights and measures and the director of the department of environmental quality shall compare the emissions of the alternate fuel control measure with the emissions of a fuel with a maximum vapor pressure standard as prescribed by section 41-2083 and with the minimum oxygen content or percentage by volume of ethanol as prescribed by this section.

C. Any alternate fuel control measures that are approved shall not increase emissions of non-methane hydrocarbons, particulates, carbon monoxide or oxides of nitrogen. Alternate fuel control measures approved pursuant to subsection B of this section and this subsection may be used by any manufacturer or supplier of gasoline unless the approval is rescinded more than one hundred eighty days before the first day of a gasoline control period. Manufacturers and suppliers who use an approved alternate fuel control measure shall annually submit a compliance plan to the director of the department of weights and measures no later than sixty days before the first day of a gasoline control period.

Sec. 2. Title 41, chapter 15, article 6, Arizona Revised Statutes, is amended by adding sections 41-2124 and 41-2124.01, to read:

41-2124. Area A; fuel reformulation; rules

A. FROM AND AFTER MAY 1, 1999 ALL GASOLINE PRODUCED AND SHIPPED TO MARICOPA COUNTY AND SOLD OR OFFERED FOR SALE FOR USE IN MOTOR VEHICLES IN AREA A, SUBJECT TO AN APPROPRIATE WAIVER GRANTED BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY PURSUANT TO SECTION 211(c)(4) OF THE CLEAN AIR ACT AS DEFINED PURSUANT TO SECTION 49-401.01, SHALL COMPLY WITH EITHER OF THE FOLLOWING FUEL REFORMULATION OPTIONS:

1. A GASOLINE THAT MEETS STANDARDS FOR FEDERAL PHASE II REFORMULATED GASOLINE, AS PROVIDED IN 40 CODE OF FEDERAL REGULATIONS SECTION 80.41, PARAGRAPHS (a) THROUGH (h), IN EFFECT ON JANUARY 1, 1997, AND MEETS THE MAXIMUM VAPOR PRESSURE REQUIREMENTS IN SECTION 41-2083, SUBSECTIONS D AND F.

2. CALIFORNIA PHASE 2 REFORMULATED GASOLINE, INCLUDING ALTERNATIVE FORMULATIONS ALLOWED BY THE PREDICTIVE MODEL, AS ADOPTED BY THE CALIFORNIA AIR RESOURCES BOARD PURSUANT TO THE CALIFORNIA CODE OF REGULATIONS, TITLE 13, SECTIONS 2261 THROUGH 2262.7 AND 2265, IN EFFECT ON JANUARY 1, 1997, THAT MEETS THE MAXIMUM VAPOR PRESSURE REQUIREMENTS IN SECTION 41-2083, SUBSECTIONS D AND F.

B. FROM AND AFTER NOVEMBER 1 THROUGH MARCH 31 OF EACH YEAR, THE FUELS DESCRIBED IN SUBSECTION A OF THIS SECTION SHALL MEET THE REQUIREMENTS OF SECTION 41-2123.

C. THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY IN CONSULTATION WITH THE DIRECTOR OF WEIGHTS AND MEASURES SHALL ADOPT BY RULE:

1. REQUIREMENTS TO IMPLEMENT THE PROVISIONS OF SUBSECTIONS A AND B OF THIS SECTION.

2. REQUIREMENTS FOR RECORD KEEPING, REPORTING AND ANALYTICAL METHODS FOR FUEL PROVIDERS TO DEMONSTRATE COMPLIANCE WITH SUBSECTIONS A AND B OF THIS SECTION.

D. THIS SECTION DOES NOT APPLY TO FUEL SOLD FOR USE AT A MOTOR VEHICLE MANUFACTURER PROVING GROUND OR AT A MOTOR VEHICLE RACING EVENT.

41-2124.01. Area A; short-term fuel reformulation; rules

A. FROM AND AFTER JUNE 1, 1998 THROUGH SEPTEMBER 30, 1998, ALL GASOLINE PRODUCED AND SHIPPED TO MARICOPA COUNTY AND SOLD OR OFFERED FOR SALE FOR USE IN MOTOR VEHICLES IN AREA A, SUBJECT TO AN APPROPRIATE WAIVER GRANTED BY THE ENVIRONMENTAL PROTECTION AGENCY PURSUANT TO SECTION 211(c)(4) OF THE CLEAN AIR ACT AS DEFINED PURSUANT TO SECTION 49-401.01, SHALL COMPLY WITH EITHER OF THE FOLLOWING FUEL REFORMULATION OPTIONS:

1. CALIFORNIA PHASE 2 REFORMULATED GASOLINE, INCLUDING ALTERNATE FORMULATIONS ALLOWED BY THE PREDICTIVE MODEL, AS ADOPTED BY THE CALIFORNIA AIR RESOURCES BOARD PURSUANT TO THE CALIFORNIA CODE OF REGULATIONS, TITLE 13, SECTIONS 2261 THROUGH 2262.7 AND 2265, IN EFFECT ON JANUARY 1, 1997, THAT MEETS THE MAXIMUM VAPOR PRESSURE REQUIREMENTS IN SECTION 41-2083, SUBSECTION F.

2. A GASOLINE THAT MEETS THE STANDARDS FOR FEDERAL PHASE I REFORMULATED GASOLINE, AS PROVIDED IN 40 CODE OF FEDERAL REGULATIONS SECTION 80.41, PARAGRAPHS (a) THROUGH (h), IN EFFECT ON JANUARY 1, 1997, THAT MEETS THE MAXIMUM VAPOR PRESSURE REQUIREMENT IN SECTION 41-2083, SUBSECTION F.

B. THE DIRECTOR OF ENVIRONMENTAL QUALITY, IN CONSULTATION WITH THE DIRECTOR OF THE DEPARTMENT OF WEIGHTS AND MEASURES, SHALL ADOPT BY RULE:

1. REQUIREMENTS TO IMPLEMENT THE PROVISIONS OF SUBSECTION A OF THIS SECTION.

2. REQUIREMENTS FOR RECORD KEEPING, REPORTING AND ANALYTICAL METHODS FOR FUEL PROVIDERS TO DEMONSTRATE COMPLIANCE WITH THIS SECTION.

C. THIS SECTION DOES NOT APPLY TO FUEL SOLD FOR USE AT A MOTOR VEHICLE MANUFACTURER PROVING GROUND OR AT A MOTOR VEHICLE RACING EVENT.

Sec. 3. Adoption of fuel rules; interim and permanent

A. Notwithstanding title 41, chapter 6, article 3, Arizona Revised Statutes, before September 15, 1997, the director of the department of environmental quality shall adopt the rules required by sections 41-2124 and 41-2124.01, Arizona Revised Statutes, as added by this act, as interim rules by publishing the text of the rules in the Arizona administrative register.

The director shall provide for reasonable notice and at least one public hearing on the proposed interim rules in Area A, as defined pursuant to section 49-541, Arizona Revised Statutes. The rules shall become effective no earlier than the thirtieth day following the last public hearing.

B. On the same day the director files the initial rules with the secretary of state, the director shall file notice of docket opening for the permanent rule making. The notice of proposed rule making for the permanent rules shall be filed with the secretary of state within thirty days after the filing of the notice of docket opening. The rules published pursuant to subsection A of this section expire and are automatically repealed on the date that the permanent rules become effective.

Sec. 4. Disapproval of fuel reformulations; rule

A. If the administrator of the United States environmental protection agency fails to approve the sale and use of both of the reformulated gasolines prescribed in section 41-2124, Arizona Revised Statutes, as added by this act, the director of environmental quality shall adopt by rule, standards for one of the following:

1. A gasoline that meets standards for federal phase II reformulated gasoline, as provided in 40 Code of Federal Regulations section 80.41, paragraphs (a) through (h) in effect on January 1, 1997, that meets the maximum vapor pressure requirements of section 41-2083, subsections D and F, Arizona Revised Statutes.

2. California phase 2 reformulated gasoline, including alternative formulations allowed by the predictive model, as adopted by the California air resources board pursuant to California code of regulations, title 13, sections 2261 through 2262.7 and 2265, in effect on January 1, 1997, that meets the maximum vapor pressure requirements of section 41-2083, subsections D and F, Arizona Revised Statutes.

B. The rule shall prescribe all of the following:

1. From and after November 1 through March 31 of each year, the fuel formulation selected pursuant to subsection A of this section shall meet the requirements of section 41-2123, Arizona Revised Statutes.

2. Requirements for record keeping, reporting and analytical methods for fuel providers to demonstrate compliance with this section.

3. Only the reformulated gasoline selected pursuant to subsection A of this section shall be sold or offered for sale for use in motor vehicles in area A, as defined pursuant to section 49-541, Arizona Revised Statutes, except that this requirement does not apply to fuel sold for use at a motor vehicle manufacturer proving ground or at a motor vehicle racing event.

Sec. 5. Joint legislative study committee on fuel pricing; duties; membership; report

A. The joint legislative study committee on fuel pricing is established consisting of the following members:

1. Three members of the house of representatives, two members to be appointed by the speaker of the house of representatives, one of whom is the chairperson of the house commerce committee who shall serve as cochairperson of the committee and one member to be appointed by the minority leader of the house of representatives.

2. Three members of the senate, two members to be appointed by the president of the senate, one of whom is the chairperson of the senate commerce and economic development committee who shall serve as cochairperson of the committee and one member to be appointed by the minority leader of the senate.

B. The committee shall complete a study on fuel prices including the comparison of fuel pricing by region, state and in major metropolitan areas across the United States. The committee shall compare the pricing by fiscal quarter for the past four years. The committee shall include in a report a list of factors affecting pricing and competition in these regions, states and metropolitan areas and shall make recommendations as to the state's role in maintaining and ensuring price competitiveness of gasoline in Arizona.

C. The committee shall submit a report and recommendations to the president of the senate, the speaker of the house of representatives and the governor by December 31, 1997.

D. The committee may use the services of legislative staff and the staff of the department of commerce.

Sec. 6. Appropriation; implementation and enforcement of the long term fuel formulation measure

A. The sum of $150,000 is appropriated from the state general fund in fiscal year 1997-1998 to the department of weights and measures for the implementation and enforcement and quality assurance program for the fuels requirements adopted pursuant to sections 41-2124 and 41-2124.01, Arizona Revised Statutes, as added by this act.

B. The sum of $50,000 is appropriated from the state general fund in fiscal year 1997-1998 to the department of environmental quality for the purpose of adopting rules pursuant to sections 41-2124 and 41-2124.01, Arizona Revised Statutes, as added by this act.

Sec. 7. Delayed repeal

Section 5 of this act is repealed from and after January 31, 1998.

Sec. 8. Emergency

This act is an emergency measure that is necessary to preserve the public peace, health or safety and is operative immediately as provided by law.

Senate Engrossed House Bill

State of Arizona
House of Representatives
Forty-third Legislature
Second Regular Session
1998

HOUSE BILL 2347

AN ACT

AMENDING SECTION 41-2124, ARIZONA REVISED STATUTES; RELATING TO FUEL REFORMULATION REQUIREMENTS.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 41-2124, Arizona Revised Statutes, is amended to read:

41-2124. Area A; fuel reformulation; rules

A. From and after May 1, 1999 all gasoline produced and shipped to Maricopa county and sold or offered for sale for use in motor vehicles in area A, subject to an appropriate waiver granted by the administrator of the United States environmental protection agency pursuant to section 211(c)(4) of the clean air act as defined pursuant to section 49-401.01, shall comply with either of the following fuel reformulation options:

1. A gasoline that meets standards for federal phase II reformulated gasoline, as provided in 40 Code of Federal Regulations section 80.41, paragraphs (a) through (h), in effect on January 1, 1997, and meets the maximum vapor pressure requirements in section 41-2083, subsections D and F.

2. California phase 2 reformulated gasoline, including alternative formulations allowed by the predictive model, as adopted by the California air resources board pursuant to the California code of regulations, title 13, sections 2261 through 2262.7 and 2265, in effect on January 1, 1997, that meets the maximum vapor pressure requirements in section 41-2083, subsections D and F.

B. FROM AND AFTER NOVEMBER 1, 2000 THROUGH MARCH 31, 2001 AND FROM THE PERIOD BEGINNING NOVEMBER 1 THROUGH MARCH 31 OF EACH SUBSEQUENT YEAR, ALL GASOLINE PRODUCED AND SHIPPED TO MARICOPA COUNTY AND SOLD OR OFFERED FOR SALE FOR USE IN MOTOR VEHICLES IN AREA A, SUBJECT TO AN APPROPRIATE WAIVER GRANTED

BY THE ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY PURSUANT TO SECTION 211(c)(4) OF THE CLEAN AIR ACT AS DEFINED PURSUANT TO SECTION 49-401.01, SHALL COMPLY WITH STANDARDS FOR CALIFORNIA PHASE 2 REFORMULATED GASOLINE, INCLUDING ALTERNATIVE FORMULATIONS ALLOWED BY THE PREDICTIVE MODEL, AS ADOPTED BY THE CALIFORNIA AIR RESOURCES BOARD PURSUANT TO THE CALIFORNIA CODE OF REGULATIONS, TITLE 13, SECTIONS 2261 THROUGH 2262.7 AND 2265, IN EFFECT ON JANUARY 1, 1997, AND SHALL MEET THE MAXIMUM VAPOR PRESSURE REQUIREMENTS IN SECTION 41-2083, SUBSECTIONS D AND F. THE FUEL DESCRIBED IN THIS SUBSECTION SHALL MEET THE REQUIREMENTS OF SECTION 41-2123, SUBSECTION A, PARAGRAPH 2.

C. FROM NOVEMBER 1, 2000 THROUGH MARCH 31, 2001, AND FOR EACH WINTER SEASON OF NOVEMBER THROUGH MARCH THEREAFTER, THE DIRECTOR OF THE DEPARTMENT OF WEIGHTS AND MEASURES SHALL DETERMINE THE AVERAGE LEVELS OF THE CONSTITUENTS IN THE GASOLINE SOLD OR OFFERED FOR SALE IN AREA A AND SHALL PROVIDE THE RESULTS OF THIS DETERMINATION TO THE DIRECTOR OF ENVIRONMENTAL QUALITY. THE DIRECTOR OF ENVIRONMENTAL QUALITY SHALL ANALYZE THE DATA PROVIDED BY THE DIRECTOR OF THE DEPARTMENT OF WEIGHTS AND MEASURES AND, NO LATER THAN JULY 1, 2001 AND EACH JULY THEREAFTER, SHALL DETERMINE THE AVERAGE DAILY CARBON MONOXIDE REDUCTIONS RESULTING FROM THE USE OF THE GASOLINE SPECIFIED IN SUBSECTION B OF THIS SECTION DURING THE PRECEDING WINTER SEASON. IF THE AVERAGE DAILY CARBON MONOXIDE REDUCTIONS RESULTING FROM THE USE OF THE GASOLINE SPECIFIED IN SUBSECTION B OF THIS SECTION DURING THE PRECEDING WINTER SEASON ARE LESS THAN NINETY PER CENT OF THE GOAL OF THIRTY-TWO TONS PER DAY IN 2001, THIRTY-ONE TONS PER DAY IN 2003, THIRTY TONS PER DAY IN 2005, TWENTY-NINE TONS PER DAY IN 2007, OR TWENTY-EIGHT TONS PER DAY IN 2009, THEN THE DEPARTMENT OF ENVIRONMENTAL QUALITY SHALL IMMEDIATELY NOTIFY THE GOVERNOR, THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

D. ANY REGISTERED SUPPLIER OR OXYGENATE BLENDER, AS DEFINED IN DEPARTMENT RULES, MAY PETITION THE DIRECTOR TO REQUEST THAT ALL REGISTERED SUPPLIERS OR OXYGENATE BLENDERS BE ALLOWED TO COMPLY WITH ANY PROVISION OF SECTION 41-2123, SUBSECTION A, PROVIDED THE PETITIONER CAN DEMONSTRATE THAT ETHANOL SUPPLY SHORTAGES ARE IMMINENT.

1. THE PETITION SHALL:

(a) IDENTIFY SPECIFIC SUPPLY CONDITIONS THAT WILL RESULT IN A SHORTAGE OF ETHANOL.

(b) IDENTIFY WHICH OXYGENATE OR OXYGENATES WILL BE BLENDED INTO GASOLINE FOR SALE OR USE IN AREA A.

(c) DEMONSTRATE THAT THE ALTERNATIVE OXYGENATE BLEND COMES CLOSEST TO MEETING A THREE AND ONE-HALF PER CENT BY WEIGHT OXYGEN CONTENT AT REASONABLE COST.

(d) SPECIFY A TIME PERIOD FOR COMPLIANCE WITH ANY PROVISION OF SECTION 41-2123, SUBSECTION A, NOT TO EXCEED SIXTY DAYS.

2. THE DIRECTOR SHALL EITHER GRANT OR DENY THE PETITION IN WRITING WITHIN SEVEN DAYS OF ITS RECEIPT. ANY DECISION BY THE DIRECTOR TO GRANT THE PETITION SHALL BE EQUALLY APPLICABLE TO ALL REGISTERED SUPPLIERS OR OXYGENATE BLENDERS AND SHALL NOT BE SELECTIVELY APPLIED TO ANY SINGLE REGISTERED SUPPLIER OR OXYGENATE BLENDER. THE PETITION MAY BE GRANTED ONLY IF THE DIRECTOR VERIFIES THAT THE BASIS FOR REQUESTING THE PETITION IS FACTUAL.

3. THE DIRECTOR MAY REAUTHORIZE A PETITION IF THE PETITIONER CAN DEMONSTRATE THAT THE CONDITIONS HAVE CONTINUED. THE REAUTHORIZATION OF A PETITION SHALL NOT EXCEED THIRTY DAYS.

4. THE DIRECTOR SHALL CONSULT WITH THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY PRIOR TO GRANTING, REAUTHORIZING OR DENYING ANY SUCH PETITION.

~~B.~~ E. From and after November 1, 1999 through March 31, 2000 of each year, the fuels described in subsection A of this section shall meet the requirements of section 41-2123.

~~C.~~ F. The director of environmental quality in consultation with the director of the department of weights and measures shall adopt by rule:

1. Requirements to implement ~~the provisions of~~ subsections A ~~and B~~ THROUGH E of this section.

2. Requirements for record keeping, reporting and analytical methods for fuel providers to demonstrate compliance with subsections A ~~and B~~ THROUGH E of this section.

~~D.~~ G. This section does not apply to fuel sold for use at a motor vehicle manufacturer proving ground or at a motor vehicle racing event.

Sec. 2. Intent

It is the intent of the legislature that except as is necessary to satisfy the requirements of the federal clean air act, the gasoline formulation specified in section 41-2124, Arizona Revised Statutes, as amended by this act for use in the winter season of November through March of each year shall be limited exclusively to the winter season and that this gasoline formulation shall not be extended for the exclusive use in any time periods other than November through March of each year. If the gasoline specified in section 41-2124, Arizona Revised Statutes, as amended by this act does not result in the carbon monoxide emission benefits specified in subsection C of that section, then the legislature intends to re-evaluate the existing authorized measures as well as alternative measures.

Conference Engrossed

State of Arizona
House of Representatives
Forty-fourth Legislature
First Regular Session
1999

HOUSE BILL 2189

AN ACT

AMENDING SECTIONS 1-215, 28-5805, 41-796.01, 41-803, 41-1516, 41-2083 AND 41-2116, ARIZONA REVISED STATUTES; CHANGING THE DESIGNATION OF TITLE 41, CHAPTER 15, ARTICLE 6, ARIZONA REVISED STATUTES, TO "MOTOR FUEL"; AMENDING SECTIONS 41-2121 AND 41-2122, ARIZONA REVISED STATUTES; AMENDING SECTION 41-2123, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1998, CHAPTER 217, SECTION 11; REPEALING SECTION 41-2123, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1998, CHAPTER 146, SECTION 21; AMENDING SECTIONS 41-2124 AND 41-2128, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 15, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-2129; AMENDING SECTIONS 41-2132, 41-2133, 41-2134, 41-2501, 43-1026, 43-1086, 43-1086.01, 43-1128.01, 43-1174, 43-1174.01 AND 49-105, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 1.1; AMENDING SECTIONS 49-281, 49-282, 49-282.03 AND 49-282.05, ARIZONA REVISED STATUTES; REPEALING SECTION 49-285, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1997, CHAPTER 233, SECTION 43; AMENDING SECTIONS 49-287, 49-287.03, 49-287.06, 49-289.03, 49-289.04, 49-292.01, 49-292.02, 49-401.01, 49-402, 49-404, 49-454, 49-541, 49-516 AND 49-571, ARIZONA REVISED STATUTES; AMENDING SECTION 49-1091, ARIZONA REVISED STATUTES, AS ADDED BY LAWS 1998, CHAPTER 298, SECTION 15; AMENDING SECTION 49-1203, ARIZONA REVISED STATUTES; AMENDING LAWS 1997, CHAPTER 287, SECTIONS 51 AND 52; AMENDING LAWS 1998, CHAPTER 217, SECTION 42; REPEALING SECTION 49-1052, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1998, CHAPTER 181, SECTION 7; REPEALING SECTION 49-1091, ARIZONA REVISED STATUTES, AS ADDED BY LAWS 1998, CHAPTER 181, SECTION 9; REPEALING LAWS 1998, CHAPTER 181, SECTION 11; RELATING TO THE ENVIRONMENT.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 1-215, Arizona Revised Statutes, is amended to read:

1-215. Definitions

In the statutes and laws of the state, unless the context otherwise requires:

1. "Action" includes any matter or proceeding in a court, civil or criminal.

2. "Adopted rule" means a final rule as defined in section 41-1001.

3. "Adult" means a person who has attained the age of eighteen years.

4. "Alternative fuel" means:

(a) Liquefied petroleum gas.

(b) Natural gas.

(c) Hydrogen.

(d) A blend of hydrogen with liquefied petroleum or natural gas.

(e) An emulsion of water-phased hydrocarbon fuel that contains not less than twenty per cent water by volume and that complies with any of the following:

(i) Is used in an engine that is certified to meet at a minimum the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section ~~88.104-95~~ 88.104-94 or 88.105-94.

(ii) Is used in an engine that is certified by the engine modifier to meet the addendum to memorandum 1-A of the United States environmental protection agency.

(iii) Is used in an engine that is the subject of a waiver for that specific engine application from the United States environmental protection agency's memorandum 1-A addendum requirements and that waiver is documented to the reasonable satisfaction of the department of commerce energy office.

(f) Only for vehicles that use alcohol fuels before the effective date of this amendment to this section, alcohol fuels that contain not less than eighty-five per cent alcohol by volume.

(g) Electricity.

(h) Solar energy.

(i) A combination of at least seventy per cent alternative fuel and no more than thirty per cent petroleum based fuel and that operates in an engine that meets the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section ~~88.104-95~~ 88.104-94 or 88.105-94 and is certified by the engine manufacturer to consume at least seventy per cent alternative fuel during normal vehicle operations.

5. "Bribe" signifies anything of value or advantage, present or prospective, asked, offered, given, accepted or promised with a corrupt

intent to influence, unlawfully, the person to whom it is given in his action, vote or opinion, in any public or official capacity.

6. "Child" or "children" as used in reference to age of persons means persons under the age of eighteen years.

7. "Corruptly" imports a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person.

8. "Daytime" means the period between sunrise and sunset.

9. "Depose" includes every manner of written statement under oath or affirmation.

10. "Grantee" includes every person to whom an estate or interest in real property passes, in or by a deed.

11. "Grantor" includes every person from or by whom an estate or interest in real property passes, in or by a deed.

12. "Includes" or "including" means not limited to and is not a term of exclusion.

13. "Inhabitant" means a resident of a city, town, village, district, county or precinct.

14. "Issue" as used in connection with descent of estates includes all lawful, lineal descendants of the ancestor.

15. "Knowingly" imports only a knowledge that the facts exist which bring the act or omission within the provisions of the statute using such word. It does not require any knowledge of the unlawfulness of the act or omission.

16. "Magistrate" means an officer having power to issue a warrant for the arrest of a person charged with a public offense and includes the chief justice and judges of the supreme court, judges of the superior court, justices of the peace and police magistrates in cities and towns.

17. "Majority" or "age of majority" as used in reference to age of persons means the age of eighteen years or more.

18. "Malice" and "maliciously" import a wish to vex, annoy or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law.

19. "Mentally ill person" includes an idiot, an insane person, a lunatic or a person non compos.

20. "Minor" means a person under the age of eighteen years.

21. "Minor children" means persons under the age of eighteen years.

22. "Month" means a calendar month unless otherwise expressed.

23. "Neglect," "negligence," "negligent" and "negligently" import a want of such attention to the nature or probable consequence of the act or omission as a prudent man ordinarily bestows in acting in his own concerns.

24. "Nighttime" means the period between sunset and sunrise.

25. "Oath" includes affirmation or declaration.

26. "Peace officers" means sheriffs of counties, constables, marshals, policemen of cities and towns, commissioned personnel of the department of public safety, police officers appointed by community college district governing boards who have received a certificate from the Arizona peace officer standards and training board and police officers appointed by the Arizona board of regents who have received a certificate from the Arizona peace officer standards and training board.

27. "Person" includes a corporation, company, partnership, firm, association or society, as well as a natural person. When the word "person" is used to designate the party whose property may be the subject of a criminal or public offense, the term includes the United States, this state, or any territory, state or country, or any political subdivision of this state which may lawfully own any property, or a public or private corporation, or partnership or association. When the word "person" is used to designate the violator or offender of any law, it includes corporation, partnership or any association of persons.

28. "Personal property" includes money, goods, chattels, dogs, things in action and evidences of debt.

29. "POPULATION" MEANS THE POPULATION ACCORDING TO THE MOST RECENT UNITED STATES DECENNIAL CENSUS.

~~29.~~ 30. "Process" means a citation, writ or summons issued in the course of judicial proceedings.

~~30.~~ 31. "Property" includes both real and personal property.

~~31.~~ 32. "Real property" is coextensive with lands, tenements and hereditaments.

~~32.~~ 33. "Registered mail" includes certified mail.

~~33.~~ 34. "Seal" as used in reference to a paper issuing from a court or public office to which the seal of such court or office is required to be affixed means the impression on such paper, as well as the impression of the seal affixed thereto by means of a wafer or wax.

~~34.~~ 35. "Signature" or "subscription" includes mark, when a person cannot write, with his name written near it and witnessed by a person who writes his own name as witness.

~~35.~~ 36. "State" as applied to the different parts of the United States, includes the District of Columbia, this state and the territories.

~~36.~~ 37. "Testify" includes every manner of oral statement under oath or affirmation.

~~37.~~ 38. "United States" includes the District of Columbia and the territories.

~~38.~~ 39. "Vessel", as used in reference to shipping, includes ships of all kinds, steamboats, steamships, barges, canal boats and every structure adapted to navigation from place to place for the transportation of persons or property.

~~39.~~ 40. "Wilfully" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or believes that his or her conduct is of that nature or that the circumstance exists.

~~40.~~ 41. "Will" includes codicils.

~~41.~~ 42. "Workers' compensation" means workmen's compensation as used in article XVIII, section 8, Constitution of Arizona.

~~42.~~ 43. "Writ" signifies an order or precept in writing issued in the name of the state or by a court or judicial officer.

~~43.~~ 44. "Writing" includes printing.

Sec. 2. Section 28-5805, Arizona Revised Statutes, is amended to read:

28-5805. Motor vehicle powered by alternative fuels; classification; vehicle license tax; definitions

A. A separate classification of motor vehicles is established for purposes of taxation pursuant to article IX, section 11, Constitution of Arizona, that consists of motor vehicles powered by alternative fuels.

B. Notwithstanding section 28-5801, the registering officer shall collect at the time of application for and before registration of the motor vehicle classified under this section an annual license tax of four dollars for each one hundred dollars in value. During the first twelve months of the life of the vehicle as determined by its initial registration, the value is one per cent of the manufacturer's base retail price of the vehicle. During each succeeding twelve month period the value of the vehicle is fifteen per cent less than the value of the preceding twelve month period.

C. The minimum amount of the license tax computed under this section is five dollars per year for each vehicle subject to the tax.

D. Except as specifically provided in this section, the vehicle license tax on a vehicle classified under this section is governed by this article.

E. The owner of a vehicle claiming the special annual license tax rate provided by this section shall provide proof at the time of application and before registration of the vehicle each year as follows:

1. The owner of a vehicle that is purchased new shall provide a certificate from the manufacturer indicating that the vehicle is powered by an alternative fuel.

2. The owner of a vehicle that is not purchased new, that is a converted vehicle or that is assembled by the owner shall provide either:

(a) A certificate issued by the department of environmental quality indicating that the vehicle is powered by liquefied petroleum gas, natural gas, hydrogen, a blend of hydrogen with liquefied petroleum or natural gas, or alcohol fuels that contain not less than eighty-five per cent alcohol by volume.

(b) A certificate issued by the department of transportation indicating that the vehicle is powered by either electricity or solar energy.

F. For purposes of this section:

1. "Alternative fuels" means:

(a) Liquefied petroleum gas.

(b) Natural gas.

(c) Hydrogen.

(d) A blend of hydrogen with liquefied petroleum or natural gas.

(e) An emulsion of water-phased hydrocarbon fuel that contains not less than twenty per cent water by volume and that complies with any of the following:

(i) Is used in an engine that is certified to meet at a minimum the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section ~~88.104-95~~ 88.104-94 or 88.105-94.

(ii) Is used in an engine that is certified by the engine modifier to meet the addendum to memorandum 1-A of the United States environmental protection agency.

(iii) Is used in an engine that is the subject of a waiver for that specific engine application from the United States environmental protection agency's memorandum 1-A addendum requirements and that waiver is documented to the reasonable satisfaction of the department of commerce energy office.

(f) Only for vehicles that use alcohol fuels before the effective date of this amendment to this section, alcohol fuels that contain not less than eighty-five per cent alcohol by volume.

(g) Electricity.

(h) Solar energy.

(i) A combination of at least seventy per cent alternative fuel and no more than thirty per cent petroleum based fuel and that operates in an engine that meets the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section ~~88.104-95~~ 88.104-94 or 88.105-94 and is certified by the engine manufacturer to consume at least seventy per cent alternative fuel during normal vehicle operations.

2. "Motor vehicle" means a vehicle that meets the safety standards of the national highway traffic safety administration.

Sec. 3. Section 41-796.01, Arizona Revised Statutes, is amended to read:

41-796.01. Adjusted work hours

The director by rule shall require adjusted work hours for at least eighty-five per cent of state employees with offices located in ~~a nonattainment~~ area A OR AREA B as defined in section 49-541 each year

beginning October 1 and ending April 1 in order to reduce the level of carbon monoxide concentrations caused by vehicular travel.

Sec. 4. Section 41-803, Arizona Revised Statutes, is amended to read:

41-803. Operation of state motor vehicle fleet; energy conservation; alternative fuels; definitions

A. The director shall operate a motor vehicle fleet for all state owned motor vehicles for the purpose of providing transportation for state officers and employees, except those officers and employees of any agency or department excluded by subsection E of this section. The director shall make fleet motor vehicles available to state agencies and departments on the request of the chosen representative for that agency or department.

B. The director may adopt rules necessary for the administration of the motor vehicle fleet.

C. The director shall provide for detailed cost, operation, maintenance, mileage and custody records for each state owned vehicle. On or before August 1 of each year, all state agencies and departments, including those listed in subsection E of this section, shall make information available to the director regarding vehicle cost, operation, maintenance and mileage and other information as established by the director in policies and procedures for the purposes of the report prescribed in subsection P of this section.

D. Each state department and agency shall pay from available monies the cost of motor vehicle services received from the state motor vehicle fleet at a rate determined by the director.

E. The following departments and agencies are excluded from participation in the state motor vehicle fleet:

1. Department of public safety.
2. Department of transportation.
3. Department of economic security.
4. State department of corrections.
5. Universities and community colleges.
6. Arizona state schools for the deaf and the blind.

F. The director shall appoint a person in the office of the director who is the state motor vehicle fleet alternative fuel coordinator. The coordinator shall develop, implement, document, monitor and modify as necessary a statewide alternative fuels plan in consultation with all state agencies and departments that are subject to the alternative fuel requirements prescribed in this section or any other law. The approval of the coordinator is required for all acquisitions of vehicles pursuant to this section.

G. Purchases of all new motor vehicles that primarily operate in counties with a population of more than two hundred fifty thousand persons ~~according to the most recent United States decennial census~~ and that have a gross vehicle weight of eight thousand five hundred pounds or less, including those agency motor vehicle fleets listed in subsection E of this section, shall meet the following minimum requirements for vehicles:

1. For model year 1997, ten per cent of new motor vehicles purchased shall be capable of operating on alternative fuels.

2. For model year 1998, fifteen per cent of new motor vehicles purchased shall be capable of operating on alternative fuels.

3. For model year 1999, twenty-five per cent of new motor vehicles purchased shall be capable of operating on alternative fuels.

4. For model year 2000, fifty per cent of new motor vehicles purchased shall be capable of operating on alternative fuels.

5. For model year 2001 and all subsequent model years, seventy-five per cent of new motor vehicles purchased shall be capable of operating on alternative fuels.

H. Purchases of new alternative fuel vehicles that have a gross vehicle weight of eight thousand five hundred pounds or less shall meet the following minimum requirements for vehicles that primarily operate in counties with a population of more than one million two hundred thousand persons ~~according to the most recent United States decennial census~~:

1. For model year 2000, forty per cent of new alternative fuel vehicles purchased shall comply with the United States environmental protection agency standards for low emission vehicles pursuant to 40 Code of Federal Regulations sections ~~88.104-95~~ 88.104-94 and 88.105-94.

2. For model year 2001, fifty per cent of new alternative fuel vehicles purchased shall comply with the United States environmental protection agency standards for low emission vehicles pursuant to 40 Code of Federal Regulations sections ~~88.104-95~~ 88.104-94 and 88.105-94.

3. For model year 2002, sixty per cent of new alternative fuel vehicles purchased shall comply with the United States environmental protection agency standards for low emission vehicles pursuant to 40 Code of Federal Regulations sections ~~88.104-95~~ 88.104-94 and 88.105-94.

4. For model year 2003, seventy per cent of new alternative fuel vehicles purchased shall comply with the United States environmental protection agency standards for low emission vehicles pursuant to 40 Code of Federal Regulations sections ~~88.104-95~~ 88.104-94 and 88.105-94.

I. The coordinator may waive the requirements of subsection G of this section for any state agency on receipt of certification supported by evidence acceptable to the coordinator that:

1. The agency's vehicles will be operating primarily in an area in which neither the agency nor a supplier has established or can reasonably be expected to establish a central refueling station for alternative fuels.

2. The agency is unable to acquire or be provided equipment or refueling facilities necessary to operate vehicles using alternative fuels at a projected cost that is reasonably expected to result in net costs of no greater than thirty per cent more than the net costs associated with the continued use of traditional gasoline or diesel fuels measured over the

expected useful life of the equipment or facilities supplied. Applications for waivers shall be filed with the department of commerce energy office pursuant to section 41-1516.01. An entity that receives a waiver pursuant to this section shall retrofit fleet heavy-duty diesel vehicles with a gross vehicle weight of eight thousand five hundred pounds or more that were manufactured in or before model year 1993 and that are the subject of the waiver with a technology that is effective at reducing particulate emissions at least twenty-five per cent or more and that has been approved by the United States environmental protection agency pursuant to the urban bus engine retrofit/rebuild program. The entity shall comply with the implementation schedule pursuant to section 49-555.

J. The department of administration, through the coordinator, may acquire or be provided equipment or refueling facilities necessary to operate such vehicles using alternative fuels:

1. By purchase or lease as authorized by law.

2. By gift or loan of the equipment or facilities.

3. By gift or loan of the equipment or facilities or any other arrangement pursuant to a service contract for the supply of alternative fuels.

K. The coordinator and the department of commerce energy office shall develop and implement a vehicle fleet energy conservation plan for the purposes of reducing vehicle fuel consumption and to encourage and progressively increase the use of alternative fuels in state owned vehicles. The plans shall include:

1. A timetable by which fleet vehicles shall be replaced with vehicles that have demonstrated high fuel economy estimates within their vehicle class.

2. A timetable for increasing the use of alternative fuels in fleet vehicles either through purchase or conversion. The timetable shall reflect the following schedule and percentage of vehicles which operate on alternative fuels:

(a) Not less than forty per cent of the total fleet by December 31, 1995.

(b) Not less than ninety per cent of the total fleet operating primarily in counties with populations exceeding one million two hundred thousand persons according to the most recent federal decennial census by December 31, 1997.

3. Options for increasing, whenever possible, the use of vehicles that have the capability to use available alternative fuels, or vehicles that may be economically converted, if needed, for the use of alternative fuels.

4. Options for the use of demonstrated innovative technologies that promote energy conservation and reduced fuel consumption.

5. Methods that promote efficient trip planning and state vehicle use.

6. Car pooling and van pooling for agency employees for commuting and job related travel.

L. The coordinator shall identify specific vehicle models within each vehicle class that would meet the demands of each state agency and that demonstrate a high degree of fuel economy. Vehicle classes and fuel economy comparisons shall be based on United States department of energy and United States environmental protection agency data pursuant to title 15, United States Code sections 2003 through 2006. For the use of an alcohol fueled vehicle, the state agency shall demonstrate to the director that the fuel for the vehicle is available within a ten mile radius of the primary home base of that vehicle.

M. Subsections G, H, I, J, K, L and N of this section do not apply to the purchase or lease of the following:

1. A vehicle to be used primarily for criminal law enforcement.

2. A motorcycle.

3. An all-terrain vehicle.

4. An ambulance.

5. A fire truck, a fire engine or any other fire suppression apparatus.

N. The departments and agencies excluded from participation in the state motor vehicle fleet pursuant to subsection E of this section shall develop and implement a program for alternative fuels and fuel economy for their motor vehicle fleets substantially similar to the standards set forth in this section, and the program shall be submitted to the coordinator for review.

O. All agencies, including those listed in subsection E of this section, shall comply with the plan developed and implemented by the director pursuant to subsection F of this section.

P. On or before November 1 of each year, the director shall submit a report to the governor, the speaker of the house of representatives, the president of the senate, the governor's office of strategic planning and budgeting and the joint legislative budget committee concerning the use of alternative fuels in the state motor vehicle fleet. The report shall include at least the following:

1. The number of state fleet vehicles.

2. The number of state fleet vehicles used primarily in Maricopa county.

3. The number of state fleet vehicles capable of using alternative fuels.

4. Progress on compliance with federal and state guidelines mandating the conversion of state fleet vehicles to alternatively fueled vehicles.

5. Alternative fuels usage data.

6. Information received from state agencies pursuant to subsection C of this section.

7. Information gathered from local offices of federal agencies regarding progress made toward implementing the federal mandates relating to the conversion of motor vehicle fleets to alternative fuels pursuant to subsection G of this section.

Q. For the purposes of this section :

1. "Alternative fuels" means any of the following fuel types or power sources:

(a) Liquefied petroleum gas.

(b) Natural gas.

(c) Hydrogen or a blend of hydrogen with liquefied petroleum or natural gas.

(d) Only for vehicles that use alcohol fuels before the effective date of this amendment to this section, alcohol fuels that contain not less than eighty-five per cent alcohol by volume.

(e) Electricity.

(f) Solar energy.

(g) An emulsion of water-phased hydrocarbon fuel that contains not less than twenty per cent water by volume and that complies with any of the following:

(i) Is used in an engine that is certified to meet at a minimum the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section ~~88.104-95~~ 88.104-94 or 88.105-94.

(ii) Is used in an engine that is certified by the engine modifier to meet the addendum to memorandum 1-A of the United States environmental protection agency.

(iii) Is used in an engine that is the subject of a waiver for that specific engine application from the United States environmental protection agency's memorandum 1-A addendum requirements and that waiver is documented to the reasonable satisfaction of the department of commerce energy office.

(h) A combination of at least seventy per cent alternative fuel and no more than thirty per cent petroleum based fuel and that operates in an engine that meets the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section 88.104-95 or 88.105-94 and is certified by the engine manufacturer to consume at least seventy per cent alternative fuel during normal vehicle operations.

2. "New motor vehicle" means a motor vehicle not previously under the control of this state regardless of the year the vehicle was manufactured.

Sec. 5. Section 41-1516, Arizona Revised Statutes, is amended to read:

41-1516. Arizona clean air fund; purposes; vehicle certification program; definition

A. The Arizona clean air fund is established consisting of the following:

1. Monies appropriated by the legislature.

2. Monies from the air quality fund pursuant to section 49-551, subsection C, paragraph 2.

3. Any monies that are appropriated to state agencies for alternative fuel vehicles or conversion of conventional vehicles to operate on alternative fuels and that have not been spent by the state agency at the end of each fiscal year.

4. Any monies that are allocated from the emissions inspection fund established by section 49-544 to the vehicle repair grant program established pursuant to section 49-542 and that have not been spent at the end of each fiscal year.

5. Monies collected pursuant to section 49-543, subsection B.

6. Monies from the state lottery fund pursuant to section 5-522, subsection A, paragraph 4.

7. Any other monies received through gifts, grants and donations.

B. The director shall administer the fund.

C. Monies in the fund may be used for any of the following:

1. To promote public use of alternative fuels by providing individual grants that do not exceed one hundred thousand dollars each for alternative fuel systems that have had their equipment certified by the department of commerce energy office. A recipient of a grant for an alternative fuel delivery system pursuant to this paragraph is not eligible to claim a tax credit for that alternative fuel delivery system pursuant to section 43-1086 or 43-1174. Alternative fuel delivery systems that are established using grant monies shall be accessible to the general public.

2. Not more than one-half of the monies deposited into the fund shall be used by the department to establish a program that would provide a maximum of a two thousand dollar grant for each alternative fuel vehicle that is owned or leased by individuals or small businesses for the purchase and installation of an alternative fuel delivery system for use on the individual's or small business' property in this state. The department of commerce shall promptly notify the department of revenue of individuals and small businesses that have received a grant and the amount of the grant. For the purposes of this paragraph, "small business" has the same meaning prescribed in section 41-1001.

3. Grants to school districts to pay a portion of the cost incurred for the alternative fuels program prescribed in section 15-349.

4. Grants to cities and towns to pay a portion of the cost incurred for the alternative fuels vehicle program and for the incremental cost of alternative fuel buses pursuant to section 9-500.04.

5. To pay the costs of high occupancy vehicle lane sign markings required by section 28-2416.

6. Administrative costs incurred by the department in administering the programs prescribed in this subsection.

7. To conduct public awareness programs for alternative fuels.

8. To provide for training for persons involved in alternative fuel activities with automobiles.

9. To allocate resources to reduce the cost of converting or acquiring alternative fuel vehicles and equipment as prescribed by sections 43-1026, 43-1086, 43-1128.01 and 43-1174.

10. To allocate resources to reduce the cost of an alternative fuel as prescribed by sections 43-1026, 43-1086, 43-1128.01 and 43-1174.

D. The department may provide certification of alternative fuel vehicles and equipment converted or purchased in previous tax years if the taxpayer provides appropriate documentation to the department and if the department deems the documentation and certification acceptable.

E. Tax credits or subtractions for alternative fuel vehicles authorized pursuant to state law shall only be allowed if the vehicle meets one of the following:

1. The vehicle ENGINE is certified to meet at a minimum the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section 88.104-94 or 88.105-94.

2. The vehicle ENGINE meets the requirements of the addendum to memorandum 1-A, issued by the United States environmental protection agency, as printed in the federal register, volume 62, number 207, October 27, 1997, pages 55635 through 55637.

3. The vehicle ENGINE is the subject of a waiver for that specific engine application from the United States environmental protection agency's memorandum 1-A requirements and that waiver is documented to the reasonable satisfaction of the department.

F. The director shall report annually to the legislature on the status of the Arizona clean air fund including a report on expenditures from the fund pursuant to subsection C of this section. The report shall include a summary of alternative fuel delivery systems for which funding was provided during the preceding fiscal year. The report shall be submitted to the president of the senate and the speaker of the house of representatives no later than September 1 of each year.

G. Monies in the Arizona clean air fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations. The state treasurer shall invest and divest monies in the fund pursuant to section 35-313.

H. For the purposes of this section, "alternative fuel delivery system" means any facility that provides for the fueling of an alternative fuel vehicle.

Sec. 6. Section 41-2083, Arizona Revised Statutes, is amended to read:

41-2083. Standards for motor fuel; exceptions

A. Except as provided in subsections C, D, E, F and G of this section, a retail seller or fleet owner shall not store, sell or expose or offer for

sale any motor fuel, kerosene, oil or other liquid or gaseous fuel or lubricating oil, lubricant, mixtures of lubricants or other similar products if the product fails to meet the standards specified in this section and in the rules adopted by the director.

B. A person shall not misrepresent the nature, origination, quality, grade or identity of any product specified in subsection A of this section or represent the nature, origination, quality, grade or identity of such product in any manner calculated or tending to mislead or in any way deceive.

C. After consultation with the director of the department of environmental quality, the standards and test methods for motor fuels shall be established by the director of the department of weights and measures by rule.

D. Maximum vapor pressure for gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles in a ~~vehicle emissions control area as defined by section 49-541~~ COUNTY with a population of one million two hundred thousand or more persons ~~according to the most recent United States decennial census~~ AND ANY PORTION OF A COUNTY CONTAINED IN AREA A AS DEFINED IN SECTION 49-541 shall be 9.0 pounds per square inch from and after September 30 through March 31 of each year. Fuel used in motor vehicles at a manufacturer's proving ground or a motor vehicle racing event as defined by section 41-2121 is exempt from this subsection.

E. From and after September 30 through March 31 of each year a person shall not supply or sell gasoline that exceeds the ASTM D4814 class A vapor pressure/distillation class ten volume per cent evaporated distillation temperature.

F. Maximum vapor pressure for gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles in ~~a vehicle emissions control area as defined by section 49-541~~ A COUNTY with a population of one million two hundred thousand persons or more ~~according to the most recent United States decennial census~~ AND ANY PORTION OF A COUNTY CONTAINED IN AREA A AS DEFINED IN SECTION 49-541 shall be 7.0 pounds per square inch from and after May 31 through September 30 of each year. Fuel used in motor vehicles at a manufacturer's proving ground or a motor vehicle racing event as defined by section 41-2121 is exempt from this subsection.

G. Exclusively for the purposes of transportation conformity and only if the administrator of the United States environmental protection agency fails to approve the applicable plan required pursuant to section 49-406, maximum vapor pressure for gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles in area B as defined in section 49-541 shall be ten pounds per square inch from and after September 30, 1999 through March 31, 2000 and from and after

September 30 through March 31 of each year thereafter. Fuel used in motor vehicles at a manufacturer's proving ground or a motor vehicle racing event as defined by section 41-2121 is exempt from this subsection.

H. Notwithstanding subsections D, F and G of this section, the director of the department of weights and measures in consultation with the director of the department of environmental quality shall approve alternate fuel control measures that are submitted by manufacturers or suppliers of gasoline and that the directors determine will result in either of the following:

1. Motor vehicle carbon monoxide emissions that are equal to or less than emissions that result under compliance with subsection D of this section and section 41-2123. In making this determination, the director of the department of weights and measures and the director of the department of environmental quality shall compare the emissions of the alternate fuel control measure with the emissions of a fuel with a maximum vapor pressure standard as prescribed by this section and with the minimum oxygen content or percentage by volume of ethanol as prescribed by section 41-2123.

2. Motor vehicle non-methane hydrocarbon emissions that are equal to or less than the emissions that result under compliance with subsection F of this section. In making this determination, the director of the department of weights and measures and the director of the department of environmental quality shall compare the motor vehicle non-methane hydrocarbon emissions of the alternate fuel control measure with the motor vehicle non-methane hydrocarbon emissions of a fuel that complies with the maximum vapor pressure standard as prescribed by subsection F of this section.

I. Any alternate fuel control measures that are approved shall not increase emissions of non-methane hydrocarbons, particulates, carbon monoxide or oxides of nitrogen. Alternate fuel control measures approved pursuant to subsection H of this section and this subsection may be used by any manufacturer or supplier of gasoline unless the approval is rescinded more than one hundred eighty days before the first day of a gasoline control period. Manufacturers and suppliers who use an approved alternate fuel control measure shall annually submit a compliance plan to the director of the department of weights and measures no later than sixty days before the first day of a gasoline control period.

J. A person shall not sell or offer or expose for sale diesel fuel grade 1, 2 or 4 as defined in ASTM D975 that contains sulfur in excess of five hundred parts per million for use in area A as defined in section 49-541.

Sec. 7. Section 41-2116, Arizona Revised Statutes, is amended to read:

41-2116. Delinquent civil penalties and fees

In addition to any other penalty, if a civil penalty or any fee due pursuant to this chapter has not been paid thirty days after the due date, the civil penalty or fee is delinquent and the department may refuse to issue

a license OR MAY REVOKE A LICENSE pursuant to this chapter until the civil penalty or fee is paid in full.

Sec. 8. Heading change

The article heading of title 41, chapter 15, article 6, Arizona Revised Statutes, is changed from "OXYGENATED FUEL" to "MOTOR FUEL".

Sec. 9. Section 41-2121, Arizona Revised Statutes, is amended to read:

41-2121. Definitions

In this article, unless the context otherwise requires:

1. "Area A" has the same meaning prescribed in section 49-541.

2. "Area B" ~~means a carbon monoxide vehicle emissions control area in a county with a population in excess of four hundred thousand but fewer than one million two hundred thousand persons~~ HAS THE SAME MEANING PRESCRIBED IN SECTION 49-541.

3. "Fleet owner" means a registered owner or lessee of at least twenty-five vehicles.

4. "Gasoline" means a volatile, highly flammable liquid mixture of hydrocarbons that does not contain more than five one-hundredths grams of lead for each United States gallon, that is produced, refined, manufactured, blended, distilled or compounded from petroleum, natural gas, oil, shale oils or coal and other flammable liquids free from undissolved water, sediment or suspended matter, with or without additives, and that is commonly used as a fuel for spark ignition internal combustion engines. Gasoline does not include diesel fuel.

5. "Manufacturer's proving ground" means a facility whose sole purpose is to develop complete advanced vehicles for an automotive manufacturer.

6. "Motor vehicle racing event" means a race that uses unlicensed vehicles that are designed and manufactured specifically for racing purposes and that is conducted on a public or private racecourse for the entertainment of the general public. A motor vehicle racing event includes practice, qualifying and demonstration laps conducted as part of the activities related to a motor vehicle race.

7. "Oxygenate" means any oxygen-containing ashless, organic compound, including aliphatic alcohols and aliphatic ethers, that may be used as a fuel or as a gasoline blending component and that is approved as a blending agent under the provisions of a waiver issued by the United States environmental protection agency pursuant to 42 United States Code section 7545(f).

8. "Oxygenated fuel" means an unleaded motor fuel blend that consists primarily of gasoline and at least one and one-half per cent by weight of one or more oxygenates and that has been blended consistent with the provisions of a waiver issued by the United States environmental protection agency pursuant to 42 United States Code section 7545(f).

9. "Product ~~transport~~ TRANSFER document" means any bill of lading, loading ticket, manifest, delivery receipt, invoice or other documentation

used on any occasion when a person transfers custody or title of motor fuel other than when motor fuel is sold or dispensed at a service station or fleet vehicle fueling facility.

10. "Supplier" means any person who imports gasoline into a ~~carbon monoxide~~ vehicle emissions control area by means of a pipeline or in truckload quantities for the person's own use within the vehicle emissions control area or any person who sells gasoline intended for ultimate consumption within a vehicle emissions control area, except that supplier does not mean a person with respect to gasoline supplied or sold by the person to another for resale to a retailer within a vehicle emissions control area or to a fleet owner for consumption within a vehicle emissions control area.

11. "Vehicle emissions control area" has the same meaning prescribed in section 49-541, except that such an area does not include a manufacturer's proving ground that is located in the vehicle emissions control area.

Sec. 10. Section 41-2122, Arizona Revised Statutes, is amended to read:

41-2122. Standards for oxygenated fuel; volatility exceptions

A. From and after September 30 through March 31 of each year, IN A COUNTY WITH A POPULATION OF ONE MILLION TWO HUNDRED THOUSAND OR MORE PERSONS AND IN ANY PORTION OF A COUNTY CONTAINED in area A, blends of gasoline with ethanol shall not exceed the volatility requirements prescribed by section 41-2083 and rules adopted by the director under that section. From and after September 30, 1999 through March 31, 2000 and from and after September 30 through March 31 of each year thereafter, in area B, blends of gasoline with ethanol may exceed the volatility requirements prescribed by section 41-2083 and rules adopted by the director under that section by up to one pound per square inch if the base fuel meets the requirements of ASTM D4814 and the final gasoline-ethanol blend contains at least six per cent ethanol by volume but does not exceed United States environmental protection agency waivers. For any other locations and period of time, blends of gasoline with ethanol shall meet the volatility requirements as determined by department rule.

B. Notwithstanding subsection D of this section, the director of the department of weights and measures in consultation with the director of the department of environmental quality shall approve alternate fuel control measures that are submitted by manufacturers or suppliers of gasoline and that the directors determine will result in motor vehicle carbon monoxide emission reductions that will equal or exceed the reductions that result under subsection D of this section. In making those determinations, the directors shall compare the alternative measure against the emission reduction that would be obtained from a fuel with the maximum vapor pressure standard prescribed by subsection D of this section and the minimum oxygen standard prescribed by section 41-2123 or 41-2125. Alternative fuel control

measures approved by the director of the department of weights and measures in consultation with the director of the department of environmental quality may be used by any manufacturer or supplier of gasoline unless the approval is rescinded by the director of the department of weights and measures at least one hundred eighty days before the beginning of any oxygenate period in the future. Manufacturers and suppliers who choose to use an approved alternate fuel control measure shall annually submit a compliance plan to the director of the department of weights and measures not later than sixty days prior to the start of the oxygenate period.

C. From and after September 30 through March 31 of each year, all blends of gasoline with alcohol other than ethanol shall satisfy all of the requirements prescribed by section 41-2083 and rules adopted by the director under that section and the provisions of a waiver issued by the United States environmental protection agency pursuant to 42 United States Code section 7545(f).

D. Notwithstanding subsection A of this section, if the director of the department of environmental quality has previously raised the minimum oxygen content to the maximum percentage of oxygen allowed for each oxygenate as provided by section 41-2125, the designated air quality planning agency for area B has considered, analyzed and reviewed the costs and benefits of all other reasonable and available control measures in lieu of reducing volatility requirements to nine pounds per square inch and the director of the department of environmental quality finds that area B has failed to maintain the carbon monoxide national ambient air quality standards by violating the standard, beginning with the oxygenate period beginning on the following September 30 and for each oxygenate period thereafter in area B, the volatility requirements described by section 41-2083, subsection G may be reduced to nine pounds per square inch. If a violation of the carbon monoxide national ambient air quality standards is recorded after the volatility requirements have been reduced to nine pounds per square inch, the director of the department of environmental quality shall remove the one pound per square inch waiver for gasoline-ethanol blends.

Sec. 11. Section 41-2123, Arizona Revised Statutes, as amended by Laws 1998, chapter 217, section 11, is amended to read:

41-2123. Area A; sale of gasoline; oxygen content

A. From and after November 1 through March 31 of each year:

~~1. All leaded gasoline which is supplied or sold by any person and which is intended as a final product for the fueling of motor vehicles within a county with a population of one million two hundred thousand or more persons according to the most recent United States decennial census and any portion of a county contained in area A or which is consumed in a motor vehicle within a county with a population of one million two hundred thousand or more persons according to the most recent United States decennial census and any portion of a county contained in area A by a fleet owner shall~~

~~contain not less than 2.7 per cent by weight of oxygen nor more than 3.7 per cent by weight of oxygen.~~

~~2.~~ 1. All ~~unleaded~~ gasoline ~~which~~ THAT is supplied or sold by any person and ~~which~~ THAT is intended as a final product for the fueling of motor vehicles within a county with a population of one million two hundred thousand or more persons ~~according to the most recent United States decennial census~~ and any portion of a county contained in area A or ~~which~~ THAT is consumed in a motor vehicle in a county with a population of one million two hundred thousand or more persons ~~according to the most recent United States decennial census~~ and any portion of a county contained in area A by a fleet owner shall, for a gasoline-ethanol blend, contain not less than ten per cent by volume of ethanol nor more than the maximum percentage of oxygen allowed by provisions of a waiver issued or other limits established by the United States environmental protection agency.

~~3.~~ 2. All ~~unleaded~~ gasoline ~~which~~ THAT is supplied or sold by any person and ~~which~~ THAT is intended as a final product for the fueling of motor vehicles within a county with a population of one million two hundred thousand or more persons ~~according to the most recent United States decennial census~~ and any portion of a county contained in area A or ~~which~~ THAT is consumed in a motor vehicle within a county with a population of one million two hundred thousand or more persons ~~according to the most recent United States decennial census~~ and any portion of a county contained in area A by a fleet owner shall, for a blend other than a gasoline-ethanol blend, contain not less than 2.7 per cent by weight of oxygen nor more than the maximum percentage of oxygen allowed by provisions of a waiver issued or other limits established by the United States environmental protection agency.

B. Notwithstanding subsection A of this section, the director of the department of weights and measures in consultation with the director of the department of environmental quality shall approve alternate fuel control measures that are submitted by manufacturers or suppliers of gasoline and that the directors determine will result in motor vehicle carbon monoxide emissions that are equal to or less than emissions that result under compliance with subsection A of this section and section 41-2083. In making this determination, the director of the department of weights and measures and the director of the department of environmental quality shall compare the emissions of the alternate fuel control measure with the emissions of a fuel with a maximum vapor pressure standard as prescribed by section 41-2083 and with the minimum oxygen content or percentage by volume of ethanol as prescribed by this section.

C. Any alternate fuel control measures that are approved shall not increase emissions of non-methane hydrocarbons, particulates, carbon monoxide or oxides of nitrogen. Alternate fuel control measures approved pursuant to subsection B of this section and this subsection may be used by any

manufacturer or supplier of gasoline unless the approval is rescinded more than one hundred eighty days before the first day of a gasoline control period. Manufacturers and suppliers who use an approved alternate fuel control measure shall annually submit a compliance plan to the director of the department of weights and measures no later than sixty days before the first day of a gasoline control period.

Sec. 12. Repeal

Section 41-2123, Arizona Revised Statutes, as amended by Laws 1998, chapter 146, section 21, is repealed.

Sec. 13. Section 41-2124, Arizona Revised Statutes, is amended to read:

41-2124. Area A; fuel reformulation; rules

A. From and after May 1, 1999 all gasoline produced and shipped to ~~Maricopa county~~ OR WITHIN THIS STATE and sold or offered for sale for use in motor vehicles IN A COUNTY WITH A POPULATION OF ONE MILLION TWO HUNDRED THOUSAND OR MORE PERSONS AND ANY PORTION OF A COUNTY CONTAINED in area A, subject to an appropriate waiver granted by the administrator of the United States environmental protection agency pursuant to section 211(c)(4) of the clean air act as defined ~~pursuant to~~ IN section 49-401.01, shall comply with either of the following fuel reformulation options:

1. A gasoline that meets standards for federal phase II reformulated gasoline, as provided in 40 Code of Federal Regulations section 80.41, paragraphs (a) through (h), in effect on January 1, ~~1997~~ 1999~~,~~ and THAT meets the maximum vapor pressure requirements in section 41-2083, subsections D and F.

2. California phase 2 reformulated gasoline, including alternative formulations allowed by the predictive model, as adopted by the California air resources board pursuant to ~~the~~ California code of regulations~~,~~ title 13, sections 2261 through 2262.7 and 2265, in effect on January 1, 1997~~,~~ that meets the maximum vapor pressure requirements in section 41-2083, subsections D and F.

B. From and after November 1, 2000 through March 31, 2001 and from the period beginning November 1 through March 31 of each subsequent year, all gasoline produced and shipped to ~~Maricopa county~~ OR WITHIN THIS STATE and sold or offered for sale for use in motor vehicles IN A COUNTY WITH A POPULATION OF ONE MILLION TWO HUNDRED THOUSAND OR MORE PERSONS AND ANY PORTION OF A COUNTY CONTAINED in area A, subject to an appropriate waiver granted by the administrator of the United States environmental protection agency pursuant to section 211(c)(4) of the clean air act as defined ~~pursuant to~~ IN section 49-401.01, shall comply with standards for California phase 2 reformulated gasoline, including alternative formulations allowed by the predictive model, as adopted by the California air resources board pursuant to ~~the~~ California code of regulations~~,~~ title 13, sections 2261 through 2262.7 and 2265, in effect on January 1, 1997~~,~~ and shall meet the maximum vapor pressure requirements in section 41-2083, subsections D and F. The fuel described in this subsection shall meet the requirements of section 41-2123, subsection A, paragraph ~~2~~ 1.

C. From November 1, 2000 through March 31, 2001~~,~~ and for each winter season of November through March thereafter, the director of the department

of weights and measures shall determine the average levels of the constituents in the gasoline sold or offered for sale in area A and shall provide the results of this determination to the director of environmental quality. The director of environmental quality shall analyze the data provided by the director of the department of weights and measures and, no later than July 1, 2001 and each July thereafter, shall determine the average daily carbon monoxide reductions resulting from the use of the gasoline specified in subsection B of this section during the preceding winter season. If the average daily carbon monoxide reductions resulting from the use of the gasoline specified in subsection B of this section during the preceding winter season are less than ninety per cent of the goal of thirty-two tons per day in 2001, thirty-one tons per day in 2003, thirty tons per day in 2005, twenty-nine tons per day in 2007, or twenty-eight tons per day in 2009, ~~then~~ the DIRECTOR OF THE department of environmental quality shall immediately notify the governor, the president of the senate and the speaker of the house of representatives.

D. Any registered supplier or oxygenate blender, as defined in department rules, may petition the director to request that all registered suppliers or oxygenate blenders be allowed to comply with any provision of section 41-2123, subsection A, provided the petitioner can demonstrate that ethanol supply shortages are imminent.

E. The petition shall:

1. Identify specific supply conditions that will result in a shortage of ethanol.

2. Identify which oxygenate or oxygenates will be blended into gasoline for sale or use in area A.

3. Demonstrate that the alternative oxygenate blend comes closest to meeting a three and one-half per cent by weight oxygen content at reasonable cost.

4. Specify a time period for compliance with any provision of section 41-2123, subsection A, not to exceed sixty days.

F. The director shall either grant or deny the petition in writing within seven days of its receipt. Any decision by the director to grant the petition shall be equally applicable to all registered suppliers or oxygenate blenders and shall not be selectively applied to any single registered supplier or oxygenate blender. The petition may be granted only if the director verifies that the basis for requesting the petition is factual.

G. The director may reauthorize a petition if the petitioner can demonstrate that the conditions have continued. The reauthorization of a petition shall not exceed thirty days.

H. The director OF THE DEPARTMENT OF WEIGHTS AND MEASURES shall consult with the director of the department of environmental quality prior to granting, reauthorizing or denying any such petition.

I. From and after November 1, 1999 through March 31, 2000 ~~of each year~~, the fuels described in subsection A of this section shall meet the requirements of section 41-2123.

J. The director of environmental quality in consultation with the director of the department of weights and measures shall adopt by rule:

1. Requirements to implement subsections A through E of this section.

2. Requirements for record keeping, reporting and analytical methods for fuel providers to demonstrate compliance with subsections A through E of this section.

K. This section does not apply to fuel sold for use at a motor vehicle manufacturer proving ground or at a motor vehicle racing event.

Sec. 14. Section 41-2128, Arizona Revised Statutes, is amended to read:

41-2128. Inspections

A. On request, AN INTERSTATE PIPELINE TERMINAL OR a motor fuel storage or dispensing site shall provide a product transfer document to the department. Product transfer documents may be stored off site as provided by department rule.

B. On request, a motor fuel storage or dispensing site shall provide access to motor fuel dispensing cabinets to the department for inspection of fuel dispensing meters and blending valves.

Sec. 15. Title 41, chapter 15, article 6, Arizona Revised Statutes, is amended by adding section 41-2129, to read:

41-2129. Diesel fuel sampling and reporting

A. BEGINNING ON JANUARY 1, 2000 AND ENDING ON JULY 1, 2000, AND FROM JANUARY 1 THROUGH JULY 1 OF EACH SUBSEQUENT YEAR, GASOLINE REFINERS AND OTHER SUPPLIERS OF DIESEL FUEL THAT IS SUPPLIED OR SOLD AND INTENDED AS A FINAL PRODUCT FOR THE FUELING OF DIESEL VEHICLES IN A COUNTY WITH A POPULATION OF ONE MILLION TWO HUNDRED THOUSAND OR MORE PERSONS AND ANY PORTION OF A COUNTY CONTAINED IN AREA A SHALL REPORT TO THE DIRECTOR OF THE DEPARTMENT OF WEIGHTS AND MEASURES BY THE FIFTEENTH DAY OF EACH MONTH THE QUANTITY AND QUALITY OF DIESEL FUEL SHIPPED TO OR PRODUCED IN A COUNTY WITH A POPULATION OF ONE MILLION TWO HUNDRED THOUSAND OR MORE PERSONS AND TO ANY PORTION OF A COUNTY CONTAINED IN AREA A DURING THE PRECEDING MONTH. REFINERS AND OTHER SUPPLIERS OF DIESEL FUEL SUBJECT TO THIS REQUIREMENT SHALL REPORT BY BATCH AS FOLLOWS:

1. SULFUR CONTENT.

2. AROMATIC HYDROCARBON CONTENT.

3. CETANE NUMBER.

4. SPECIFIC GRAVITY.

5. AMERICAN PETROLEUM INSTITUTE GRAVITY.

6. THE TEMPERATURES AT WHICH TEN PER CENT, FIFTY PER CENT AND NINETY PER CENT OF THE DIESEL FUEL BOILED OFF DURING DISTILLATION.

B. THE REPORT PRESCRIBED BY THIS SECTION SHALL BE ON A FORM PRESCRIBED BY THE DIRECTOR AND SHALL CONTAIN A CERTIFICATION OF TRUTHFULNESS AND ACCURACY OF THE DATA SUBMITTED. THE REPORT SHALL BE SIGNED BY A CORPORATE OFFICER WHO IS RESPONSIBLE FOR OPERATIONS AT THE FACILITY THAT PRODUCES OR SUPPLIES THE DIESEL FUEL.

C. THE DIRECTOR OF THE DEPARTMENT OF WEIGHTS AND MEASURES SHALL REPORT THE RESULTS OF THE SIX MONTH SAMPLING AND REPORTING PERIOD PRESCRIBED BY SUBSECTION A TO THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY BY OCTOBER 1 OF EACH YEAR FOLLOWING THE REPORTING PERIOD.

Sec. 16. Section 41-2132, Arizona Revised Statutes, is amended to read:

41-2132. Stage I and stage II vapor recovery systems

A. A person shall not offer for sale, sell, install or use a new or rebuilt gasoline vapor recovery system, or any of its component parts, unless the system has been certified by the California air resources board pursuant to California health and safety code sections 41950 through 41962 in effect on January 1, 1998~~,~~ and is clearly identified by a permanent identification of the certified manufacturer or rebuilder. The department of weights and measures shall maintain and keep current a list of those design and performance standards for stage I and stage II vapor recovery systems certified by the California air resources board. Only those systems so certified shall be used in this state.

B. For gasoline dispensing sites with a throughput of over ten thousand gallons per month in area A or area B as defined in section 49-541, AND BEGINNING ON JANUARY 1, 2001 FOR GASOLINE DISPENSING SITES WITH A THROUGHPUT OF OVER TEN THOUSAND GALLONS PER MONTH IN AREA A BUT OUTSIDE OF THE PHOENIX AREA MARICOPA COUNTY OZONE NONATTAINMENT AREA AS PRESCRIBED IN 40 CODE OF FEDERAL REGULATIONS SECTION 81.303, a person shall not transfer or allow the transfer of gasoline into storage tanks at gasoline dispensing sites unless the storage tank is equipped with either of the following:

1. A stage I vapor collection system consisting of a vapor-tight return line from the storage tank or its vent to the gasoline transport vehicle.

2. A properly installed on-site vapor control system connected to a vapor collection system.

C. In an ozone nonattainment area designated as moderate, serious, severe or extreme by the United States environmental protection agency under section 107(d) of the clean air act, area A or other geographical area as provided in subsection I, an owner or operator of a gasoline dispensing site shall not transfer or allow the transfer of gasoline into a motor vehicle fuel tank at a gasoline dispensing site unless the gasoline dispensing site is equipped with a stage II vapor collection system. This subsection does not apply to gasoline dispensing sites with a throughput of less than ten

thousand gallons per month, or to a gasoline dispensing site with a throughput of less than fifty thousand gallons per month in the case of an independent small business marketer of gasoline as defined in section 324 of the clean air act or to a gasoline dispensing site that is located on a manufacturer's proving ground. BEGINNING ON JANUARY 1, 2001, THIS SUBSECTION APPLIES TO GASOLINE DISPENSING SITES THAT ARE LOCATED WITHIN AREA A BUT OUTSIDE THE PHOENIX AREA MARICOPA COUNTY OZONE NONATTAINMENT AREA AS DEFINED IN 40 CODE OF FEDERAL REGULATIONS SECTION 81.303.

D. An owner or operator of a gasoline storage tank, gasoline transport vehicle or gasoline dispensing site subject to stage I or stage II vapor collection requirements shall comply with the following:

1. Install all necessary stage I and stage II vapor collection and control systems and make any modifications necessary to comply with the requirements.

2. Provide adequate training and written instructions to the operator of the affected gasoline dispensing site and the gasoline transport vehicle.

3. Replace, repair or modify any worn or ineffective component or design element to ensure the vapor-tight integrity and efficiency of the stage I and stage II vapor collection systems.

4. Connect and ensure proper operation of the stage I and stage II vapor collection systems whenever gasoline is being loaded, unloaded or dispensed.

E. Before the initial installation or modification of any stage I or stage II recovery system, the owner or operator of a gasoline storage tank, gasoline transport vehicle or gasoline dispensing site shall obtain a plan review and approval from the department. Application for the plan review and approval shall be on forms prescribed and provided by the department.

F. The operator or each gasoline dispensing site using a stage II vapor recovery system shall conspicuously post operating instructions for the system in the gasoline or oxygenated fuel dispensing area. The instructions shall clearly describe how to fuel vehicles correctly with the vapor recovery nozzles used at the station and shall include a warning that topping off may result in spillage or recirculation of gasoline or oxygenated fuel and is prohibited.

G. The department of weights and measures in consultation with the department of environmental quality and the state fire marshal shall establish by rule standards for the installation and operation of stage I and stage II vapor recovery systems. The department of weights and measures shall establish by rule plan review and approval fees. In establishing those rules and standards, the director shall consider requirements in other states to assure that only state of the art technology is used.

H. Approval of a stage I or stage II vapor collection system by the department does not relieve the owner or operator of the responsibility to

comply with other applicable statutes, codes and rules pertaining to fire prevention, environmental quality and safety matters.

I. Any county, city or town outside an ozone nonattainment area designated as moderate, serious or severe by the environmental protection agency under section 107(d) of the clean air act or outside of area A as defined in section 49-541 may require gasoline dispensing sites with a throughput greater than ten thousand gallons per month or fifty thousand gallons per month in the case of an independent small business marketer of gasoline as defined in section 324 of the clean air act to install, operate and maintain stage II vapor collection systems in accordance with this section. For a county, city or town considering the adoption of a resolution to require stage II vapor collection systems within its jurisdiction and on request, the department of environmental quality shall provide technical assistance in evaluating the air quality in that county, city or town and shall provide final review and approval of an adopted resolution.

J. A county board of supervisors or governing body of a city or town shall submit a resolution approved by the department of environmental quality to the director of the department of weights and measures requesting the imposition of the requirements for stage II vapor collection systems within its jurisdiction.

K. The director shall adopt, by rule, compliance schedules for gasoline dispensing sites located within the jurisdiction requesting stage II vapor collection system requirements no later than twelve months after receipt of the resolution from the county board of supervisors or governing board of a city or town. All gasoline dispensing sites other than those that are exempt pursuant to subsection C shall be required to comply with stage II vapor collection system rules within twenty-four months after the rules have been filed with the secretary of state.

L. A county board of supervisors or governing body of a city or town that adopts the requirements for stage II vapor collection systems may repeal those requirements by adopting a resolution to remove the imposition of those requirements within its jurisdiction unless the county, city or town is in an ozone nonattainment area that has since been designated as moderate, serious or severe by the United States environmental protection agency under section 107(d) of the clean air act. On receipt of the resolution, the director of the department of weights and measures shall consult with the director of the department of environmental quality to verify that a county, city or town is outside of an ozone nonattainment area designated as moderate, serious or severe by the United States environmental protection agency under section 107(d) of the clean air act. After consultation with the department of environmental quality, the director of the department of weights and measures shall revise the rules to repeal the requirements for stage II vapor collection systems within that jurisdiction as soon as practicable.

Sec. 17. Section 41-2133, Arizona Revised Statutes, is amended to read:

41-2133. Compliance schedules

Notwithstanding section 41-2132, subsection K relating to schedules of compliance:

1. Gasoline dispensing facilities located in an ozone nonattainment area designated as moderate, SERIOUS OR SEVERE by the United States environmental protection agency under section 107(d) of the clean air act, IN AREA A or IN ANY other geographical area as provided in section 41-2132, subsection I, for which construction began after the certification of rules adopted pursuant to section 41-2132 shall be constructed to include stage I and stage II systems that meet the minimum standards set forth in this chapter and department rules.

2. All gasoline dispensing sites located in an ozone nonattainment area designated as moderate, SERIOUS OR SEVERE by the United States environmental protection agency under section 107(d) of the clean air act, IN AREA A or IN ANY other geographical area as provided in section 41-2132, subsection I, that begin underground storage tank replacement and that apply for a permit pursuant to title 49, chapter 3, article 3 or 5 on or after September 30, 1992 shall be in compliance within six months after the effective date of the rules adopted pursuant to section 41-2132. Compliance with this article is a condition of the permit.

Sec. 18. Section 41-2134, Arizona Revised Statutes, is amended to read:

41-2134. Stage II rule effectiveness; enhanced enforcement

The director shall adopt rules to:

1. Enhance enforcement of the department's stage II vapor recovery program. The enforcement shall be enhanced through programs that may include increased frequency of or targeting of inspections, increased sampling frequency, use of portable analyzers or any other technique.

2. ESTABLISH STANDARDS AND FEES FOR REQUIRED INSPECTIONS OF VAPOR RECOVERY SYSTEMS.

Sec. 19. Section 41-2501, Arizona Revised Statutes, is amended to read:

41-2501. Applicability

A. This chapter applies only to procurements initiated after January 1, 1985 unless the parties agree to its application to procurements initiated before that date.

B. This chapter applies to every expenditure of public monies, including federal assistance monies except as otherwise specified in section 41-2637, by this state, acting through a state governmental unit as defined in this chapter, under any contract, except that this chapter does not apply to either grants or contracts between this state and its political subdivisions or other governments, except as provided in article 10 of this chapter. This chapter also applies to the disposal of state materials.

Nothing in this chapter or in rules adopted under this chapter shall prevent any state governmental unit or political subdivision from complying with the terms and conditions of any grant, gift, bequest or cooperative agreement.

C. All political subdivisions and other local public agencies of this state may adopt all or any part of this chapter and the rules adopted pursuant to this chapter.

D. The Arizona board of regents, the legislative and judicial branches of state government and the state compensation fund are not subject to the provisions of this chapter except as prescribed in subsection E of this section.

E. The Arizona board of regents and the judicial branch shall adopt rules prescribing procurement policies and procedures for themselves and institutions under their jurisdiction. The rules must be substantially equivalent to the policies and procedures prescribed in this chapter.

F. The Arizona state lottery commission is exempt from the provisions of this chapter for procurement relating to the design and operation of the lottery or purchase of lottery equipment, tickets and related materials. The executive director of the Arizona state lottery commission shall adopt rules substantially equivalent to the policies and procedures in this chapter for procurement relating to the design and operation of the lottery or purchase of lottery equipment, tickets or related materials. All other procurement shall be as prescribed by this chapter.

G. The Arizona health care cost containment system administration is exempt from the provisions of this chapter for provider contracts pursuant to section 36-2904, subsection A and contracts for goods and services including program contractor contracts pursuant to title 36, chapter 29, articles 2 and 3. All other procurement, including contracts for the statewide administrator of the program pursuant to section 36-2903, subsection C, shall be as prescribed by this chapter.

H. Arizona industries for the blind is exempt from the provisions of this chapter for purchases of finished goods from members of national industries for the blind and for purchases of raw materials for use in the manufacture of products for sale pursuant to section 41-1972. All other procurement shall be as prescribed by this chapter.

I. Arizona correctional industries is exempt from the provisions of this chapter for purchases of raw materials, components and supplies that are used in the manufacture or production of goods or services for sale entered into pursuant to section 41-1622. All other procurement shall be as prescribed by this chapter.

J. The state transportation board and the director of the department of transportation are exempt from the provisions of this chapter other than section 41-2586 for the procurement of construction or reconstruction, including engineering services, of transportation facilities or highway facilities.

K. The Arizona highways magazine is exempt from the provisions of this chapter for contracts for the production, promotion, distribution and sale of the magazine and related products and for contracts for sole source creative works entered into pursuant to section 28-7314, subsection A, paragraph 5. All other procurement shall be as prescribed by this chapter.

L. The secretary of state is exempt from the provisions of this chapter for contracts entered into pursuant to section 41-1012 to publish and sell the administrative code. All other procurement shall be as prescribed by this chapter.

M. The provisions of this chapter are not applicable to contracts for professional witnesses if the purpose of such contracts is to provide for professional services or testimony relating to an existing or probable judicial proceeding in which this state is or may become a party or to contract for special investigative services for law enforcement purposes.

N. The head of any state governmental unit, in relation to any contract exempted by this section from the provisions of this chapter, has the same authority to adopt rules, procedures or policies as is delegated to the director pursuant to this chapter.

O. Agreements negotiated by legal counsel representing this state in settlement of litigation or threatened litigation are exempt from the provisions of this chapter.

P. The provisions of this chapter are not applicable to contracts entered into by the department of economic security with a provider licensed or certified by an agency of this state to provide child day care services or with a provider of family foster care pursuant to section 8-503 or 36-554, to contracts entered into with area agencies on aging created pursuant to the older Americans act of 1965 (P.L. 89-73; 79 Stat. 218; 42 United States Code section 3001 through 3058ee) or to contracts for services pursuant to title 36, chapter 29, article 2.

Q. The department of health services may not require that persons with whom it contracts follow the provisions of this chapter for the purposes of subcontracts entered into for the provision of the following:

1. Mental health services pursuant to section 36-189, subsection B.

2. Services for the seriously mentally ill pursuant to title 36, chapter 5, article 10.

3. Drug and alcohol services pursuant to section 36-141.

4. Domestic violence services pursuant to title 36, chapter 30, article 1.

R. The department of health services is exempt from the provisions of this chapter for contracts for services of physicians at the Arizona state hospital.

S. Contracts for goods and services approved by the fund manager of the public safety personnel retirement system are exempt from the provisions of this chapter.

T. The Arizona department of agriculture is exempt from this chapter with respect to contracts for private labor and equipment to effect cotton or cotton stubble plow-up pursuant to rules adopted under title 3, chapter 2, article 1. On or before September 1 each year the director of the Arizona department of agriculture shall establish and announce costs for each acre of cotton or cotton stubble to be abated by private contractors.

U. The state parks board is exempt from the provisions of this chapter for purchases of guest supplies and items for resale such as food, linens, gift items, sundries, furniture, china, glassware and utensils for the facilities located in the Tonto natural bridge state park.

V. The Arizona state parks board is exempt from the provisions of this chapter for the purchase, production, promotion, distribution and sale of publications, souvenirs and sundry items obtained and produced for resale.

W. The Arizona state schools for the deaf and the blind are exempt from the provisions of this chapter when purchasing products through a cooperative that is organized and operates in accordance with state law if such products are not available on a statewide contract and are related to the operation of the schools or are products for which special discounts are offered for educational institutions.

X. Expenditures of monies in the morale, welfare and recreational fund established by section 26-153 are exempt from the provisions of this chapter.

Y. The state department of corrections is exempt from the provisions of this chapter for purchases of food commodities to be used in the preparation of meals for inmates. All other procurement shall be as prescribed by this chapter.

Z. The department of environmental quality is exempt from the provisions of this chapter for contracting for services relating to the implementation of the water quality assurance revolving fund program established pursuant to title 49, chapter 2, article 5 INCLUDING GOODS AND SERVICES. TO THE EXTENT PRACTICABLE, THE DEPARTMENT OF ENVIRONMENTAL QUALITY SHALL FOLLOW PROCEDURES FOR CONTRACTING THAT ARE SUBSTANTIALLY EQUIVALENT TO THE PROCEDURES PRESCRIBED BY THIS CHAPTER INCLUDING COMPETITIVE BIDDING. THE EXCLUSIVE REMEDY FOR DISPUTES OR CLAIMS RELATING TO CONTRACTING PURSUANT TO THIS SUBSECTION IS AS PRESCRIBED BY ARTICLE 9 OF THIS CHAPTER AND THE RULES ADOPTED PURSUANT TO THAT ARTICLE. All other procurement by the department shall be as prescribed by this chapter.

AA. The motor vehicle division of the department of transportation is exempt from the provisions of this chapter for third party authorizations pursuant to title 28, chapter 13, only if all of the following conditions exist:

1. The division does not pay any public monies to an authorized third party.

2. Exclusivity is not granted to an authorized third party.

3. The director has complied with the requirements prescribed in title 28, chapter 13 in selecting an authorized third party.

BB. This section does not exempt third party authorizations pursuant to title 28, chapter 13 from any other applicable law.

Sec. 20. Section 43-1026, Arizona Revised Statutes, is amended to read:

43-1026. Subtraction for alternative fuel vehicles and equipment; computing amount; definitions

A. For taxable years beginning from and after December 31, 1993, in computing Arizona adjusted gross income a taxpayer may subtract an amount equal to the sum of the following:

1. Twenty-five per cent of the purchase price paid for one or more new alternative fuel vehicles purchased for use in this state, exclusive of taxes, interest and other finance charges, but not more than ten thousand dollars with respect to each vehicle. One-third of the subtraction shall be allocated and applied to each of three consecutive taxable years beginning with the taxable year in which the vehicle is purchased, except that if title to the vehicle is conveyed to another person as defined in section 43-104, the subtraction is not allowed for any subsequent taxable year. The subtraction under this paragraph is not allowed with respect to purchasing a used alternative fuel vehicle.

2. The cost of converting one or more conventional vehicles for use in this state to operate on an alternative fuel, exclusive of taxes, interest and other finance charges, but not more than five thousand dollars with respect to each vehicle. One-third of the subtraction shall be allocated and applied to each of three consecutive taxable years beginning with the taxable year in which the vehicle is converted, except that if title to the vehicle is conveyed to another person as defined in section 43-104, the subtraction is not allowed for any subsequent taxable year.

3. The purchase price of refueling equipment, including storage tanks, for installation on the taxpayer's property in this state for the taxpayer's use, exclusive of taxes, interest and other finance charges, but not more than five thousand dollars. One-third of the subtraction shall be allocated and applied to each of three consecutive taxable years beginning with the taxable year in which the equipment is installed.

4. Fifty per cent of the interest paid or accrued during the taxable year on indebtedness incurred by the individual to purchase for private noncommercial use one or more new alternative fuel vehicles, to convert for private noncommercial use one or more conventional vehicles to operate on an alternative fuel or to both purchase and convert such vehicles for private noncommercial use.

B. The subtraction allowed by this section is not considered to be a double deduction for any purpose under this title.

C. A subtraction under this section is in addition to a credit under section 43-1086. The total amount of a subtraction, a credit and any grant made pursuant to section 41-1516 for a single vehicle is limited to the amount of the incremental cost of the alternative fuel vehicle compared to the same vehicle using conventional fuel.

D. For purposes of this section:

1. "Alternative fuel" means:

(a) Liquefied petroleum gas.

(b) Natural gas.

(c) Hydrogen.

(d) Electricity.

(e) Solar energy.

(f) Only for vehicles that use alcohol fuels before the effective date of this amendment to this section, alcohol fuels that contain not less than eighty-five per cent alcohol by volume.

(g) An emulsion of water-phased hydrocarbon fuel that contains not less than twenty per cent water by volume and that complies with any of the following:

(i) Is used in an engine that is certified to meet at a minimum the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section ~~88.104-95~~ 88.104-94 or 88.105-94.

(ii) Is used in an engine that is certified by the engine modifier to meet the addendum to memorandum 1-A of the United States environmental protection agency.

(iii) Is used in an engine that is the subject of a waiver for that specific engine application from the United States environmental protection agency's memorandum 1-A addendum requirements and that waiver is documented to the reasonable satisfaction of the department of commerce energy office.

(h) A combination of at least seventy per cent alternative fuel and no more than thirty per cent petroleum based fuel and that operates in an engine that meets the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section ~~88.104-95~~ 88.104-94 or 88.105-94 and is certified by the engine manufacturer to consume at least seventy per cent alternative fuel during normal vehicle operations.

2. "Alternative fuel vehicle" means a self-propelled vehicle that is registered and titled in this state for operation on the highways and that is primarily propelled by an alternative fuel but does not include such vehicles as a golf cart or implement of husbandry, as defined in section 28-101, a motorized wheelchair as defined in section 28-601 or a vehicle, such as a forklift, that is not designed primarily for operation on highways.

An alternative fuel vehicle that is powered by electricity may include an on board auxiliary motor that is designed and used to recharge batteries.

Sec. 21. Section 43-1086, Arizona Revised Statutes, is amended to read:

43-1086. Credit for alternative fuel vehicles and equipment; definitions

A. For taxable years beginning after December 31, 1997, and before January 1, 2002, a credit against the taxes imposed by this title is allowed to each taxpayer who purchases or enters into a lease, for a duration of at least three years, one or more new alternative fuel vehicles for use in this state, who incurs expenses during the taxable year for converting one or more conventional vehicles for use in this state to operate on an alternative fuel or who purchases an alternative fuel delivery system, including storage tanks, for installation on one or more properties located in this state for the taxpayer's use.

B. The amount of the credit is equal to the following:

1. If purchased, leased as bi-fuel or converted to bi-fuel operation in taxable years 1998 through 2001, one thousand dollars per purchase, lease or conversion.

2. If purchased, leased as dedicated or converted to dedicated operation in taxable years 1998 through 2001, two thousand dollars per purchase, lease as dedicated or conversion.

C. For taxable years beginning after December 31, 1997 and before January 1, 2002, a credit against the taxes imposed by this title is allowed to each taxpayer who incurs expenses during the tax year for constructing or operating a fueling station in this state that is capable of dispensing an alternative fuel to an alternative fuel vehicle. The amount of the credit is equal to the following:

1. If for a station that is accessible to the general public or if for a station that is dispensing a renewable fuel, fifty per cent of the costs incurred, up to a maximum of four hundred thousand dollars.

2. If for a station that does not comply with paragraph 1 of this subsection, twenty-five per cent of the costs incurred, up to a maximum of two hundred thousand dollars.

D. A credit under this section is in addition to a subtraction under section 43-1026.

E. If the allowable credit exceeds the taxes otherwise due under this title on the claimant's income, or if there are no taxes due under this title, the amount of the credit not used to offset taxes under this title may be carried forward to the next five consecutive taxable years as a credit against subsequent years' income tax liability.

F. Co-owners of a business, including partners in a partnership and shareholders of an S corporation as defined in section 1361 of the internal revenue code, may each claim only the pro rata share of the credit allowed

under this section based on the ownership interest. The total of the credits allowed all such owners may not exceed the amount that would have been allowed for a sole owner of the business.

G. A person who receives a grant pursuant to section 41-1516 is not eligible to claim a credit pursuant to this section for the amount of the grant. If the cost of the alternative fuel delivery system exceeds the amount of the grant, a person may claim a credit for the amount in excess of the amount of the grant not to exceed the limits imposed by this section.

H. For purposes of this section:

1. "Alternative fuel" means:

(a) Liquefied petroleum gas.

(b) Natural gas.

(c) Hydrogen.

(d) Electricity.

(e) Solar energy.

(f) Only for vehicles that use alcohol fuels before the effective date of this amendment to this section, alcohol fuels that contain not less than eighty-five per cent alcohol by volume.

(g) An emulsion of water-phased hydrocarbon fuel that contains not less than twenty per cent water by volume and that complies with any of the following:

(i) Is used in an engine that is certified to meet at a minimum the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section ~~88.104-95~~ 88.104-94 or 88.105-94.

(ii) Is used in an engine that is certified by the engine modifier to meet the addendum to memorandum 1-A of the United States environmental protection agency.

(iii) Is used in an engine that is the subject of a waiver for that specific engine application from the United States environmental protection agency's memorandum 1-A addendum requirements and that waiver is documented to the reasonable satisfaction of the department of commerce energy office.

(h) A combination of at least seventy per cent alternative fuel and no more than thirty per cent petroleum based fuel and that operates in an engine that meets the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section ~~88.104-95~~ 88.104-94 or 88.105-94 and is certified by the engine manufacturer to consume at least seventy per cent alternative fuel during normal vehicle operations.

2. "Alternative fuel delivery system" means any facility that provides for the fueling of an alternative fuel vehicle.

3. "Bi-fuel" or "bi-fuel vehicle" means a vehicle that is capable of operating on both gasoline or an alternative fuel but does not include a vehicle that is capable of operating on a mixture of two or more fuel types.

4. "Dedicated vehicle" means a vehicle that is capable of operating only on a single alternative fuel.

Sec. 22. Section 43-1086.01, Arizona Revised Statutes, is amended to read:

43-1086.01. Credit for alternative fuel vehicles based on emissions levels; definition

A. For taxable years beginning from and after December 31, 1998 and before January 1, 2012, a credit against the taxes imposed by this title is allowed to each taxpayer who purchases or leases, for a period of at least three years, one or more original equipment manufactured alternative fuel vehicles for use in this state, in an amount equal to the following:

1. Fifty per cent of the incremental cost of a low emission vehicle over and above the cost of a conventionally fueled vehicle.

2. Seventy-five per cent of the incremental cost of an ultralow or inherently low emission vehicle over and above the cost of a conventionally fueled vehicle.

3. Ninety per cent of the incremental cost of a zero emission vehicle over and above the cost of a conventionally fueled vehicle.

B. For taxable years beginning from and after December 31, 2011 and before January 1, 2020, a credit against the taxes imposed by this title is allowed to each taxpayer who purchases or leases, for a period of at least three years, one or more original equipment manufactured alternative fuel vehicles for use in this state, in an amount equal to the following:

1. Twenty-five per cent of the incremental cost of a low emission vehicle over and above the cost of a conventionally fueled vehicle.

2. Fifty per cent of the incremental cost of an ultralow or inherently low emission vehicle over and above the cost of a conventionally fueled vehicle.

3. Seventy-five per cent of the incremental cost of a zero emission vehicle over and above the cost of a conventionally fueled vehicle.

C. The tax credit taken pursuant to this section is allowed only if the vehicle is certified to meet the United States environmental protection agency emission standards for the particular type of vehicle for which the credit is claimed as prescribed by 40 Code of Federal Regulations section ~~88.104-95~~ 88.104-94 or 88.105-94.

D. The taxpayer is responsible for maintaining the factory or dealer invoice stating the incremental cost difference of the alternative fuel low, inherently low, zero or ultralow emission vehicle over and above the cost of a conventionally fueled low emission vehicle. For a vehicle that is leased, the lessor may claim the credit and the lessee is not eligible to claim the

credit if the credit amount is fully deducted from the manufacturer's base retail price for the life of the vehicle.

E. If the allowable credit exceeds the taxes otherwise due under this title on the claimant's income, or if there are no taxes due under this title, the amount of the credit not used to offset taxes under this title may be carried forward to the next five consecutive taxable years as a credit against subsequent years' income tax liability.

F. Co-owners of a business, including partners in a partnership and shareholders of an S corporation as defined in section 1361 of the internal revenue code may each claim only the pro rata share of the credit allowed under this section based on the ownership interest. The total of the credits allowed all such owners may not exceed the amount that would have been allowed for a sole owner of the business.

G. For purposes of this section "alternative fuel delivery system" has the same meaning prescribed in section 43-1086.

Sec. 23. Section 43-1128.01, Arizona Revised Statutes, is amended to read:

43-1128.01. Subtraction for alternative fuel vehicles and equipment; computing amount; definitions

A. For taxable years beginning from and after December 31, 1993, in computing Arizona taxable income a taxpayer may subtract an amount equal to the sum of the following:

1. Twenty-five per cent of the purchase price paid for one or more new alternative fuel vehicles purchased for use in this state, exclusive of taxes, interest and other finance charges, but not more than ten thousand dollars with respect to each vehicle. One-third of the subtraction shall be allocated and applied to each of three consecutive taxable years beginning with the taxable year in which the vehicle is purchased, except that if title to the vehicle is conveyed to another person as defined in section 43-104, the subtraction is not allowed for any subsequent taxable year. The subtraction under this paragraph is not allowed with respect to purchasing a used alternative fuel vehicle.

2. The cost of converting one or more conventional vehicles for use in this state to operate on an alternative fuel, exclusive of taxes, interest and other finance charges, but not more than five thousand dollars with respect to each vehicle. One-third of the subtraction shall be allocated and applied to each of three consecutive taxable years beginning with the taxable year in which the vehicle is converted, except that if title to the vehicle is conveyed to another person as defined in section 43-104, the subtraction is not allowed for any subsequent taxable year.

3. The purchase price of refueling equipment, including storage tanks, for installation on the taxpayer's property in this state for the taxpayer's use, exclusive of taxes, interest and other finance charges, but not more than five thousand dollars. One-third of the subtraction shall be allocated

and applied to each of three consecutive taxable years beginning with the taxable year in which the equipment is installed.

B. The subtraction allowed by this section is not considered to be a double deduction for any purpose under this title.

C. A subtraction under this section is in addition to a credit under section 43-1174. The total amount of a subtraction, a credit and any grant made pursuant to section 41-1516 for a single vehicle is limited to the amount of the incremental cost of the alternative fuel vehicle compared to the same vehicle using conventional fuel.

D. For purposes of this section:

1. "Alternative fuel" means:

(a) Liquefied petroleum gas.

(b) Natural gas.

(c) Hydrogen.

(d) Electricity.

(e) Solar energy.

(f) Only for vehicles that use alcohol fuels before the effective date of this amendment to this section, alcohol fuels that contain not less than eighty-five per cent alcohol by volume.

(g) An emulsion of water-phased hydrocarbon fuel that contains not less than twenty per cent water by volume and that complies with any of the following:

(i) Is used in an engine that is certified to meet at a minimum the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section ~~88.104-95~~ 88.104-94 or 88.105-94.

(ii) Is used in an engine that is certified by the engine modifier to meet the addendum to memorandum 1-A of the United States environmental protection agency.

(iii) Is used in an engine that is the subject of a waiver for that specific engine application from the United States environmental protection agency's memorandum 1-A addendum requirements and that waiver is documented to the reasonable satisfaction of the department of commerce energy office.

(h) A combination of at least seventy per cent alternative fuel and no more than thirty per cent petroleum based fuel and that operates in an engine that meets the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section ~~88.104-95~~ 88.104-94 or 88.105-94 and is certified by the engine manufacturer to consume at least seventy per cent alternative fuel during normal vehicle operations.

2. "Alternative fuel vehicle" means a self-propelled vehicle that is registered and titled in this state for operation on the highways and that is primarily propelled by an alternative fuel but does not include such

vehicles as a golf cart or implement of husbandry, as defined in section 28-101, a motorized wheelchair as defined in section 28-601 or a vehicle, such as a forklift, that is not designed primarily for operation on highways. An alternative fuel vehicle that is powered by electricity may include an on board auxiliary motor that is designed and used to recharge batteries.

Sec. 24. Section 43-1174, Arizona Revised Statutes, is amended to read:

43-1174. Credit for alternative fuel vehicles and equipment; definitions

A. For taxable years beginning after December 31, 1997 and before January 1, 2002, a credit against the taxes imposed by this title is allowed to each taxpayer who purchases or enters into a lease, for a duration of at least three years, one or more new alternative fuel vehicles for use in this state, who incurs expenses during the tax year for converting one or more conventional vehicles for use in this state to operate on an alternative fuel or who purchases an alternative fuel delivery system, including storage tanks, for installation on one or more properties located in this state for the taxpayer's use.

B. The amount of the credit is equal to the following:

1. If purchased, leased as bi-fuel or converted to bi-fuel operation in taxable years 1998 through 2001, one thousand dollars per purchase, lease or conversion.

2. If purchased, leased as dedicated or converted to dedicated operation in taxable years 1998 through 2001, two thousand dollars per purchase, lease as dedicated or conversion.

C. For taxable years beginning after December 31, 1997 and before January 1, 2002, a credit against the taxes imposed by this title is allowed to each taxpayer who incurs expenses during the tax year for constructing or operating a fueling station in this state that is capable of dispensing an alternative fuel to an alternative fuel vehicle. The amount of the credit is equal to the following:

1. If for a station that is accessible to the general public or if for a station that is dispensing a renewable fuel, fifty per cent of the costs incurred, up to a maximum of four hundred thousand dollars.

2. If for a station that does not comply with paragraph 1 of this subsection, twenty-five per cent of the costs incurred, up to a maximum of two hundred thousand dollars.

D. A credit under this section is in addition to a subtraction under section 43-1128.01.

E. If the allowable credit exceeds the taxes otherwise due under this title on the claimant's income, or if there are no taxes due under this title, the amount of the credit not used to offset taxes under this title may be carried forward to the next five consecutive taxable years as a credit against subsequent years' income tax liability.

F. Co-owners of a business, including corporate partners in a partnership, may each claim only the pro rata share of the credit allowed under this section based on the ownership interest. The total of the credits allowed all such owners may not exceed the amount that would have been allowed for a sole owner of the business.

G. For purposes of this section:

1. "Alternative fuel" means:

(a) Liquefied petroleum gas.

(b) Natural gas.

(c) Hydrogen.

(d) Electricity.

(e) Solar energy.

(f) Only for vehicles that use alcohol fuels before the effective date of this amendment to this section, alcohol fuels that contain not less than eighty-five per cent alcohol by volume.

(g) An emulsion of water-phased hydrocarbon fuel that contains not less than twenty per cent water by volume and that complies with any of the following:

(i) Is used in an engine that is certified to meet at a minimum the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section ~~88.104-95~~ 88.104-94 or 88.105-94.

(ii) Is used in an engine that is certified by the engine modifier to meet the addendum to memorandum 1-A of the United States environmental protection agency.

(iii) Is used in an engine that is the subject of a waiver for that specific engine application from the United States environmental protection agency's memorandum 1-A addendum requirements and that waiver is documented to the reasonable satisfaction of the department of commerce energy office.

(h) A combination of at least seventy per cent alternative fuel and no more than thirty per cent petroleum based fuel and that operates in an engine that meets the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section ~~88.104-95~~ 88.104-94 or 88.105-94 and is certified by the engine manufacturer to consume at least seventy per cent alternative fuel during normal vehicle operations.

2. "Alternative fuel delivery system" means any facility that provides for the fueling of an alternative fuel vehicle.

3. "Bi-fuel" or "bi-fuel vehicle" means a vehicle that is capable of operating on both gasoline or an alternative fuel but does not include a vehicle that is capable of operating on a mixture of two or more fuel types.

4. "Dedicated vehicle" means a vehicle that is capable of operating only on a single alternative fuel.

Sec. 25. Section 43-1174.01, Arizona Revised Statutes, is amended to read:

43-1174.01. Credit for alternative fuel vehicles based on emissions levels; definition

A. For taxable years beginning from and after December 31, 1998 and before January 1, 2012, a credit against the taxes imposed by this title is allowed to each taxpayer who purchases or leases, for a period of at least three years, one or more original equipment manufactured alternative fuel vehicles for use in this state, in an amount equal to the following:

1. Fifty per cent of the incremental cost of a low emission vehicle over and above the cost of a conventionally fueled vehicle.

2. Seventy-five per cent of the incremental cost of an ultralow or inherently low emission vehicle over and above the cost of a conventionally fueled vehicle.

3. Ninety per cent of the incremental cost of a zero emission vehicle over and above the cost of a conventionally fueled vehicle.

B. For taxable years beginning from and after December 31, 2011 and before January 1, 2020, a credit against the taxes imposed by this title is allowed to each taxpayer who purchases or leases, for a period of at least three years, one or more original equipment manufactured alternative fuel vehicles for use in this state, in an amount equal to the following:

1. Twenty-five per cent of the incremental cost of a low emission vehicle over and above the cost of a conventionally fueled vehicle.

2. Fifty per cent of the incremental cost of an ultralow or inherently low emission vehicle over and above the cost of a conventionally fueled vehicle.

3. Seventy-five per cent of the incremental cost of a zero emission vehicle over and above the cost of a conventionally fueled vehicle.

C. The tax credit taken pursuant to this section is allowed only if the vehicle is certified to meet the United States environmental protection agency emission standards for the particular type of vehicle for which the credit is claimed as prescribed by 40 Code of Federal Regulations section ~~88.104-95~~ 88.104-94 or 88.105-94.

D. The taxpayer is responsible for maintaining the factory or dealer invoice stating the incremental cost difference of the alternative fuel low or ultralow emission vehicle over and above the cost of a conventionally fueled low emission vehicle. For a vehicle that is leased, the lessor may claim the credit and the lessee is not eligible to claim the credit if the credit amount is fully deducted from the manufacturer's base retail price for the life of the vehicle.

E. If the allowable credit exceeds the taxes otherwise due under this title on the claimant's income, or if there are no taxes due under this title, the amount of the credit not used to offset taxes under this title may

be carried forward to the next five consecutive taxable years as a credit against subsequent years' income tax liability.

F. Co-owners of a business, including partners in a partnership and shareholders of an S corporation as defined in section 1361 of the internal revenue code, may each claim only the pro rata share of the credit allowed under this section based on the ownership interest. The total of the credits allowed all such owners may not exceed the amount that would have been allowed for a sole owner of the business.

G. For purposes of this section "alternative fuel delivery system" has the same meaning prescribed in section 43-1086.

Sec. 26. Section 49-105, Arizona Revised Statutes, is amended to read:

49-105. Annual report on violations and enforcement

Not later than December 1 of each year the director shall submit to the governor, the speaker of the house of representatives and the president of the senate a report listing the following information for the preceding fiscal year ending June 30:

1. The number of site or facility inspections conducted pursuant to chapters 2 and 5 of this title, including information on the reasons for and nature of such inspections.

2. The number of permits or approvals issued pursuant to chapters 2 and 5 of this title.

3. The names of all persons who were ~~found~~ THE SUBJECT OF AN ENFORCEMENT ACTION by THE department ~~inspectors to be in~~ AS A RESULT OF A violation of any provision of chapter 2 or 5 of this title, including any rules, permits, orders or conditions of approval issued under those chapters.

4. A brief description of the number and nature of violations committed by each person named under paragraph 3 and a description of any enforcement action taken in response to the violations.

5. A summary of all administrative penalties assessed pursuant to enforcement of the federal safe drinking water act and the violations of that act.

Sec. 27. Title 49, chapter 2, Arizona Revised Statutes, is amended by adding article 1.1, to read:

ARTICLE 1.1. BROWNFIELDS CLEANUP REVOLVING LOAN FUND PROGRAM

49-211. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "CERCLA BROWNFIELDS CLEANUP REVOLVING LOAN FUND PROGRAM" MEANS THE PROGRAM ESTABLISHED BY THE ENVIRONMENTAL PROTECTION AGENCY PURSUANT TO THE BROWNFIELDS ECONOMIC REDEVELOPMENT INITIATIVE TO PROVIDE LOAN ASSISTANCE TO ELIGIBLE PERSONS TO REMEDIATE CONTAMINATION AT ELIGIBLE SITES AS PROVIDED IN SECTION 104(d)(1) OF CERCLA, 40 CFR PARTS 31, 35 AND 300 AND APPLICABLE

GUIDANCE DOCUMENTS PREPARED BY THE ENVIRONMENTAL PROTECTION AGENCY TO IMPLEMENT THIS PROGRAM.

2. "ELIGIBLE ACTIVITIES" MEANS NON-TIME CRITICAL REMOVALS AS DEFINED BY SECTION 101(23) OF CERCLA AND INCLUDE REQUIRED ENGINEERING EVALUATIONS, COST ANALYSIS OF CLEANUP ALTERNATIVES, PUBLIC PARTICIPATION REQUIREMENTS AND REASONABLE AND NECESSARY SITE MONITORING ACTIVITIES DURING THE REMEDIATION.

3. "ELIGIBLE BORROWER" MEANS A PERSON ACCEPTED INTO THE DEPARTMENT'S VOLUNTARY REMEDIATION PROGRAM EXCEPT AS OTHERWISE PROVIDED IN SECTION 49-212.

4. "ELIGIBLE SITE" MEANS A SITE THAT HAS BEEN ACCEPTED INTO THE DEPARTMENT'S VOLUNTARY REMEDIATION PROGRAM AND THAT IS WITHIN AN AREA DESIGNATED IN A COOPERATIVE AGREEMENT BETWEEN THE DEPARTMENT AND THE ENVIRONMENTAL PROTECTION AGENCY AND THAT IS EITHER:

(a) A SITE THAT HAS BEEN DETERMINED BY THE DEPARTMENT TO HAVE AN ACTUAL RELEASE OR SUBSTANTIAL THREAT OF A RELEASE OF A HAZARDOUS SUBSTANCE.

(b) A SITE THAT HAS BEEN DETERMINED BY THE DEPARTMENT TO HAVE AN ACTUAL RELEASE OR SUBSTANTIAL THREAT OF A RELEASE OF A POLLUTANT OR CONTAMINANT THAT MAY PRESENT AN IMMINENT AND SUBSTANTIAL DANGER TO THE PUBLIC HEALTH OR WELFARE.

49-212. Brownfields cleanup revolving loan fund program; eligibility; program termination

A. SUBJECT TO THE DISCRETION OF THE DIRECTOR, THE DEPARTMENT MAY IMPLEMENT A BROWNFIELDS CLEANUP REVOLVING LOAN FUND PROGRAM. IF IMPLEMENTED PURSUANT TO A COOPERATIVE AGREEMENT WITH THE ENVIRONMENTAL PROTECTION AGENCY, THE DIRECTOR SHALL IMPLEMENT THE BROWNFIELDS CLEANUP REVOLVING LOAN FUND PROGRAM PURSUANT TO THE REQUIREMENTS OF THE CERCLA BROWNFIELDS CLEANUP REVOLVING FUND PROGRAM.

B. THE DIRECTOR MAY:

1. ENTER INTO LOAN AGREEMENTS, AS DEEMED APPROPRIATE, WITH ELIGIBLE BORROWERS FOR THE PERFORMANCE OF ELIGIBLE ACTIVITIES AT ELIGIBLE SITES.

2. APPLY FOR, ACCEPT AND ADMINISTER GRANTS AND OTHER FINANCIAL ASSISTANCE FROM THE FEDERAL GOVERNMENT AND FROM OTHER PUBLIC AND PRIVATE SOURCES FOR THE BROWNFIELDS CLEANUP REVOLVING LOAN FUND PROGRAM.

3. ENTER INTO AGREEMENTS TO ADMINISTER THE PROGRAM.

4. ENTER INTO AGREEMENTS WITH THE WATER INFRASTRUCTURE FINANCE AUTHORITY PURSUANT TO SECTION 49-1203 TO PERFORM ANY OF THE FUNCTIONS OF THE FUND MANAGER PURSUANT TO THE CERCLA BROWNFIELDS CLEANUP REVOLVING FUND LOAN PROGRAM.

5. ASSESS FEES TO ADMINISTER THE PROGRAM CONSISTENT WITH ANY COOPERATIVE AGREEMENT WITH THE ENVIRONMENTAL PROTECTION AGENCY.

C. LOAN RECIPIENTS SHALL PERFORM REMOVAL ACTIONS THAT MEET THE REQUIREMENTS OF THE VOLUNTARY REMEDIATION PROGRAM, THE NATIONAL CONTINGENCY PLAN, THE CERCLA BROWNFIELDS CLEANUP REVOLVING LOAN FUND PROGRAM AND THIS

ARTICLE. TO THE EXTENT POSSIBLE, THE DEPARTMENT SHALL ELIMINATE DUPLICATIVE REQUIREMENTS AMONG THE PROGRAMS.

D. THE FOLLOWING ARE NOT ELIGIBLE FOR THE PROGRAM:

1. A SITE LISTED OR PROPOSED FOR LISTING ON THE NATIONAL PRIORITIES LIST.

2. A SITE AT WHICH A REMOVAL ACTION MUST BE TAKEN WITHIN SIX MONTHS OF RECEIPT OF THE LOAN APPLICATION.

3. A SITE WHERE A FEDERAL OR STATE AGENCY IS PLANNING OR CONDUCTING A RESPONSE OR ENFORCEMENT ACTION.

4. A SITE WHICH HAS BEEN TERMINATED FROM OR HAS NOT BEEN ACCEPTED INTO THE DEPARTMENT'S VOLUNTARY REMEDIATION PROGRAM.

E. BROWNFIELDS CLEANUP REVOLVING LOAN FUND MONIES MAY BE LOANED TO A PERSON WHO IS AN OWNER OR OPERATOR OF AN ELIGIBLE SITE TO BE REMEDIATED ONLY IF THE DEPARTMENT CAN DETERMINE THAT THE OWNER OR OPERATOR WOULD FALL UNDER A STATUTORY EXEMPTION FROM CERCLA LIABILITY OR THAT THE ENVIRONMENTAL PROTECTION AGENCY WOULD USE ITS ENFORCEMENT DISCRETION AND NOT PURSUE THE OWNER OR OPERATOR UNDER CERCLA AS ALLOWED UNDER THE APPLICABLE ENVIRONMENTAL PROTECTION AGENCY GUIDANCE. THE INITIAL FINDINGS MADE BY THE DEPARTMENT DO NOT LIMIT THE AUTHORITY OF THE FEDERAL GOVERNMENT OR THE DEPARTMENT.

F. BROWNFIELDS CLEANUP REVOLVING LOAN FUND MONIES SHALL NOT BE LOANED TO A PERSON WHO IS A GENERATOR OR TRANSPORTER OF CONTAMINATION AT THE SITE SUBJECT TO THE LOAN REQUEST.

G. THE DIRECTOR, THROUGH THE ATTORNEY GENERAL, MAY TAKE ACTIONS NECESSARY TO ENFORCE THE LOAN CONTRACT AND ACHIEVE REPAYMENT OF LOANS PROVIDED UNDER THIS ARTICLE.

H. THE PROGRAM ESTABLISHED BY THIS ARTICLE ENDS ON JULY 1, 2009 PURSUANT TO SECTION 41-3102.

49-213. Brownfields cleanup revolving loan fund

A. THE BROWNFIELDS CLEANUP REVOLVING LOAN FUND IS ESTABLISHED TO BE ADMINISTERED BY THE DIRECTOR. THE FUND CONSISTS OF MONIES FROM THE FOLLOWING SOURCES:

1. MONIES APPROPRIATED BY THE LEGISLATURE.

2. MONIES RECEIVED FROM THE FEDERAL GOVERNMENT.

3. MONIES RECEIVED FROM LOAN RECIPIENTS AND LOAN REPAYMENTS, INTEREST AND PENALTIES.

4. INTEREST AND OTHER INCOME RECEIVED FROM INVESTING MONIES IN THE FUND.

5. GIFTS, GRANTS AND DONATIONS RECEIVED FROM ANY PUBLIC OR PRIVATE SOURCE.

B. MONIES IN THE FUND MAY BE USED FOR THE PURPOSES PROVIDED IN SECTION 49-212, EXCEPT THAT MONIES SHALL NOT BE USED FOR ANY OF THE FOLLOWING PURPOSES:

1. TO CONDUCT ENVIRONMENTAL RESPONSE ACTIVITIES PRELIMINARY TO REMEDIATION INCLUDING SITE ASSESSMENT, SITE IDENTIFICATION AND SITE CHARACTERIZATION.

2. TO CLEAN UP PRODUCTS THAT ARE PART OF A BUILDING STRUCTURE.

3. TO CLEAN UP SITES CONTAMINATED WITH PETROLEUM PRODUCTS UNLESS THEY ARE BELIEVED TO BE CO-MINGLED WITH A HAZARDOUS SUBSTANCE, POLLUTANT OR CONTAMINANT.

4. TO PERFORM DEVELOPMENT OR OTHER ACTIVITIES THAT ARE NOT REMOVAL ACTIONS.

C. THE DEPARTMENT MAY USE MONIES IN THE FUND FOR THE DEPARTMENT'S COSTS IN ADMINISTERING THIS PROGRAM.

D. DISBURSEMENT OF MONIES FROM THE FUND PURSUANT TO A LOAN AGREEMENT UNDER THIS ARTICLE IS NOT SUBJECT TO TITLE 41, CHAPTER 23.

E. MONIES IN THE FUND ARE CONTINUOUSLY APPROPRIATED AND ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190, RELATING TO LAPSING OF APPROPRIATIONS.

Sec. 28. Section 49-281, Arizona Revised Statutes, is amended to read:

49-281. Definitions

In this article, unless the context otherwise requires:

1. "Applicant" means any individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership~~,~~ OR association, this state, a political subdivision of this state, or a commission ~~or~~ OF the United States government or a federal facility, an interstate body or any other entity that applies for a settlement under either section 49-292.01 or 49-292.02.

2. "Community" means the broad spectrum of persons determined by the director to be within an existing or proposed site placed on the registry pursuant to section 49-287.01.

3. "Community involvement area" means the geographical area that is within a site placed on the registry pursuant to section 49-287.01 and additional geographic areas as found appropriate in the director's discretion.

4. "Dispose" means the deposit, injection, dumping, spilling, leaking or placing of any pollutant into or on any land or water so that the pollutant or any constituent of the pollutant may enter the environment or be discharged into any waters, including aquifers.

5. "Eligible party" means a person who enters into a written agreement with the director to implement and complete a remedial investigation and feasibility study with respect to a site or portion of a site that was on the annual priority list on May 1, 1997.

6. "Facility" means any land, building, installation, structure, equipment, device, conveyance, area, source, activity or practice.

7. "Fund" means the water quality assurance revolving fund established by section 49-282.

8. "Hazardous substance" has the same meaning ~~as~~ prescribed in section 49-201~~,~~ but does not include petroleum as defined in section 49-1001, except to the extent that a constituent of petroleum is subject to the provisions of section 49-283.02.

9. "Nonrecoverable costs" means any costs incurred by the director after June 30, 1997:

(a) That consist of salaries and benefits paid to state employees, including direct and indirect costs, except as specifically provided in ~~sections~~ SECTION 49-282.05, SECTION 49-285, subsection B, SECTION 49-285.01, SECTION 49-287.01, SECTION 49-287.06, SUBSECTION H and SECTION 49-287.07 and for epidemiological studies conducted by the department of health services.

(b) For activities conducted pursuant to section 49-287.02.

(c) For water monitoring activities conducted pursuant to section 49-225.

(d) For well inspections, but not other remedial actions, to determine whether vertical cross-contamination is resulting from a well pursuant to section 45-605 or ~~section~~ 49-282.04.

(e) For the advisory board established by section 49-289.04.

(f) For rule making.

10. "Orphan shares" means the shares of the cost of a remedial action that are allocated to an identified person who is determined to be a responsible party and that are not paid or otherwise satisfied by that responsible party due to any of the following:

(a) The party cannot be located or no longer exists.

(b) The party has entered into a qualified business settlement pursuant to this article.

(c) The party has entered into a settlement pursuant to this article for an amount that is less than its allocated share.

(d) The director has determined that the share allocated to the party is uncollectible.

11. "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment~~,~~ but excludes:

(a) Any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons.

(b) Emissions from the engine exhaust of ~~a~~ ANY motor vehicle, rolling stock, aircraft, vessel or pipeline pumping station engine.

(c) Release of source, by-product or special nuclear material, as those terms are defined in section 30-651, resulting from the operation of a production or utilization facility as defined in the atomic energy act of

1954~~, as amended~~ (68 Stat. 919; 42 UNITED STATES CODE SECTION 2011 THROUGH 2297), which is subject to the regulatory authority of the United States nuclear regulatory commission as specified in that act, and the agreement, dated March 30, 1967, entered into between the governor of this state and the United States atomic energy commission pursuant to section 30-656 and section 274 of the atomic energy act of 1954, as amended.

(d) The normal application of fertilizer.

12. "Remedial actions" means those actions that are reasonable, necessary, cost-effective and technically feasible in the event of the release or threat of release of hazardous substances into the environment, such actions as may be necessary to investigate, monitor, assess and evaluate such release or threat of release, actions of remediation, removal or disposal of hazardous substances or taking such other actions as may be necessary to prevent, minimize or mitigate damage to the public health or welfare or to the environment which may otherwise result from a release or threat of release of a hazardous substance. Remedial actions include the use of biostimulation with indigenous microbes and bioaugmentation using microbes that are nonpathogenic, that are nonopportunistic and that are naturally occurring. Remedial actions may include community information and participation costs and providing an alternative drinking water supply.

13. "Remedy" means a remedial action selected in a record of decision issued pursuant to section 49-287.04.

14. "Site" means the geographical areal extent of contamination.

15. "Vertical cross-contamination" means the vertical migration of released hazardous substances in groundwater through a well from an aquifer or aquifer layer to another aquifer or aquifer layer.

Sec. 29. Section 49-282, Arizona Revised Statutes, is amended to read:

49-282. Water quality assurance revolving fund

A. A water quality assurance revolving fund is established to be administered by the director. The fund consists of monies from the following sources:

1. Monies appropriated by the legislature.

2. Fertilizer license fees allocated under section 3-272, subsection B, paragraph 2.

3. Pesticide registration fees allocated under section 3-351, subsection D, paragraph 2.

4. The tax on water use pursuant to section 42-5302.

5. Water quality assurance fees collected under section 45-616.

6. Industrial discharge registration fees collected under section 49-209.

7. Manifest resubmittal fees collected under section 49-922.01.

8. Hazardous waste facility registration fees collected under section 49-929.

9. Hazardous waste resource recovery facility registration fees collected under section 49-930.

10. Monies recovered from responsible parties as remedial action costs.

11. Monies received as costs for a review of remedial actions at the request of a person other than the state.

12. Monies received from the collection of corporate income taxes under title 43, chapter 11, article 2 as prescribed by subsection B of this section.

13. Prospective purchaser agreement fees collected under section 49-285.01.

B. The water quality assurance revolving fund shall be assured of an annual funding amount of eighteen million dollars. Beginning July 1, 1999, as soon as practicable at the beginning of each fiscal year, the state treasurer shall transfer the sum of fifteen million dollars to the water quality assurance revolving fund from the corporate income tax as collected pursuant to title 43, chapter 11, article 2. As custodian of the fund, the director shall certify to the governor, the state treasurer, the president of the senate and the speaker of the house of representatives at the end of that fiscal year the amount of monies deposited in the water quality assurance revolving fund pursuant to subsection A, paragraphs 1 through 9. At the end of the fiscal year the state treasurer shall adjust the fifteen million dollar transfer of corporate income tax so that, when combined with monies deposited in the fund during that fiscal year pursuant to subsection A, paragraphs 1 through 9, the fund receives eighteen million dollars each fiscal year. This adjustment shall occur as part of the year-end book closing process for that fiscal year. If sufficient monies from the corporate income tax are not available to make any necessary upward adjustments as part of the year-end book closing, the state treasurer shall transfer the monies necessary to achieve the eighteen million dollar funding level from the transaction privilege and severance tax clearing account pursuant to section 42-5029, subsection D, to the water quality assurance revolving fund. Any transfers prescribed by this subsection shall not be deducted from the net proceeds distributed pursuant to section 43-206.

C. At the beginning of each fiscal year the director shall transfer the sum of eight hundred thousand dollars from the water quality assurance revolving fund to the Arizona water quality fund established by section 45-618.

D. Monies in the fund are exempt from lapsing under section 35-190. Interest earned on monies in the fund shall be credited to the fund.

E. Monies from the water quality assurance revolving fund shall be used for the following purposes:

1. To provide state matching monies or to meet such other obligations as are prescribed by section 104 of CERCLA.

2. For all reasonable and necessary costs to implement this article, including:

(a) Taking remedial actions.

(b) Conducting investigations of an area to determine if a release or a threatened release of a hazardous substance exists.

(c) Conducting remedial investigations, feasibility studies, health effect studies and risk assessments.

(d) Identifying and investigating potentially responsible parties and allocating liability among the responsible parties.

(e) Funding orphan shares.

(f) Participating in the allocation process, administrative appeals and court actions.

(g) Funding the community advisory boards and other community involvement activities and the water quality assurance revolving fund advisory board.

(h) Remediating pollutants if necessary to remediate a hazardous substance.

3. For the reasonable and necessary costs of monitoring, assessing, identifying, locating and evaluating the degradation, destruction, loss of or threat to the waters of the state resulting from a release of a hazardous substance to the environment.

4. For the reasonable and necessary costs of administering the fund.

5. For the reasonable and necessary costs of administering the industrial discharge registration program under section 49-209.

6. For the costs of the water quality monitoring program described in section 49-225.

7. For compliance monitoring, investigation and enforcement activities pertaining to generating, transporting, treating, storing and disposing of hazardous waste. The amount to be used pursuant to chapter 5 of this title is limited to the amount received in the prior fiscal year from the hazardous waste facility registration fee.

8. For emergency response use as prescribed in section 49-282.02.

9. For all reasonable and necessary costs of the preparation and execution of prospective purchaser agreements.

10. For all reasonable and necessary costs of the voluntary remediation program.

11. To reimburse a political subdivision of this state for its reasonable, necessary and cost-effective remedial action costs incurred in response to a release or threat of a release of a hazardous substance OR POLLUTANTS that presents an immediate and substantial endangerment to the public health or the environment. The political subdivision is not eligible for reimbursement until it has taken all reasonable efforts to obtain reimbursement from the responsible party and the federal government. No more

than two hundred fifty thousand dollars may be spent from the fund for this purpose in any fiscal year.

12. For all reasonable and necessary costs incurred by the department pursuant to section 49-282.04 and the department of water resources pursuant to section 45-605 for well inspections, remedial actions and review and approval of well construction necessary to prevent vertical cross-contamination. The director of environmental quality and the director of water resources shall enter into an agreement for the transfer of these costs.

13. For actions that are taken pursuant to section 49-282.03 before the selection of a remedy.

14. For the reasonable and necessary costs of the conveyance, use or discharge of water remediated as part of a remedy under this article.

15. For the reasonable and necessary costs incurred by the department of health services at the request of the director of environmental quality to assess and evaluate the effect of a release or threatened release of hazardous substances to the public health or welfare and the environment. The director of environmental quality and the director of the department of health services shall enter into an agreement for the transfer of these costs. The assessment and evaluation by the department of health services may include:

(a) Performing health effect studies and risk assessments.

(b) Evaluating and calculating cleanup standards.

(c) Assisting in communicating health and risk issues to the public.

16. For the reasonable and necessary costs incurred by the department of law to provide legal services at the request of the director of environmental quality.

17. For the reasonable and necessary costs of contracting for the goods and services to enable the director to implement this article.

18. For remediation demonstration projects that use bioremediation or other alternative technologies. The department may not use more than five hundred thousand dollars in a fiscal year pursuant to this paragraph.

F. Any political subdivision of this state which uses, used or may use waters of the state for drinking water purposes or any state agency, regardless of whether the political subdivision or state agency is a responsible party, may apply to the director for monies from the fund to be used for remedial action. An application to the fund for remedial action costs shall not be treated as an admission that a political subdivision or an agency of the state is a responsible party, but a political subdivision or a state agency that is a responsible party is liable for remedial action costs in the same manner, including reimbursement of the fund, as any other responsible party. The political subdivision shall commit a local matching amount at least equal to the amount sought from the fund.

G. The director shall prepare and submit a written report to the speaker of the house of representatives and the president of the senate in December of each year. The report shall describe:

1. The accomplishments from expenditures from the fund during the preceding fiscal year in terms of the reduction of contamination in the environment and actions taken to determine the nature and extent of contamination.

2. The status of all sites on the registry, including the site locations, the basis for establishing site boundaries and whether remedial actions taken to date would support a modification of the boundaries of the site.

3. The number of settlements made with responsible parties and the terms of each settlement.

4. The number and types of settlements applied for and made pursuant to sections 49-292.01 and 49-292.02, including:

(a) The number of applications submitted under each section.

(b) The number of applications denied under each section.

(c) The number of applicants who settled based on the formula in section 49-292.01, subsection C, paragraph 1 and the total amount of the settlements.

(d) The number of settlements pursuant to section 49-292.02 and the total amount of the settlements.

(e) The number of persons who met the definition of qualified business under section 49-292.01, subsection ~~G~~ J but who settled pursuant to section 49-292.02, for each such person, the amount of the settlement as a percentage of the person's average annual gross income for the two years preceding the request for settlement, and for all such persons, the total of the difference between the settlement amounts and the amounts that would have been paid based on the formula in section 49-292.01, subsection C, paragraph 1.

H. The water quality assurance revolving fund program shall be reviewed pursuant to the program authorization review prescribed in section 35-114 in 2002 and every five years thereafter.

I. In addition to the report prescribed by subsection H of this section, the director of environmental quality shall prepare and submit a budget for the water quality assurance revolving fund program and the director of water resources shall prepare and submit a budget for the Arizona water quality fund with the departments' budgets that are required pursuant to section 35-111. The committees on appropriations of the house of representatives and the senate shall review the water quality assurance revolving fund budget and the Arizona water quality fund budget and the reports made pursuant to subsection G of this section to ensure that the departments' expenditures are made in accordance with the legislature's

intent and that the departments are making adequate progress toward accomplishing that intent.

Sec. 30. Section 49-282.03, Arizona Revised Statutes, is amended to read:

49-282.03. Interim remedial actions; reimbursement of the fund; rules

A. On the request of any person, the director may take interim remedial actions to address the loss or reduction of available water from a well before the selection of a remedy, including making grants from the water quality assurance revolving fund to provide alternative water supplies, well replacement or water treatment if the director determines that both of the following apply:

1. The well currently supplies water for municipal, domestic, industrial, irrigation or agricultural uses or is currently part of a public water system.

2. The well produces water or, in the reasonably foreseeable future, will produce water that is not fit for its current or reasonably foreseeable end use without treatment due to the release of hazardous substances at or from a site on the registry established pursuant to section 49-287.01, subsection D.

B. The interim remedial action taken by the director pursuant to subsection A of this section shall be the minimum necessary to address the loss or reduction of available water until a remedy is selected. The director, to the extent possible, shall consider potential remedies when selecting the interim remedial action pursuant to subsection A of this section. The interim remedial action shall not include the costs of reimbursement for costs already incurred. The director may choose not to take interim remedial action pursuant to subsection A of this section if the director has sufficient information to reasonably establish that the person requesting the remedial action may be responsible under this article for the release of hazardous substances contaminating the well. Notwithstanding this section, the director shall select remedies pursuant to section 49-287.04.

C. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, if the director, in the record of decision, determines that the remedial action taken pursuant to subsection A of this section was not necessary, based on the criteria in section ~~49-282~~ 49-282.06 and the rules adopted pursuant to that section, or if the person requesting the remedial action pursuant to subsection A of this section is later determined to be responsible under this article for the release of hazardous substances which contaminated or threatened to contaminate the well, that person shall reimburse the water quality assurance revolving fund for the costs incurred in taking the remedial action. The person requesting the interim remedial action shall make arrangements for financial assurance for the obligation to the satisfaction of the director.

The attorney general shall file an action for reimbursement of costs pursuant to this section if requested by the director~~,~~ and may file an action on his own initiative.

D. The director shall adopt rules governing when interim remedial action may be taken pursuant to subsection A of this section.

Sec. 31. Section 49-282.05, Arizona Revised Statutes, is amended to read:

49-282.05. Voluntary remediation program

A. Any person may apply to the director to undertake a voluntary remedial action at a site or a portion of a site. A person applying to undertake a voluntary remedial action shall reimburse the fund for the reasonable costs incurred by the director to review the proposed voluntary action. Any person voluntarily conducting a remedial action pursuant to this section may obtain approval for all or any portion of its remedial action under the provisions of section 49-285, subsection B by providing a work plan for the remedial action to the director for review before conducting the remedial action.

B. The application under subsection A of this section shall contain all of the following:

1. The name and address of the person filing the application and the nature of the relationship of the person to the site, if any.

2. The boundaries of the site or portion of the site and the nature and extent of the hazardous substance contamination, if known.

3. A description of the remedial action the person is proposing to conduct and a schedule for performance of the remedial action.

4. A proposal for public notice and comment appropriate to the schedule and scope of work being proposed. The proposal shall include a list of the persons the volunteer believes may be responsible for the release or threatened release of hazardous substances at the site or that have migrated to the site and a summary of the basis for that belief.

5. A list of the actions of the director that the volunteer proposes to be suspended by the voluntary remedial action and the procedural requirements the volunteer proposes to be waived under the voluntary remedial action.

C. The director shall review the application for voluntary remedial action within ninety days after its receipt and may approve it if it is in substantial compliance with section 49-282.06, may request changes to the ~~proposal~~ APPLICATION or may deny the ~~proposal~~ APPLICATION. If the director approves the application for voluntary remedial action, the person conducting the voluntary remedial action shall reimburse the director for the reasonable and necessary costs incurred in reviewing the remedial action and shall conduct the remedial action as proposed including, if necessary, providing

notice to other potentially responsible parties and notice to the public for comment.

D. If approved, the voluntary remedial action shall suspend any remedial action by the director at the site to the extent determined by the director to be appropriate. The suspension shall be specifically stated in the director's approval of the remedial action and shall continue as long as the volunteer complies with the approved remedial action and its schedules.

E. If the volunteer does not comply with the approved remedial action or its schedules, the director may withdraw the approval to conduct the voluntary remedial action. If the director denies the application to conduct the voluntary remedial action, or if the director withdraws the approval to conduct the voluntary remedial action, the director may continue the remedial action, may conduct other remedial action or may delay conducting any remedial action based on the rules adopted by the director to establish priorities for the use of the fund.

F. A person who conducts a voluntary remedial action pursuant to this section may recover the costs incurred for the remedial action pursuant to section 49-285, subsection H.

G. Nothing contained in this section shall be construed to abridge or alter any right a person might have to voluntarily engage in remedial action under this title or any other provisions of common or statutory law.

Sec. 32. Repeal

Section 49-285, Arizona Revised Statutes, as amended by Laws 1997, chapter 233, section 43, is repealed.

Sec. 33. Section 49-287, Arizona Revised Statutes, is amended to read:

49-287. Enforcement; use of fund; inspections and information gathering; civil penalties

A. Except as provided in section 49-286, the provisions of this article are independent of and are not subject to the enforcement remedies of article 4 of this chapter and section 49-264.

B. This section does not preclude the director from initiating actions pursuant to section 505 of the clean water act and section 1449 of the safe drinking water act. The director shall not initiate any action under ~~sections~~ SECTION 107(a) or 107(f) of CERCLA or section 7002 of the resource conservation and recovery act to the extent that the action is inconsistent with this article, except under any of the following circumstances:

1. In an action initiated by the director filing a complaint contemporaneously with a consent decree or ANY other agreement to provide contribution protection or a covenant not to sue under CERCLA.

2. In an action involving a facility at a site listed on the national priorities list on ~~the effective date of this amendment to this section~~ APRIL 29, 1997. In an action involving a facility at a site on the national priorities list that is listed after ~~the effective date of this amendment to~~

~~this section~~ APRIL 29, 1997~~,~~ the director may initiate an action if the facility is not being remediated pursuant to this article or any other provision of THIS title ~~49~~.

3. In a counterclaim action when the state is sued under section 107 (a) of CERCLA, but only against the party asserting the claim. For purposes of this paragraph, "state" does not include political subdivisions of the state.

C. The director may initiate an action to recover natural resource damages under section 107(f) of CERCLA~~,~~ but may recover only the proportionate share of these damages from a defendant who is also a responsible party under this article.

D. Judicial actions initiated pursuant to this section have precedence over all other civil proceedings.

E. If there is a release or the threat of a release of a hazardous substance which may present an imminent and substantial danger to the public health or welfare or the environment:

1. The director may take such remedial action as he deems necessary to protect the public health or welfare or the environment.

2. The attorney general may request a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief necessary to protect the public health or welfare or the environment from the release.

3. The director may issue an order requiring abatement of such release or threat of a release and appropriate remedial action if the action is consistent with the criteria listed in and rules adopted pursuant to section 49-282.06 and before taking such action the director provides written notice to the responsible party, if known, and the owner of the real property where the facility is located if the owner is not a responsible party. The notice shall include:

(a) The reasons for the remedial action.

(b) A reasonable time for beginning and completing the actions, taking into account the urgency of the actions for protecting public health or welfare or the environment.

(c) The steps taken to comply with the criteria listed in and rules adopted pursuant to section 49-282.06.

(d) The intention of this state or a political subdivision to take remedial action and the possible liability of the responsible party for the costs of such actions if that action is not taken by the responsible party.

4. The director may take action pursuant to sections 49-287.01 through 49-287.07, or enter into a settlement under section 49-292 or any other applicable provision of this article. ACTIONS TAKEN BY THE DIRECTOR PURSUANT TO SECTIONS 49-287.01 THROUGH 49-287.07 MAY SUBSTANTIALLY AFFECT THE RIGHTS AND OBLIGATIONS OF PERSONS WHO MAY BE LIABLE UNDER THIS ARTICLE FOR THE RELEASE OR THREATENED RELEASE OF A HAZARDOUS SUBSTANCE AT A SITE OR PORTION

OF A SITE FOR PURPOSES OF DETERMINING INSURANCE COVERAGE. ANY ACTION TAKEN BY THE DIRECTOR PURSUANT TO SECTIONS 49-287.01 THROUGH 49-287.07 IS NOT APPEALABLE UNLESS OTHERWISE PROVIDED IN THIS ARTICLE.

F. A remedial action order issued under subsection E of this section becomes final and enforceable in the superior court for purposes of subsections I and J of this section unless, within thirty days after the receipt of the order, the recipient moves to quash or modify the order in the superior court. If the motion to quash or modify the order raises issues of fact, the recipient of the order and the state are entitled to conduct expedited discovery on application to the court and are entitled to a priority for trial. A party who undertakes the actions prescribed in a remedial action order issued pursuant to this section may obtain a court order to recover from the fund the reasonable and necessary costs of the actions if the party demonstrates to the court that the actions required by the order were arbitrary and capricious or otherwise were not in accordance with law, that the party is not a responsible party as prescribed by section 49-283 or for the amount of costs incurred that exceeded the party's share of liability pursuant to section 49-285.

G. If there is a release or the threat of a release of any pollutant which may present an imminent and substantial danger to the public health or welfare, the director may take such remedial action as he deems necessary to protect the public health or welfare or the environment.

H. Any remedial action costs, other than nonrecoverable costs, incurred by the director pursuant to the procedures in subsection E of this section may be recovered in a civil action brought by the attorney general against any responsible party pursuant to section 49-287.07.

I. A responsible party who wilfully violates or fails or refuses to comply with any order of the director under subsection E, paragraph 3 of this section may, in an action brought in the superior court in the appropriate county to enforce such order, be assessed a civil penalty of not more than five thousand dollars for each day in which the violation occurs or the failure to comply continues. All civil penalties assessed pursuant to this subsection shall be transmitted to the state treasurer for deposit in the state general fund.

J. A responsible party who fails, without sufficient cause, to properly provide remedial action on order of the director pursuant to subsection E, paragraph 3 of this section may be liable to this state for punitive damages in an amount up to three times the amount of any costs incurred by the director as a result of the failure to take proper action. The attorney general may commence a civil action against the responsible party to recover the remedial action costs and the punitive damages. Any punitive damages received by this state pursuant to this subsection shall be deposited in the state general fund. The director's failure to comply with the requirements of section 49-282.06 or the director's order to take a

remedial action that causes the responsible party to incur costs that exceed the responsible party's proportionate share of liability pursuant to section 49-285 is a defense to an action for punitive damages and the amount of the punitive damages requested may be reduced, in full or in part.

K. If the director may act pursuant to this section, he may undertake such investigations, monitoring, surveys, testing and other information gathering as he may deem necessary or appropriate to identify the existence and extent of the release or threat of a release, the source and nature of the hazardous substances and the extent of danger to the public health or welfare or to the environment. In addition, the director may undertake such planning, legal, fiscal, economic, engineering, architectural and other studies or investigations as he may deem necessary or appropriate to plan and direct remedial actions, to recover the costs of remedial actions, other than nonrecoverable costs, and to enforce this article.

Sec. 34. Section 49-287.03, Arizona Revised Statutes, is amended to read:

49-287.03. Remedial investigation and feasibility study

A. The department may conduct a remedial investigation and feasibility study of a scored site or portion of the site to assess conditions on the site or portion of the site and to evaluate alternative potential remedies to the extent necessary to select a final remedy in a manner consistent with the rules and procedures adopted pursuant to section 49-282.06.

B. Unless the director determines that the necessary remedial action can be completed within one hundred eighty days, before the department begins a remedial investigation and feasibility study for a site or a portion of a site, the department shall prepare a scope of work, a fact sheet and an outline of a community involvement plan. The scope of work shall generally describe the proposed scope of the remedial investigation and feasibility study. The outline of the community involvement plan shall address all of the elements of the community involvement plan requirements of section 49-289.03.

C. The department shall provide written notice to each person ~~for whom~~ WHO, ACCORDING TO INFORMATION AVAILABLE TO the department ~~has information~~, may be liable under this article ~~of the availability of~~ THAT the scope of work IS AVAILABLE for inspection and that any person by agreement with the department may ~~volunteer to~~ develop and implement a work plan for the remedial investigation and the feasibility study. The department shall publish in a newspaper of general circulation in the county where the site is located a notice of the availability of the scope of work, fact sheet and outline of a community involvement plan for public comment. The notice shall provide an opportunity for a public meeting.

D. The department shall prepare a responsiveness summary before implementing the scope of work. Before the director implements a remedial

investigation, unless the director determines that the necessary remedial action can be completed within one hundred eighty days, the department shall prepare and implement the community involvement plan based upon the outline and after considering the public comments, consistent with the requirements of section 49-289.03. The department shall annually update the community involvement plan.

E. The remedial investigation shall collect the data necessary to adequately characterize the site or the portion of the site for the purpose of developing and evaluating effective remediation alternatives pursuant to the feasibility study requirements prescribed by subsection F of this section.

F. The feasibility study shall be fully integrated with the results of the remedial investigation and shall include an alternative screening step to select a reasonable number of alternatives in a manner consistent with the rules and procedures adopted pursuant to section 49-282.06.

Sec. 35. Section 49-287.06, Arizona Revised Statutes, is amended to read:

49-287.06. Allocation hearing

A. Ninety days after the issuance of notice pursuant to section 49-287.05, subsection A, the director shall issue a notice to each person who has not settled its liability with the department of the start of an allocation proceeding. The director shall propose the names of at least three allocators taken from a list maintained by the director. The director shall be entitled to be represented in the allocation proceeding but may waive this right. If all parties have settled, the director's notice shall advise all persons notified pursuant to section 49-287.05 that no allocation hearing will be held pursuant to this section.

B. Within fifteen days of receipt, each person receiving the notice of allocation proceeding shall respond to the director regarding the acceptability of any of the allocators on the director's list. If all of the parties cannot agree on one of the allocators proposed by the director, each party may provide the names of up to three other proposed allocators. If the director and all of the parties cannot agree on a proposed allocator within thirty days after the issuance of the director's notice pursuant to this section, the director shall request the presiding civil judge of the superior court in the county where the site is located to select an allocator. Within thirty days after the request, the presiding civil judge shall select an allocator and advise the director of the selection.

C. The director shall give all parties written notice of the selection of the allocator. The allocator shall set the date for hearing at least sixty and not more than one hundred twenty days after the date of the notice of selection of the allocator pursuant to this section. The allocator may continue the date of the hearing for good cause. Ex parte contact with the

allocator regarding any of the evidence or issues in the allocation is prohibited.

D. The allocator shall conduct an allocation hearing and, on request of one or more of the parties, may conduct a mediation or settlement conference before the allocation hearing. The allocator has the power to administer oaths or affirmations to witnesses. In conducting the allocation hearing, the allocator has discretion to determine the procedures to be followed, except that:

1. Each party shall provide the allocator, the director and all parties with a disclosure statement at least thirty days before the date of the first scheduled hearing. The disclosure statement shall comply with rule 26.1, Arizona rules of civil procedure, and shall include a statement of the method of allocation proposed, a description of evidence supporting the factors listed in section 49-285, subsections E and F intended to be presented at the hearing and a description of any other relevant evidence known to the party, including information regarding the responsibility of any other person. Copies of any documentary evidence shall be included with the disclosure statement unless already in the department's public file on the site or a disclosure statement previously filed pursuant to this paragraph. Evidence that is not disclosed in a party's disclosure statement is inadmissible by that party at the hearing. Evidence that a party failed to provide the director pursuant to a request under section 49-288 is inadmissible by that party at the hearing. The liability allocation notice issued by the director pursuant to section 49-287.05, subsection A and the public record on file at the department may serve as the disclosure statement of the director and any persons who have settled their liability with the director. The director may supplement the liability allocation notice up to thirty days prior to the first scheduled hearing date. The allocator shall resolve disputes regarding the adequacy of disclosure statements.

2. The director has the burden of proving that all other parties are responsible parties under this article. The allocator shall allow each party to present evidence relevant to the liability and proportionate share of liability of any person, except as provided in paragraphs 8 and 9 of this subsection. There is no burden of proof as to the proportionate share of any person. The allocator shall hear all of the evidence and assign the proportionate shares in accordance with the considerations as specified in section 49-285, subsections E and F.

3. The allocator shall allow each party to cross-examine any other party's witnesses, except that the allocator may limit cross-examination to avoid needless delay or a needless presentation of cumulative evidence or to expedite the hearing.

4. The allocator may issue subpoenas to compel the attendance of witnesses and the production of documents. The subpoenas shall be served and, on application to the superior court, enforced in the manner provided

by law for the service and enforcement of subpoenas in civil actions. Service of the subpoena is the responsibility of the person requesting the subpoena. Discovery shall not be permitted except on a showing of good cause and due diligence as determined by the allocator.

5. The allocator may request any additional information from any party if the allocator believes that this information is necessary to assist in making a determination regarding liability or the share of any person.

6. If, during the hearing or at its conclusion, the allocator believes that additional information is necessary to issue a report, the allocator may order the parties to exchange additional information and submit posthearing evidence for a period of not more than sixty days.

7. The allocator shall use the Arizona rules of civil procedure as guidance for hearing procedures, but may depart from these rules as prompt and fair resolution of the issues demand, and shall honor all privileges recognized under Arizona law. The allocator may allow any relevant evidence, including hearsay evidence, to be admitted and shall give appropriate weight to all of the evidence. The allocator may impose time limits on individual presentations and may require the consolidation of presentations or cross-examination if this consolidation can be justified by commonality of interests. The disclosure statements and the liability allocation notice sent by the director pursuant to section 49-287.05 shall be admitted as evidence. The proceeding shall be recorded by a court reporter upon request by any party who agrees to pay the costs.

8. Except on a showing of good cause and due diligence as determined by the allocator, a party may not allege that a person is responsible for a share of liability unless that person was named in the director's list of liable persons issued pursuant to section 49-287.05 or was identified as a potentially liable person pursuant to section 49-287.04.

9. A party may not introduce evidence at the hearing regarding the liability or share of liability of any person under this article unless the director was notified of the existence of the information pursuant to section 49-287.04. The allocator may allow the introduction of that evidence if the party acquired the information after that time and if the party shows good cause and due diligence as determined by the allocator, if the party provided the evidence to the director promptly after it was acquired.

E. Within sixty days after the hearing or, if applicable, the end of the period for submitting posthearing evidence, the allocator shall issue a written allocation report identifying the persons who are liable and the proportionate share of liability of each person in accordance with section 49-285, subsections E and F in percentages adding up to one hundred per cent. The allocator shall send a copy of the report to each party.

F. All parties to the allocation shall bear an equal share of the allocator's fees and costs, which shall be specified in the allocator's report.

G. The director shall serve notice of the issuance of the allocator's report on all persons notified pursuant to subsection A of this section and on the persons who filed an appeal of the record of decision pursuant to section 49-287.04. The notice shall state that there shall be a period of ninety days after service of the notice for settlement discussions, that the allocator's findings are final unless a challenge is filed pursuant to section 49-287.07 and the period for challenging the allocator's findings as provided in section 49-287.07, subsection B.

H. The findings regarding liability and the proportionate share of liability for each person as set forth in the allocator's report are final unless a timely challenge regarding a person's liability or proportionate share is filed as provided in section 49-287.07, subsection B. The director or any other person with a claim for recovery of remedial action costs against a responsible party whose proportionate share as found by the allocator has become final pursuant to this subsection may obtain a judgment based on the proportionate share determined in the allocator's report. In any action to obtain such a judgment, the responsible party whose allocated share has become final may not dispute its proportionate share of liability as determined by the allocator, and the plaintiff may recover its costs and attorney fees incurred in obtaining and enforcing the judgment. The liability of any person that has become final pursuant to this subsection is not affected by any subsequent determination by a court in any action.

I. If all parties settle during a proceeding pursuant to this section ~~or~~, THE DIRECTOR SHALL TERMINATE THE PROCEEDINGS. If all parties, not including the director, fail or refuse to participate, THE DIRECTOR MAY PROCEED WITH THE ALLOCATION HEARING OR MAY TERMINATE THE PROCEEDINGS. IF THE DIRECTOR TERMINATES THE PROCEEDINGS, the director shall provide written notice within thirty days of termination of proceedings pursuant to this section to all persons who received notice pursuant to section 49-287.05.

Sec. 36. Section 49-289.03, Arizona Revised Statutes, is amended to read:

49-289.03. Community involvement plan; community advisory boards; rules

A. The public shall receive notice and be provided an opportunity to comment to the director regarding the following actions taken by the director:

1. The placement of a site on the registry as provided in section 49-287.01.

2. The selection of a remedy as provided in section 49-287.04.

3. Entering into a prospective purchaser agreement with a person pursuant to section 49-285.01.

4. Entering into a settlement with a responsible party pursuant to section 49-292, 49-292.01 or 49-292.02.

B. The director shall adopt rules to implement this section and to govern the provision of information to communities and community involvement areas that include how to disseminate information, the location of public information repositories and notice requirements.

C. Before it implements a remedial investigation as provided in section 49-287.03, subsection D the department shall develop a community involvement plan for each site that does all of the following:

1. Establishes a community advisory board.

2. Designates a spokesperson to inform the public and to act as a liaison between the department, the local government and the responsible party.

3. Provides for newsletters with current information about the status of remedial action at the site and other pertinent information to be distributed to residents within the site.

4. Schedules community advisory board meetings and participates in the scheduling of public meetings pursuant to section 49-287.01, subsection E.

D. A selection committee shall be established for each site that is required to have a community involvement plan pursuant to section 49-287.03, subsection D. The selection committee shall consist of the following members:

1. One representative of the department.

2. One REPRESENTATIVE OF A POTENTIALLY responsible party ~~representative~~, AN OWNER OR OPERATOR OF A FACILITY WITHIN THE SITE OR AN AFFECTED BUSINESS OR INDUSTRY.

3. One local elected official.

4. Two community members who are not employees of any responsible party, the department or the local government.

E. Each community advisory board shall advise the department, the public and the responsible parties of issues, concerns and opportunities related to the expeditious cleanup of the site. Each community advisory board shall be composed of at least five but not more than twenty members. The members of the community advisory board shall be chosen to represent a diversified cross section of the community with an appropriate balance of interested parties and affected groups. Applications for membership on the community advisory board and the names of the applicants shall be publicly available. Community advisory board members may serve on more than one community advisory board and multiple sites may share a community advisory board to avoid unnecessary multiple boards.

F. Each community advisory board shall:

1. Within ninety days after appointment of members by the selection committee, ~~the members shall~~ elect cochairpersons and other officers if needed and shall develop a charter defining at a minimum operating procedures, membership terms and obligations, goals for developing issues,

concerns and opportunities related to expeditious cleanup of the site, and any other anticipated activities of the board for identifying and improving the public's access and understanding of information regarding the remediation processes at the site.

2. Meet at least four times each year with the department and any identified responsible parties to receive site briefings, progress reports and other pertinent information.

3. Coordinate with the department to establish local repositories for the dissemination of information about the site.

G. Each community advisory board may:

1. Make site visits and participate in public meetings related to cleanup opportunities and remedy selection decisions.

2. Participate in an annual meeting held by the department in each county that has a site undergoing a remedial investigation and feasibility study under section 49-287.03 or in the process of selecting or implementing a remedy for the purpose of facilitating public involvement and identifying funding priorities for site cleanups.

Sec. 37. Section 49-289.04, Arizona Revised Statutes, is amended to read:

49-289.04. Water quality assurance revolving fund advisory board; definitions

A. The water quality assurance revolving fund advisory board is established to provide recommendations to improve the functioning of the program established pursuant to this article.

B. The board consists of the following members:

1. A representative from a qualified business as defined in section 49-292.01.

2. A representative of a water provider.

3. A representative of an agricultural improvement district.

4. One representative of a municipal government of a municipality with a population of two hundred fifty thousand persons or more and one representative of a municipal government of a municipality with a population of less than two hundred fifty thousand persons ~~according to the most recent United States decennial census~~.

5. Two persons residing within the boundaries of a site located in a city or town with a population of one hundred thousand persons or more ~~according to the most recent United States decennial census~~. These individuals may be members of a community advisory board formed pursuant to section 49-289.03.

6. One person residing within or in close proximity to the boundaries of a site located in a city or town with a population of less than one hundred thousand persons ~~according to the most recent United States decennial census~~ or an unincorporated area. This person may be a member of a community advisory board formed pursuant to section 49-289.03.

7. Two representatives of businesses.

8. A person with an academic appointment at a college or university AND who has technical expertise in groundwater remediation.

9. A representative of a mining entity.

10. A representative of the agricultural industry.

11. A representative of the governor's office.

12. The director of environmental quality or the director's designee.

13. The director of water resources or the director's designee.

14. The director of the department of health services or the director's designee.

15. The attorney general or the attorney general's designee.

C. Members prescribed by subsection ~~A~~ B, paragraphs 1 through 11 of this section shall be appointed by the governor for three year terms pursuant to section 38-211 and shall have technical expertise related to or personal knowledge of or experience in remedial actions conducted pursuant to this article or CERCLA.

D. The board shall:

1. Select a chairperson and vice-chairperson from among its members.

2. Meet at least quarterly, pursuant to subsection F of this section.

3. Evaluate the overall effectiveness of the program established pursuant to this article, including:

(a) The prioritization of sites.

(b) The selection of remedies and their effectiveness.

(c) The allocation process.

(d) The pace of remedial actions.

(e) The adequacy of funding provided for remedial actions and agency responsibilities at current and future sites, including the need for additional funding to account for inflation.

(f) The criteria and processes for settlements.

(g) The effectiveness of early settlement incentives.

(h) The effectiveness of disincentives for parties not willing to participate in the allocation process.

(i) The level of coordination between the department of environmental quality and the department of water resources.

(j) The effectiveness of incentives to encourage beneficial use of remediated water.

(k) The well inspection and cross-contamination prevention program.

(l) The pace of rule making by the department of environmental quality.

(m) The participation of the department of water resources and other state agencies.

(n) Any other aspects of the program deemed relevant by the board.

4. At least once every five years, submit a comprehensive report to the director, the legislature and the governor summarizing the board's evaluation of the effectiveness of the program established pursuant to this article and containing any recommendations for improving the effectiveness of that program.

E. The board may:

1. Meet more often than quarterly to conduct its business.

2. Form subcommittees to consider specific issues.

3. Transmit specific recommendations for improving the effectiveness of the program established pursuant to this article to the director, the legislature and the governor at any time.

4. Solicit or accept comments from any person on any topic within the scope of the board's authority pursuant to this subsection and subsection D of this section.

F. Meetings of the board or any subcommittee shall be open to the public. An opportunity for public comments shall be provided. Meetings of the board or a subcommittee may be held in any county in which a site is located. ~~In addition~~ MEETINGS OF THE BOARD AND ANY SUBCOMMITTEES OF THE BOARD ARE SUBJECT to the requirements of title 38, chapter 3, article 3.1~~,~~.

Public notice of all meetings of the board ~~shall~~ MAY be provided by notice in the Arizona administrative register BY EXISTING AVAILABLE ELECTRONIC MEDIA MAINTAINED BY THE DEPARTMENT, BY RECORDED INCLUSION IN TOLL-FREE TELEPHONIC RECORDINGS ACCESSIBLE TO ALL PERSONS AND BY OTHER APPROPRIATE MEANS, if feasible~~, and in all cases by notice in a newspaper of statewide circulation~~. Notice also may be provided through the community advisory boards established pursuant to section 49-289.03. Meetings of the board or a subcommittee may be coordinated with meetings of a community advisory board established pursuant to section 49-289.03.

G. Members of the board shall serve without compensation but are eligible for reimbursement for travel and expenses as provided in title 38, chapter 4, article 2.

H. State agencies shall cooperate in providing information and other assistance to the board. The director of environmental quality and the director of water resources shall consider the recommendations of the board in administering the requirements of this article.

I. Members of the board are subject to title 38, chapter 3, article 8. NOTWITHSTANDING TITLE 38, CHAPTER 3, ARTICLE 8, UNLESS A MEMBER HAS A DIRECT PECUNIARY OR PROPRIETARY INTEREST, A MEMBER'S DISCUSSION OR VOTE ON AN ISSUE OF GENERAL APPLICABILITY TO THE PROGRAM ESTABLISHED PURSUANT TO THIS ARTICLE IS NOT AN INDIRECT CONFLICT OF INTEREST. A member of the board shall not vote on or otherwise participate in any manner on a specific recommendation of the board relating to a particular site if the member is identified as a responsible party in a notice of liability allocation issued by the department of environmental quality pursuant to section 49-287.05 relating to that site, or if the member receives a significant portion of income directly or indirectly from a person identified as a responsible party.

J. For purposes of this ~~subsection,~~ SECTION:

1. "AN ISSUE OF GENERAL APPLICABILITY" MEANS AN ISSUE THAT AFFECTS A SUBSTANTIAL NUMBER OF PERSONS AFFECTED BY THIS ARTICLE AND THEREFORE QUALIFIES AS A REMOTE INTEREST AS DEFINED IN SECTION 38-502 AND APPLIED IN SECTION 38-503.

2. "Significant portion of income" has the same meaning prescribed in section 49-322, subsection B.

Sec. 38. Section 49-292.01, Arizona Revised Statutes, is amended to read:

49-292.01. Qualified business settlements; definition

A. The director shall enter into a settlement under this article and section 107 of CERCLA with a person that qualifies pursuant to this section without regard to the extent of its liability except for a person whose liability under this article arose from criminal acts.

B. An applicant seeking settlement under this section shall HAVE IDENTIFIABLE GROSS INCOME AS DEFINED IN SECTION 61 OF THE INTERNAL REVENUE CODE GREATER THAN ONE DOLLAR IN EACH OF THE TWO YEARS PRIOR TO THE APPLICATION AND IN EACH OF THE TWO YEARS PRECEDING THE YEAR THAT AN INVESTIGATION OF THE APPLICANT'S SHARE WAS INITIATED BY EITHER THE DEPARTMENT OR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY. THE APPLICANT SHALL submit a letter to the director requesting a qualified business settlement on a form provided by the director. The request letter shall include the applicant's tax returns for the time periods provided in subsection ~~G~~ J of this section. The director may require additional information to verify the applicant's eligibility for a settlement under this section. Financial information submitted by the applicant pursuant to this section and marked "confidential" shall be kept confidential by the director.

C. If the director verifies that the applicant meets the definition of a qualified business, the director shall enter into a settlement within ninety days after receipt of the request letter and other information required under this section. The settlement shall meet the requirements of section 49-292, but without regard to the extent of its liability, and shall require that:

1. The QUALIFIED business pay ten per cent of its average annual gross income for the two years preceding the year that a request was submitted by the applicant INCLUDING THE INCOME FROM MONEY OR ASSETS TRANSFERRED BY THE APPLICANT WITHIN THE TWO YEARS PRECEDING THE APPLICATION. The director shall allow the settlement amount to be paid over time, up to a maximum of ten years, subject to payment of interest at the rate of six per cent per year. If the settlement amount is paid in full within the first five years, the payments shall not be subject to the payment of interest. An applicant may file a petition with the director to modify the payment schedule.

2. The qualified business ~~shall~~ cooperate with the director in providing reasonable access and information necessary for the director to carry out the requirements of this article.

D. Notice of the settlement shall be published as provided in section 49-292. The notice shall provide a general description of the contents of the agreement. Any interested person may comment on whether the applicant is a qualified business in writing to the director. The director may withdraw from a settlement after considering the comments.

E. If the director determines that the business does not qualify for the qualified business settlement pursuant to this section, the director shall notify the applicant in writing within ninety days of the receipt of all information required under subsection B of this section stating the reasons for denial. If the director does not notify the applicant within ninety days, the application is deemed denied. A denial of a settlement under this section may be appealed to the office of administrative hearings

pursuant to section 49-298. In any appeal made pursuant to section 49-298, the documents submitted by the applicant under subsection B of this section are not confidential.

F. In reviewing a proposed settlement, the United States district court or superior court shall give deference to the department's determination that the settlement is in the public interest and meets applicable legal standards for court approval. Any person who challenges a proposed settlement bears the burden of proving that the proposed settlement does not meet applicable legal standards for court approval. If a settlement is reached with an applicant, the confidential information supplied to the director under this section may be submitted under seal to the court for in camera review.

G. In determining the applicant's gross income FOR PURPOSES OF DETERMINING ELIGIBILITY PURSUANT TO SUBSECTION J OF THIS SECTION, the income of all concerns in which the applicant maintains ownership, control or management may be considered by the director. ANY TRANSFER OF MONEY OR ASSETS BY THE APPLICANT WITHIN THE TWO YEARS PRECEDING THE APPLICATION SHALL BE PRESUMED VOID FOR PURPOSES OF DETERMINING ELIGIBILITY UNDER THIS SECTION. THIS PRESUMPTION MAY BE REBUTTED BY THE APPLICANT IF THE APPLICANT SUBMITS A WRITTEN PRESUMPTION REBUTTAL STATEMENT THAT INCLUDES THE REASONS WHY THE TRANSFER OF MONEY OR ASSETS WITHIN THIS TIME PERIOD SHOULD NOT BE PRESUMED VOID FOR PURPOSES OF DETERMINING ELIGIBILITY. THE DEPARTMENT SHALL CONSIDER THIS STATEMENT AND PROVIDE A WRITTEN RECORD OF DECISION TO THE APPLICANT THAT EITHER AFFIRMS OR DENIES THE APPLICANT'S REASONS PROVIDED IN THE PRESUMPTION REBUTTAL STATEMENT.

H. The director may adopt rules to implement this section. A settlement under this section applies only to the applicant and does not release or affect in any way the liability of any other person.

~~H.~~ I. If a settlement is made pursuant to this section, the director shall not file a lien pursuant to section 49-295 for an amount greater than the settlement.

~~I.~~ J. For purposes of this section, "qualified business" means an applicant whose gross income as defined by section 61 of the internal revenue service code is less than two million dollars per year AND GREATER THAN ONE DOLLAR PER YEAR. An applicant under this section is required to comply with the definition for the average of the two years preceding the year that an investigation of the applicant's share was initiated by either the department or the United States environmental protection agency, and for each of the two years preceding the year that a request was submitted by the applicant pursuant to subsection B of this section. If a person does not qualify as a qualified business under this section, the person is eligible to settle its liability under this article and section 107 of CERCLA for less than its

proportionate share under section 49-285 on a demonstration of financial hardship under section 49-292.02.

Sec. 39. Section 49-292.02, Arizona Revised Statutes, is amended to read:

49-292.02. Financial hardship settlement

A. The director shall consider any offer by a person who is potentially liable for remedial action costs under this article or section 107(a) of CERCLA without regard to the extent of that person's liability, if the person is unable to pay the allocated share proposed by the director under section 49-287.05 or the share allocated under section 49-287.06~~,~~. If the person participated in the allocation process, a person whose liability under this article arose from criminal acts is not eligible to request a settlement under this section. In considering a person's ability to pay, the director shall consider all of the following:

1. The financial resources of the person, including available insurance.

2. The person's ability to continue in business after payment of the allocated amount.

3. Whether liability for the allocated amount would require the person to seek protection under federal bankruptcy law.

B. An applicant seeking settlement under this section shall submit a letter to the director requesting a financial hardship settlement on a form provided by the director. The request letter shall include the applicant's tax returns and all schedules, financial statements, balance statements and other information concerning the person's gross income and net worth for the five years preceding the date of the application on a form provided by the director. Within ninety days of the application, the director may require additional information to verify the applicant's eligibility for settlement under this section. The applicant may provide any additional information the applicant believes to be relevant. Financial information submitted by the applicant pursuant to this section and marked "confidential" shall be kept confidential by the director. If the director or the attorney general disputes a claim of confidentiality, written notice shall be provided to the person claiming the confidentiality that the claim is disputed. If the person claiming the confidentiality does not file an action for declaratory relief in superior court within thirty days after receiving this notice, the information shall be made available to the public.

C. If the director verifies that the applicant is unable to pay the allocated share, the director shall enter into a settlement within ninety days after receipt of the request letter and other information required under this section. The settlement shall meet the requirements of section 49-292, but without regard to the extent of the person's liability, and shall be made pursuant to subsection A of this section. The director shall allow the

settlement amount to be paid over time, up to a maximum of ten years, subject to payment of interest at the rate of six per cent per year. If the settlement amount is paid in full within the first five years, the payments shall not be subject to the payment of interest. ~~Failure to make two consecutive timely payments shall be a breach of the settlement agreement.~~ An applicant may file a petition with the director to modify the payment schedule.

D. The applicant shall cooperate with the director in providing reasonable access and information necessary for the director to carry out the requirements of this article.

E. Notice of the settlement shall be published as provided in section 49-292. The notice shall provide a general description of the contents of the agreement. Any interested person may comment on whether the applicant qualifies for a settlement pursuant to this section in writing to the director. The director may withdraw from a settlement after considering the comments.

F. If the director determines that the applicant does not qualify for a settlement pursuant to this section, the director shall notify the applicant in writing within ninety days of the receipt of all information required under subsection B of this section stating the reasons. If the director does not notify the applicant within ninety days, the application is deemed denied. A denial of settlement under this section may be appealed to the office of administrative hearings pursuant to section 49-298. In any appeal made pursuant to section 49-298, the documents submitted by the applicant under subsection B of this section are not confidential. If an applicant agrees not to contest the allocated share assigned by the director under section 49-287.05, the appeal shall include a determination of the amount the applicant is able to pay. All other appeals shall include only a determination of the applicant's ability to pay its allocated share.

G. In reviewing a proposed settlement, the federal district court or superior court shall give deference to the director's determination that the settlement is in the public interest and meets applicable legal standards for court approval. Any person challenging a proposed settlement shall bear the burden of proving that the proposed settlement does not meet the applicable legal standards for court approval. If a settlement is reached with an applicant, the confidential information supplied to the director under this section may be submitted under seal to the court for in camera review.

H. In determining the applicant's financial resources, the financial resources of all concerns in which the applicant maintains ownership, control or management may be considered by the director. A settlement under this section applies only to the applicant and does not release or affect in any way the liability of any other person. The director may adopt rules to implement this section.

I. If a settlement is made pursuant to this section, the director shall not file a lien pursuant to section 49-295 for an amount greater than the settlement.

Sec. 40. Section 49-401.01, Arizona Revised Statutes, is amended to read:

49-401.01. Definitions

In this chapter, unless the context otherwise requires:

1. "Administrator" means the administrator of the United States environmental protection agency.

2. "Adverse effects to human health" means those effects that result in or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, including adverse effects that are known to be or may reasonably be anticipated to be caused by substances that are acutely toxic, chronically toxic, carcinogenic, mutagenic, teratogenic, neurotoxic or causative of reproductive dysfunction.

3. "Adverse environmental effect" means any significant and widespread adverse effect which may reasonably be anticipated on wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.

4. "Attainment area" means any area in this state that has been identified in regulations promulgated by the administrator as being in compliance with national ambient air quality standards.

5. "Begin actual construction" means initiation of physical on-site construction activities on an emissions unit that are of a permanent nature. For purposes of title I, parts C and D and section 112 of the clean air act, these activities include installation of building supports and foundations, laying of underground pipework and construction of permanent storage structures. For purposes other than title I, parts C and D and section 112 of the clean air act, these activities do not include installation of building supports and foundations, laying of underground pipework and construction of permanent storage structures.

6. "Building", "structure", "facility" or "installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group which has the same two digit code, as described in the standard industrial classification manual, 1972, as amended by the 1977 supplement.

7. "Clean air act" means the clean air act of 1963 (P.L. 88-206; 42 United States Code sections 7401 through 7671) as amended by the clean air act amendments of 1990 (P.L. 101-549).

8. "Commence" means, as applied to construction of a source:

(a) For purposes other than title IV of the clean air act, that the owner or operator has obtained all necessary preconstruction approval or permits required by federal law and this chapter and has done either of the following:

(i) Begun or caused to begin a continuous program of physical on-site construction of the source to be completed within a reasonable time.

(ii) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the source to be completed within a reasonable time.

(b) For purposes of title IV of the clean air act, that the owner or operator has undertaken a continuous program of construction or that an owner or operator has entered into a contractual obligation to undertake and complete within a reasonable time a continuous program of construction.

9. "Construction" means any physical change in a source or change in the method of operation of a source including fabrication, erection, installation or demolition of a source that would result in a change in actual emissions.

10. "Conventional air pollutant" means any pollutant for which the administrator has promulgated a primary or secondary national ambient air quality standard.

11. "Federally listed hazardous air pollutant" means any air pollutant adopted pursuant to section 49-426.03, subsection A and not deleted pursuant to that subsection.

12. "Hazardous air pollutant" means any federally listed hazardous air pollutant and any air pollutant that the director has designated as a hazardous air pollutant pursuant to section 49-426.04, subsection A and has not deleted pursuant to section 49-426.04, subsection B.

13. "Hazardous air pollutant reasonably available control technology" means an emissions standard for hazardous air pollutants which the director, acting pursuant to section 49-426.06, subsection C, or the control officer, acting pursuant to section 49-480.04, subsection C, determines is reasonably available for a source. In making the foregoing determination the director or control officer shall take into consideration the estimated actual air quality impact of the standard, the cost of complying with the standard, the demonstrated reliability and widespread use of the technology required to meet the standard and any non-air quality health and environmental impacts and energy requirements. For purposes of this definition an emissions standard may be expressed as a numeric emissions limitation or as a design, equipment, work practice or operational standard.

14. "Maintenance area" means any nonattainment area that has been redesignated by the administrator to attainment status.

15. "Major source" means a stationary source or a group of stationary sources that is located within a contiguous area, that is under common

control and that is defined as a major source in section 501(2) of the clean air act or that is a major emitting facility as defined in title 1, part C of the clean air act or that is defined in department rules as a major source consistent with the clean air act.

16. "Maximum achievable control technology" means an emission standard that requires the maximum degree of reduction in emissions of the hazardous air pollutants subject to this chapter, including a prohibition on such emissions where achievable, and that the director, after considering the cost of achieving such emission reduction and any non-air quality health and environmental impacts and energy requirements, determines to be achievable by an affected source to which such standard applies, through application of measures, processes, methods, systems or techniques including measures which:

(a) Reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications.

(b) Enclose systems or processes to eliminate emissions.

(c) Collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point.

(d) Are design, equipment, work practice, or operational standards, including requirements for operator training or certification.

(e) Are a combination of the above.

17. "Minor source" means any stationary or portable source that is not a major source.

18. "Mobile source" means any combustion engine, device, machine or equipment that operates during transport and that emits or generates air contaminants whether in motion or at rest.

19. "Modification" or "modify" means a physical change in or change in the method of operation of a source which increases the actual emissions of any regulated air pollutant emitted by such source by more than any relevant de minimis amount or which results in the emission of any regulated air pollutant not previously emitted by more than such de minimis amount.

20. "National ambient air quality standard" means the ambient air pollutant concentration limits established by the administrator pursuant to 42 United States Code section 7409.

21. "Nonattainment area" means any area in this state that is designated as prescribed by section 49-405 and where violations of national ambient air quality standards have been measured.

22. "Nonattainment area plan" means an air pollution control plan developed in accordance with 42 United States Code sections 7501 through 7515.

23. "Permitting authority" means the department or a county department or agency that is charged with enforcing a permit program adopted pursuant to section 49-480, subsection A.

24. "Planning agency" means ~~the~~ AN organization designated by the governor pursuant to 42 United States Code section 7504 ~~as having the authority and responsibility of preparing nonattainment area plans~~.

25. "Portable source" means any stationary source that is capable of being transported and operated in more than one county of this state.

26. "Potential to emit" means~~,~~ :

(a) For purposes of section 112 of the clean air act, the maximum capacity of a stationary source to emit a pollutant, excluding secondary emissions, taking into account controls that are enforceable under any federal law or regulation or that are inherent in the design of the source.

(b) For purposes other than section 112 of the clean air act, ~~"potential to emit" means~~ the maximum capacity of a stationary source to emit a pollutant, excluding secondary emissions, taking into account controls that are enforceable under any federal, state or local law, rule or regulation or that are inherent in the design of the source.

27. "Primary standard attainment date" means the date defined within a nonattainment area plan in accordance with 42 United States Code sections 7401 through 7515 OR APPLICABLE REGULATIONS ADOPTED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BY JANUARY 1, 1999 and after which date primary national ambient air quality standards may not be violated.

28. "Reasonable further progress" means the schedule of emission reductions defined within a nonattainment area plan as being necessary to come into compliance with a national ambient air quality standard by the primary standard attainment date.

29. "Source" means any building, structure, facility or installation that may cause or contribute to air pollution or the use of which may eliminate, reduce or control the emission of air pollution.

30. "State implementation plan" means the accumulated record of enforceable air pollution control measures, programs and plans adopted by the director and submitted to the administrator pursuant to 42 United States Code section 7410.

31. "Stationary source" means any facility, building, equipment, device or machine that operates at a fixed location and that emits or generates air contaminants.

32. "Unclassifiable area" means all areas of this state for which inadequate ambient air quality data exist to determine compliance with the national ambient air quality standards.

Sec. 41. Section 49-402, Arizona Revised Statutes, is amended to read:

49-402. State and county control

A. The department shall have original jurisdiction over such sources, permits and violations that pertain to:

1. Major sources in any county that has not received approval from the administrator for new source review under the clean air act and prevention of significant deterioration under the clean air act.

2. Smelting of metal ore.

3. Petroleum refineries.

4. Coal fired electrical generating stations.

5. Portland cement plants.

6. Air pollution by portable sources.

7. Air pollution by mobile sources for the purpose of regulating those sources as prescribed by article 5 of this chapter and consistent with the clean air act.

8. ~~After November 15, 1993,~~ Sources that are located in either a county that has not submitted a permit program as required under title V of the clean air act or in a county for which the administrator has disapproved that permit program.

B. Except as specified in subsection A of this section, the review, issuance, administration and enforcement of permits issued pursuant to this chapter shall be by the county or multi-county air quality control region pursuant to the provisions of article 3 of this chapter. After the director has provided prior written notice to the control officer describing the reason for asserting jurisdiction and HAS provided an opportunity to confer, the county or multi-county air quality control region shall relinquish jurisdiction, control and enforcement over such permits as the director designates and at such times as he asserts jurisdiction at the state level. The order of the director which asserts state jurisdiction shall specify the matters, geographical area, or sources over which the department shall exercise jurisdiction and control. Such state authority shall then be the sole and exclusive jurisdiction and control to the extent asserted, and the provisions of this chapter shall govern, except as provided in this chapter, until jurisdiction is surrendered by the department to such county or region.

C. Portable sources under jurisdiction of the department under subsection A, paragraph 6 of this section may be required to file notice with the director and the control officer who has jurisdiction over the geographic area that includes the new location before beginning operations at that new location.

D. Notwithstanding any other law, a permit issued to a state regulated source shall include the emission standard or standard of performance adopted pursuant to section 49-479, if such standards are more stringent than those adopted by the director and if such standards are specifically identified as applicable to the permitted source or a component of the permitted source. Such standards shall be applied to sources identified in subsection A, paragraph 2, 3, 4 or 5 of this section only if the standard is formally proposed for adoption as part of the state implementation plan.

E. The regional planning agency for each county which contains a vehicle emissions control area shall develop plan revisions containing transportation related air quality control measures designed to attain and maintain primary and secondary ambient air quality standards as prescribed by and within the time frames specified in the clean air act. In developing the plan revisions, the regional planning agency shall consider all of the following:

1. Mandatory employee parking fees.
2. Park and ride programs.
3. Removal of on-street parking.
4. Ride share programs.
5. Mass transit alternatives.
6. Expansion of public transportation systems.
7. Optimizing freeway ramp metering.
8. Coordinating traffic signal systems.
9. Reduction of traffic congestion at major intersections.
10. Site specific transportation control measures.
11. Reversible lanes.
12. Fixed lanes for buses and ~~car pools~~ CARPOOLS.
13. Encouragement of pedestrian travel.
14. Encouragement of bicycle travel.
15. Development of bicycle travel facilities.
16. Employer incentives regarding ride share programs.
17. Modification of work schedules.
18. Strategies for controlling the generation of air pollution by nonresidents of nonattainment OR MAINTENANCE areas.
19. Use of alternative fuels.
20. Use of emission control devices on public diesel powered vehicles.
21. Paving of roads.
22. Restricting off-road vehicle travel.
23. Construction site air pollution control.
24. Other air quality control measures.

F. Each regional planning agency shall consult with the department of transportation to coordinate the plans developed pursuant to subsection E of this section with transportation plans developed by the department of transportation pursuant to any other law.

Sec. 42. Section 49-404, Arizona Revised Statutes, is amended to read:

49-404. State implementation plan

A. The director shall maintain a state implementation plan that provides for implementation, maintenance and enforcement of national ambient air quality standards and protection of visibility as required by the clean air act.

B. The director may adopt rules that describe procedures for adoption of revisions to the state implementation plan.

C. The state implementation plan and all revisions adopted before ~~the effective date of this section~~ SEPTEMBER 30, 1992 remain in effect according to their terms, except to the extent otherwise provided by the clean air act, inconsistent with any provision of the clean air act, or revised by the administrator. No control requirement in effect, or required to be adopted by an order, settlement agreement~~,~~ or plan in effect, before the enactment of the clean air act in any area which is a nonattainment OR MAINTENANCE area for any air pollutant may be modified after enactment in any manner unless the modification insures equivalent or greater emission reductions of the air pollutant. The director shall evaluate and adopt revisions to the plan in conformity with federal regulations and guidelines promulgated by the administrator for those purposes until the rules required by subsection B are effective.

Sec. 43. Section 49-454, Arizona Revised Statutes, is amended to read:

49-454. Adjusted work hours

A. A business which has five hundred or more employees at one site in ~~a nonattainment~~ area A OR AREA B as defined in section 49-541 shall submit a schedule prior to October 1 of each year to the director which shows an adjusted work hour proposal that will reduce the level of carbon monoxide concentrations caused by vehicular travel.

B. A business which has one hundred or more employees at one site working in ~~a nonattainment~~ area A OR AREA B as defined in section 49-541 may implement an adjusted work hour schedule in order to reduce the level of carbon monoxide concentrations caused by vehicular travel.

C. The director shall transmit the reports received pursuant to subsection A of this section to the ADVISORY committee on air quality compliance on or before December 1 of each year.

Sec. 44. Section 49-541, Arizona Revised Statutes, is amended to read:

49-541. Definitions

In this article, unless the context otherwise requires:

1. "Area A" means the area delineated as follows:

(a) In Maricopa county:

Township 8 north, range 2 east and range 3 east
Township 7 north, range 2 west through range 5 east
Township 6 north, range 2 west through range 6 east
Township 5 north, range 2 west through range 7 east
Township 4 north, range 2 west through range 8 east
Township 3 north, range 2 west through range 8 east
Township 2 north, range 2 west through range 8 east
Township 1 north, range 2 west through range 7 east
Township 1 south, range 2 west through range 7 east

Township 2 south, range 2 west through range 7 east
(b) In Pinal county:
Township 1 north, range 8 east and range 9 east
Township 1 south, range 8 east and range 9 east
Township 2 south, range 8 east and range 9 east
Township 3 south, range 7 east through range 9 east
(c) In Yavapai county:
Township 7 north, range 1 east and range 1 west through range 2 west.

2. "Area B" means ~~a carbon monoxide nonattainment area in a county with a population in excess of four hundred thousand but fewer than one million two hundred thousand persons as determined by the most recent United States decennial census~~ THE AREA DELINEATED IN PIMA COUNTY AS TOWNSHIP 11 AND 12 SOUTH, RANGE 12 THROUGH 14 EAST; TOWNSHIP 13 THROUGH 15 SOUTH, RANGE 11 THROUGH 16 EAST; TOWNSHIP 16 SOUTH, RANGE 12 THROUGH 16 EAST, EXCLUDING ANY PORTION OF THE CORONADO NATIONAL FOREST AND THE SAGUARO NATIONAL PARK.

3. "Certificate of inspection" means a serially numbered device or symbol, as may be prescribed by the director, indicating that a vehicle has been inspected pursuant to the provisions of section 49-546 and has passed inspection.

4. "Certificate of waiver" means a serially numbered device or symbol, as may be prescribed by the director, indicating that the requirement of passing reinspection has been waived for a vehicle pursuant to the provisions of this article.

5. "Conditioning mode" means either a fast idle test condition or a loaded test condition.

6. "Curb idle test condition" means an exhaust emissions test conducted with the engine of a vehicle running at the manufacturer's specified idle speed plus or minus one hundred revolutions per minute but without pressure exerted on the accelerator.

7. "Emissions inspection station permit" means a certificate issued by the director authorizing the holder to perform vehicular inspections pursuant to this article.

8. "Fast idle test condition" means an exhaust emissions test conducted with the engine of the vehicle running under an accelerated condition to an extent prescribed by the director.

9. "Fleet emissions inspection station" means any inspection facility operated under a permit issued to a qualified fleet owner or lessee as determined by the director.

10. "Golf cart" means a motor vehicle which has not less than three wheels in contact with the ground, has an unladen weight of less than thirteen hundred pounds, is designed to be and is operated at not more than fifteen miles an hour and is designed to carry golf equipment and persons.

11. "Gross weight" has the meaning prescribed in section 28-5431.

12. "Independent contractor" means any person, business, firm, partnership or corporation with which the director may enter into an agreement providing for the construction, equipment, maintenance, personnel, management and operation of official emissions inspection stations pursuant to section 49-545.

13. "Loaded test condition" means an exhaust emissions test conducted at cruise or transient conditions as prescribed by the director.

14. "Official emissions inspection station" means an inspection facility, other than a fleet emissions inspection station, whether placed in a permanent structure or in a mobile unit for conveyance among various locations within this state, for the purpose of conducting emissions inspections of all vehicles required to be inspected pursuant to this article.

15. "Tampering" means removing, defeating or altering an emissions control device which was installed at the time a vehicle was manufactured.

16. "Vehicle" means any automobile, truck, truck tractor, motor bus or self-propelled or motor-driven vehicle registered or to be registered in this state and used upon the public highways of this state for the purpose of transporting persons or property, except implements of husbandry, road rollers or road machinery temporarily operated upon the highway.

17. "Vehicle emissions control area" means ~~an area which has been designated by the administrator of the environmental protection agency, acting pursuant to section 107 of the clean air act (42 United States Code section 7401 et seq.) as exceeding national primary or secondary ambient air standards for the pollutant of carbon monoxide or ozone and designated as such in the state implementation plan submitted to the environmental protection agency, except that vehicle emissions control area does not include the one thousand two hundred eighty-eight square mile area which the environmental protection agency determined should be redesignated as an attainment area as printed in the federal register, volume 48, number 216, Monday, November 7, 1983, page 51161~~ AREA A OR AREA B.

Sec. 45. Section 49-516, Arizona Revised Statutes, is amended to read:

49-516. Preservation of rights

It is the purpose of this article to provide additional and cumulative remedies to prevent, abate~~,~~ and control air pollution in the state. EXCEPT AS PRESCRIBED BY SECTION 49-402, SUBSECTION C, nothing contained in this article shall be construed to abridge or alter rights of action or remedies in equity under the common law or statutory law, criminal or civil, nor shall any provisions of this article, or any act done by virtue thereof, be construed as estopping the state or any municipality~~,~~ or owners of land from the exercise of their rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution.

Sec. 46. Section 49-571, Arizona Revised Statutes, is amended to read:

49-571. Clean burning alternative fuel requirements for new buses; definition

A. A city, town or county which purchases buses for use in a county with a population of more than five hundred thousand persons ~~according to the most recent United States decennial census~~ shall only purchase buses which operate on clean burning alternative fuel.

B. If a city, town or county is unable to purchase a sufficient number of buses which operate on clean burning alternative fuel to meet the requirements of subsection A due to the unavailability of those types of buses, the city, town or county shall convert a sufficient number of buses in their present fleet which operate on any fuel listed in subsection C so that the number of the converted buses along with the buses operating on clean burning alternative fuel equals or exceeds the amount required pursuant to subsection A.

C. In this section, "clean burning alternative fuel" means:

1. Natural gas.

2. Liquefied petroleum gas.

3. A blend of unleaded gasoline that contains at minimum eighty-five per cent ethanol by volume or eighty-five per cent methanol by volume.

4. Neat methanol.

5. Neat ethanol.

6. Diesel fuel if combined with compressed natural gas or liquefied petroleum gas or alcohol.

7. Hydrogen.

8. Electricity.

9. Solar energy.

10. Liquefied natural gas.

11. An emulsion of water-phased hydrocarbon fuel that contains not less than twenty per cent water by volume and that complies with any of the following:

(a) Is used in an engine that is certified to meet at a minimum the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section ~~88.104-95~~ 88.104-94 or 88.105-94.

(b) Is used in an engine that is certified by the engine modifier to meet the addendum to memorandum 1-A of the United States environmental protection agency.

(c) Is used in an engine that is the subject of a waiver for that specific engine application from the United States environmental protection agency's memorandum 1-A addendum requirements and that waiver is documented to the reasonable satisfaction of the department of commerce energy office.

12. A combination of at least seventy per cent alternative fuel and no more than thirty per cent petroleum based fuel and that operates in an engine

that meets the United States environmental protection agency low emission vehicle standard pursuant to 40 Code of Federal Regulations section ~~88.104-95~~ 88.104-94 or 88.105-94 and is certified by the engine manufacturer to consume at least seventy per cent alternative fuel during normal vehicle operations.

D. Any fuels or combination of fuels listed in subsection C shall qualify as clean burning in new or converted buses by demonstrating levels of emission requirements pursuant to title II of the clean air act.

Sec. 47. Section 49-1091, Arizona Revised Statutes, as added by Laws 1998, chapter 298, section 15, is amended to read:

49-1091. Underground storage tank informal appeals

A. A person who undertakes corrective action pursuant to section 49-1052, subsection I or an owner or operator may informally appeal the following decisions or determinations pursuant to this section:

1. A written interim decision from the underground storage tank program of the department.

2. A written interim determination from the department on matters relating to owner or operator status.

3. A written interim determination from the department on matters relating to preapproval, direct payment or reimbursement from the underground storage tank assurance account.

B. The department's failure to respond with a written interim decision to the owner's or operator's submission to the department of any documents identified in subsection G of this section within one hundred twenty days of receipt is a basis for an informal appeal.

C. A person who undertakes corrective action pursuant to section 49-1052, subsection I or an owner or operator who is subject to an interim decision or determination described in subsections A and B of this section, and who disagrees with the interim decision or determination, may file a written notice of disagreement with the department within thirty days of receiving the department's interim decision or determination. The notice shall include a description of the specific portions of the interim decision or determination with which the person, owner or operator ~~disagree~~ DISAGREES and may include a request to meet with the department to resolve the disagreement. The department shall schedule a meeting within thirty days after receiving the request.

D. A person who requests a meeting pursuant to subsection C of this section or an authorized representative of the person designated in writing may attend the meeting with any individuals who may be helpful in discussing the matter with the department.

E. The department shall issue a final written decision or determination within forty-five days of receiving the notice of disagreement or within fifteen days of a meeting pursuant to subsection ~~D~~ C of this section, whichever is later. If the department fails to issue a final

written decision or determination within the time specified in this subsection, the department's written interim decision or determination becomes the final written decision or determination. The final written decision or determination shall address the notice of disagreement received pursuant to subsection C of this section. The final written decision or determination is the only decision or determination that is appealable as an appealable agency action as defined in section 41-1092 or a contested case AS defined in section 41-1001.

F. The period of time for compliance with corrective actions associated with the subject matter of a notice of disagreement is tolled from the date that a person who undertakes corrective action pursuant to section 49-1052, subsection I or an owner or operator files a written notice of disagreement with the department until the date the final decision or determination is rendered by the department and any appeals are completed.

G. A written interim decision ~~addresses~~ SHALL ADDRESS one of the following technical issues:

1. The department's approval, disapproval or notice of deficiency of site characterization reports.

2. The department's approval, disapproval or notice of deficiency of corrective action plans for soil~~,~~ OR groundwater, or both.

3. The department's approval, disapproval or notice of deficiency of a work plan.

4. The department's determination or confirmation of a release.

5. The department's approval, disapproval or notice of deficiency of requests for closing a case file corresponding to a release from a leaking underground storage tank.

Sec. 48. Section 49-1203, Arizona Revised Statutes, is amended to read:

49-1203. Powers and duties of authority; definition

A. The authority is a corporate and politic body and shall have an official seal that shall be judicially noticed. The authority may sue and be sued, contract and acquire, hold, operate and dispose of property.

B. The authority, through its board, may:

1. Issue negotiable water quality bonds pursuant to section 49-1261 for the following purposes:

(a) To generate the state match required by the clean water act for the clean water revolving fund and to generate the match required by the safe drinking water act for the drinking water revolving fund.

(b) To provide financial assistance to political subdivisions, Indian tribes and eligible drinking water facilities for constructing, acquiring or improving wastewater treatment facilities, drinking water facilities, nonpoint source projects and other related water quality facilities and projects.

2. Provide financial assistance to political subdivisions and Indian tribes from monies in the clean water revolving fund to finance wastewater treatment projects.

3. Provide financial assistance to drinking water facilities from monies in the drinking water revolving fund to finance these facilities.

4. Guarantee debt obligations of, and provide linked deposit guarantees through third party lenders to:

(a) Political subdivisions that are issued to finance wastewater treatment projects.

(b) Drinking water facilities that are issued to finance these facilities.

5. Provide linked deposit guarantees through third party lenders to political subdivisions and drinking water facilities.

6. Apply for, accept and administer grants and other financial assistance from the United States government and from other public and private sources.

7. Enter into capitalization grant agreements with the United States environmental protection agency.

8. Adopt rules pursuant to title 41, chapter 6 governing the application for and awarding of wastewater treatment facility, drinking water facility and nonpoint source project financial assistance under this article, the administration of the clean water revolving fund and the drinking water revolving fund and the issuance of water quality bonds.

9. Contract for the services of outside advisors, attorneys, consultants and aides reasonably necessary or desirable to allow the authority to adequately perform its duties.

10. Contract and incur obligations as reasonably necessary or desirable within the general scope of authority activities and operations to allow the authority to adequately perform its duties.

11. Assess financial assistance origination fees and annual fees to cover the reasonable costs of administering the authority and the monies administered by the authority. Any fees collected pursuant to this paragraph constitute governmental revenue and may be used for any purpose consistent with the mission and objectives of the authority.

12. PERFORM ANY FUNCTION OF A FUND MANAGER UNDER THE CERCLA BROWNFIELDS CLEANUP REVOLVING LOAN FUND PROGRAM AS REQUESTED BY THE DEPARTMENT. THE BOARD SHALL PERFORM ANY ACTION AUTHORIZED UNDER THIS ARTICLE ON BEHALF OF THE BROWNFIELDS CLEANUP REVOLVING LOAN FUND PROGRAM ESTABLISHED PURSUANT TO CHAPTER 2, ARTICLE 1.1 OF THIS TITLE AT THE REQUEST OF THE DEPARTMENT. IN ORDER TO PERFORM THESE FUNCTIONS, THE BOARD SHALL ENTER INTO A WRITTEN AGREEMENT WITH THE DEPARTMENT.

C. The board shall transmit any monies received pursuant to subsection B, paragraph 6 of this section to the state treasurer for deposit in the

appropriate fund as prescribed by the grant or other financial assistance agreement.

D. Disbursements of monies by the water infrastructure finance authority pursuant to a financial assistance agreement are not subject to title 41, chapter 23.

E. FOR PURPOSES OF THIS SECTION, "CERCLA" HAS THE SAME MEANING PRESCRIBED IN SECTION 49-201.

Sec. 49. Laws 1997, chapter 287, section 51 is amended to read:

Sec. 51. Encouraging beneficial use of groundwater withdrawn and used pursuant to CERCLA or the water quality assurance revolving fund program; definition

A. The department of water resources shall include in its management plans developed pursuant to sections 45-565, 45-566, 45-567 and 45-568, Arizona Revised Statutes, provisions to encourage the beneficial use of groundwater that is withdrawn pursuant to approved remedial action projects under CERCLA or title 49, Arizona Revised Statutes.

B. In determining compliance with applicable conservation requirements adopted pursuant to sections 45-565, 45-566, 45-567 and 45-568, Arizona Revised Statutes, the department of water resources shall account for groundwater withdrawn pursuant to approved remedial action projects under CERCLA or title 49, Arizona Revised Statutes, EXCEPT FOR GROUNDWATER WITHDRAWN TO PROVIDE AN ALTERNATIVE WATER SUPPLY PURSUANT TO SECTION 49-282.03, ARIZONA REVISED STATUTES, consistent with the accounting for surface water.

C. For purposes of this section, "CERCLA" has the same meaning prescribed in section 49-201, Arizona Revised Statutes.

Sec. 50. Laws 1997, chapter 287, section 52 is amended to read:

Sec. 52. Amendment of assured water supply rules; definition

A. For each calendar year until 2025, the use of up to an aggregate of sixty-five thousand acre-feet of groundwater withdrawn within all active management areas pursuant to approved remedial action projects under CERCLA or title 49, Arizona Revised Statutes, EXCEPT FOR GROUNDWATER WITHDRAWN TO PROVIDE AN ALTERNATIVE WATER SUPPLY PURSUANT TO SECTION 49-282.03, ARIZONA REVISED STATUTES, shall be considered consistent with the management goal of the active management area as prescribed in section 45-576, subsection I, paragraph 2, Arizona Revised Statutes.

B. The use of an amount of groundwater withdrawn pursuant to approved remedial action projects under CERCLA or title 49, Arizona Revised Statutes, EXCEPT FOR GROUNDWATER WITHDRAWN TO PROVIDE AN ALTERNATIVE WATER SUPPLY PURSUANT TO SECTION 49-282.03, ARIZONA REVISED STATUTES, in excess of the aggregate volume of sixty-five thousand acre-feet of groundwater authorized in subsections A and C of this section shall be considered consistent with the management goal of the active management area as prescribed in section

45-576, subsection I, paragraph 2, Arizona Revised Statutes, in the following amounts:

1. If the groundwater is withdrawn in the second management period, seventy-five per cent of the total volume withdrawn in excess of the aggregate volume of sixty-five thousand acre-feet of groundwater authorized in subsections A and C of this section.

2. If the groundwater is withdrawn in the third management period, fifty per cent of the total volume withdrawn in excess of the aggregate volume of sixty-five thousand acre-feet of groundwater authorized in subsections A and C of this section.

3. If the groundwater is withdrawn in the fourth management period, twenty-five per cent of the total volume withdrawn in excess of the aggregate volume of sixty-five thousand acre-feet of groundwater authorized in subsections A and C of this section.

4. If the groundwater is withdrawn in the fifth management period, ten per cent of the total volume withdrawn in excess of the aggregate volume of sixty-five thousand acre-feet of groundwater authorized in subsections A and C of this section.

5. If the groundwater is withdrawn after 2025, zero per cent of the total volume withdrawn in excess of the aggregate volume of sixty-five thousand acre-feet of groundwater authorized in subsections A and C of this section.

C. A municipal water provider who proposes to use groundwater withdrawn pursuant to an approved remedial action project under CERCLA or title 49, Arizona Revised Statutes, and who wishes to have the director of water resources determine that the use of some or all of the municipal provider's projected groundwater withdrawals are consistent with the management goal pursuant to subsection A or B of this section shall apply for this determination prior to January 1, 2010. The amount of groundwater for which the use is determined to be consistent with the management goal pursuant to this section shall not exceed the amount that the municipal provider is legally obligated to withdraw or use and shall not extend beyond 2025. The aggregate volume authorized by the director pursuant to subsection A of this section shall not exceed sixty-five thousand acre-feet in any calendar year.

D. Not later than January 1, 2001, the director of water resources shall amend the rules adopted pursuant to section 45-576, subsection H, Arizona Revised Statutes, to carry out the purpose of this section. Prior to the amendment of these rules, the director of water resources shall treat any groundwater withdrawn pursuant to an approved remedial action project under CERCLA or title 49, Arizona Revised Statutes, as consistent with the management goal as provided in subsections A, B and C of this section.

E. For annual remediated groundwater withdrawals of 250 acre-feet or less that are withdrawn pursuant to an approved remedial action under CERCLA,

the water quality assurance revolving fund program or other applicable federal or state law, EXCEPT FOR GROUNDWATER WITHDRAWN TO PROVIDE AN ALTERNATIVE WATER SUPPLY PURSUANT TO SECTION 49-282.03, ARIZONA REVISED STATUTES, the amount OF GROUNDWATER withdrawn shall not be debited against the water provider's assured water supply mined groundwater account and shall not be subject to a replenishment obligation. An annual user of 250 acre-feet or less of remediated groundwater shall notify the department of water resources of compliance with the exemption and these uses shall not apply in calculating the 65,000 acre-feet per year total prescribed by ~~paragraph 1~~ SUBSECTION A of this section.

F. For purposes of this section, "CERCLA" has the same meaning prescribed in section 49-201, Arizona Revised Statutes.

Sec. 51. Laws 1998, chapter 217, section 42 is amended to read:

Sec. 42. Area A expansion; compliance dates; air quality programs; Pinal county

A. Notwithstanding section 41 as added by this act, and section 49-541, paragraph 1, Arizona Revised Statutes, as amended by this act, relating to the geographical definition of area A, all air quality measures and programs added or modified by this act which are not listed in subsection B of this section, shall be effective from and after December 31, 2000 in the portion of area A which includes Pinal county.

B. Cities, counties and school districts ~~which~~ THAT ARE LOCATED IN PINAL COUNTY AND THAT have been included within the boundaries of area A shall comply with the provisions of section 9-500.04, subsections C through G, section 15-349 and section 49-474.01, subsections C through E, Arizona Revised Statutes, relating to the conversions of fleet vehicles to alternative fuels according to the following schedule:

1. At least eighteen per cent of the total fleet by December 31, 2000.

2. At least twenty-five per cent of the total fleet by December 31, 2001.

3. At least fifty per cent of the total fleet by December 31, 2003.

4. At least seventy-five per cent of the total fleet by December 31, 2005.

Sec. 52. Repeal

A. Section 49-1052, Arizona Revised Statutes, as amended by Laws 1998, chapter 181, section 7, is repealed.

B. Section 49-1091, Arizona Revised Statutes, as added by Laws 1998, chapter 181, section 9, is repealed.

C. Laws 1998, chapter 181, section 11 is repealed.

Sec. 53. Retroactivity

A. Section 12 of this act is effective retroactively to August 21, 1998.

B. Section 32 of this act is effective retroactively to from and after July 31, 1997.

C. Section 52 of this act is effective retroactively to May 27, 1998.

Sec. 54. Brownfields cleanup revolving loan fund program

On the effective date of this act, the department of environmental quality is authorized to immediately implement the brownfields cleanup revolving loan fund program established in title 49, chapter 2, article 1.1, Arizona Revised Statutes, as added by this act.

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 293

HOUSE BILL 2207

AN ACT

AMENDING SECTION 41-2124, ARIZONA REVISED STATUTES; MAKING AN APPROPRIATION; RELATING TO MOTOR FUEL; PROVIDING FOR CONDITIONAL ENACTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 41-2124, Arizona Revised Statutes, is amended to read:

41-2124. Area A; fuel reformulation; rules

A. ~~From and after May 1, 1999~~ All gasoline produced and shipped to or within this state and sold or offered for sale for use in motor vehicles in a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A, subject to an appropriate waiver granted by the administrator of the United States environmental protection agency pursuant to section 211(c)(4) of the clean air act as defined in section 49-401.01, shall comply with either of the following fuel reformulation options:

1. A gasoline that meets standards for federal phase II reformulated gasoline, as provided in 40 Code of Federal Regulations section 80.41, paragraphs (e) through (h), in effect on January 1, 1999, except that the minimum oxygen content standard, including methyl tertiary butyl ether, does not apply. The gasoline shall also meet the maximum vapor pressure requirements in section 41-2083, subsections D and F.

2. California phase ~~2~~ 3 reformulated gasoline, including alternative formulations allowed by the predictive model, as adopted by the California air resources board pursuant to California code of regulations title 13, sections 2261 through ~~2262.7 and 2265~~ 2263, 2265 AND 2266.5, in effect on ~~January 1, 1997~~ MAY 1, 2003, ~~except that the minimum oxygen content standard, including methyl tertiary butyl ether, does not apply. The gasoline shall also meet the maximum~~ INCLUDING vapor pressure requirements ~~in section 41-2083, subsections D and F~~ CONTAINED IN SECTION 2262.4.

B. From and after November 1, 2000 through March 31, 2001 and from the period beginning November 1 through March 31 of each subsequent year, all gasoline produced and shipped to or within this state and sold or offered for sale for use in motor vehicles in a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A, subject to an appropriate waiver granted by the administrator of the United States environmental protection agency pursuant to section 211(c)(4) of the clean air act as defined in section 49-401.01, shall comply with standards for California phase ~~2~~ 3 reformulated gasoline, including alternative formulations allowed by the predictive model, as adopted by the California air resources board pursuant to California code of regulations title 13, sections 2261 through ~~2262.7 and 2265~~ 2263, 2265 AND 2266.5, in effect on ~~January 1, 1997~~ MAY 1, 2003 and shall meet the maximum vapor pressure requirements in section 41-2083, subsections D and F. The fuel described in this subsection shall meet the requirements of section 41-2123, subsection A, paragraph 1.

C. From November 1, 2000 through March 31, 2001 and for each winter season of November through March thereafter, the director of the department of weights and measures shall determine the average levels of the constituents in the gasoline sold or offered for sale in area A and shall

provide the results of this determination to the director of THE DEPARTMENT OF environmental quality. The director of THE DEPARTMENT OF environmental quality shall analyze the data provided by the director of the department of weights and measures and, no later than July 1, 2001 and each July thereafter, shall determine the average daily carbon monoxide reductions resulting from the use of the gasoline specified in subsection B of this section during the preceding winter season. If the average daily carbon monoxide reductions resulting from the use of the gasoline specified in subsection B of this section during the preceding winter season are less than ninety per cent of the goal of thirty-two tons per day in 2001, thirty-one tons per day in 2003, thirty tons per day in 2005, twenty-nine tons per day in 2007, or twenty-eight tons per day in 2009, the director of the department of environmental quality shall immediately notify the governor, the president of the senate and the speaker of the house of representatives.

D. Any registered supplier or oxygenate blender, as defined in department rules, may petition the director to request that all registered suppliers or oxygenate blenders be allowed to comply with any provision of section 41-2123, subsection A, provided the petitioner can demonstrate that ethanol supply shortages are imminent.

E. The petition shall:

1. Identify specific supply conditions that will result in a shortage of ethanol.

2. Identify which oxygenate or oxygenates will be blended into gasoline for sale or use in area A.

3. Demonstrate that the alternative oxygenate blend comes closest to meeting a three and one-half per cent by weight oxygen content at reasonable cost.

4. Specify a time period for compliance with any provision of section 41-2123, subsection A, not to exceed sixty days.

F. The director shall either grant or deny the petition in writing within seven days of its receipt. Any decision by the director to grant the petition shall be equally applicable to all registered suppliers or oxygenate blenders and shall not be selectively applied to any single registered supplier or oxygenate blender. The petition may be granted only if the director verifies that the basis for requesting the petition is factual.

G. The director may reauthorize a petition if the petitioner can demonstrate that the conditions have continued. The reauthorization of a petition shall not exceed thirty days.

H. The director of the department of weights and measures shall consult with the director of the department of environmental quality prior to granting, reauthorizing or denying any such petition.

~~I. From and after November 1, 1999 through March 31, 2000, the fuels described in subsection A of this section shall meet the requirements of section 41-2123.~~

~~J.~~ I. The director of THE DEPARTMENT OF environmental quality in consultation with the director of the department of weights and measures shall adopt by rule:

1. Requirements to implement subsections A through E of this section.

2. Requirements for record keeping, reporting and analytical methods for fuel providers to demonstrate compliance with subsections A through E of this section.

J. THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY IN CONSULTATION WITH THE DIRECTOR OF THE DEPARTMENT OF WEIGHTS AND MEASURES SHALL ADOPT RULES TO IMPLEMENT THIS SECTION TO BE CONSISTENT WITH APPLICABLE FEDERAL AND CALIFORNIA STATE FUEL FORMULATION RULES TO THE EXTENT PRACTICABLE.

K. This section does not apply to fuel sold for use at a motor vehicle manufacturer proving ground or at a motor vehicle racing event.

Sec. 2. Section 41-2124, Arizona Revised Statutes, is amended to read:

41-2124. Area A; fuel reformulation; rules

A. From and after May 1, 1999 all gasoline produced and shipped to or within this state and sold or offered for sale for use in motor vehicles in a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A, subject to an appropriate waiver granted by the administrator of the United States environmental protection agency pursuant to section 211(c)(4) of the clean air act as defined in section 49-401.01, shall comply with either of the following fuel reformulation options:

1. A gasoline that meets standards for federal phase II reformulated gasoline, as provided in 40 Code of Federal Regulations section 80.41, paragraphs (e) through (h), in effect on January 1, 1999, except that the minimum oxygen content standard, including methyl tertiary butyl ether, does not apply. The gasoline shall also meet the maximum vapor pressure requirements in section 41-2083, subsections D and F.

2. California phase 2 reformulated gasoline, including alternative formulations allowed by the predictive model, as adopted by the California air resources board pursuant to California code of regulations title 13, sections 2261 through 2262.7 and 2265, in effect on January 1, 1997, except that the minimum oxygen content standard, including methyl tertiary butyl ether, does not apply. The gasoline shall also meet the maximum vapor pressure requirements in section 41-2083, subsections D and F.

B. ~~From and after November 1, 2000 through March 31, 2001 and from the period~~ Beginning November 1 through ~~March~~ JANUARY 31 of each ~~subsequent~~ year, all gasoline produced and shipped to or within this state and sold or offered for sale for use in motor vehicles in a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A, subject to an appropriate waiver granted by the administrator of the United States environmental protection agency pursuant to section 211(c)(4) of the clean air act as defined in section 49-401.01, shall comply with standards for California phase 2 reformulated gasoline,

including alternative formulations allowed by the predictive model, as adopted by the California air resources board pursuant to California code of regulations title 13, sections 2261 through 2262.7 and 2265, in effect on January 1, 1997 and shall meet the maximum vapor pressure requirements in section 41-2083, subsections D and F. The fuel described in this subsection shall meet the requirements of section 41-2123, subsection A, paragraph 1.

C. ~~From~~ FOR November 1, 2000 through ~~March~~ JANUARY 31, 2001 and for each winter season of November through ~~March~~ JANUARY thereafter, the director of the department of weights and measures shall determine the average levels of the constituents in the gasoline sold or offered for sale in area A and shall provide the results of this determination to the director of THE DEPARTMENT OF environmental quality. The director of THE DEPARTMENT OF environmental quality shall analyze the data provided by the director of the department of weights and measures and, no later than July 1, 2001 and each July thereafter, shall determine the average daily carbon monoxide reductions resulting from the use of the gasoline specified in subsection B of this section during the preceding winter season. If the average daily carbon monoxide reductions resulting from the use of the gasoline specified in subsection B of this section during the preceding winter season are less than ninety per cent of the goal of thirty-two tons per day in 2001, thirty-one tons per day in 2003, thirty tons per day in 2005, twenty-nine tons per day in 2007, or twenty-eight tons per day in 2009, the director of the department of environmental quality shall immediately notify the governor, the president of the senate and the speaker of the house of representatives.

D. Any registered supplier or oxygenate blender, as defined in department rules, may petition the director to request that all registered suppliers or oxygenate blenders be allowed to comply with any provision of section 41-2123, subsection A, provided the petitioner can demonstrate that ethanol supply shortages are imminent.

E. The petition shall:

1. Identify specific supply conditions that will result in a shortage of ethanol.

2. Identify which oxygenate or oxygenates will be blended into gasoline for sale or use in area A.

3. Demonstrate that the alternative oxygenate blend comes closest to meeting a three and one-half per cent by weight oxygen content at reasonable cost.

4. Specify a time period for compliance with any provision of section 41-2123, subsection A, not to exceed sixty days.

F. The director shall either grant or deny the petition in writing within seven days of its receipt. Any decision by the director to grant the petition shall be equally applicable to all registered suppliers or oxygenate blenders and shall not be selectively applied to any single registered supplier or oxygenate blender. The petition may be granted only if the director verifies that the basis for requesting the petition is factual.

G. The director may reauthorize a petition if the petitioner can demonstrate that the conditions have continued. The reauthorization of a petition shall not exceed thirty days.

H. The director of the department of weights and measures shall consult with the director of the department of environmental quality prior to granting, reauthorizing or denying any such petition.

~~I. From and after November 1, 1999 through March 31, 2000, the fuels described in subsection A of this section shall meet the requirements of section 41-2123.~~

~~J.~~ I. The director of THE DEPARTMENT OF environmental quality in consultation with the director of the department of weights and measures shall adopt by rule:

1. Requirements to implement subsections A through E of this section.

2. Requirements for record keeping, reporting and analytical methods for fuel providers to demonstrate compliance with subsections A through E of this section.

J. THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY IN CONSULTATION WITH THE DIRECTOR OF THE DEPARTMENT OF WEIGHTS AND MEASURES SHALL ADOPT RULES TO IMPLEMENT THIS SECTION TO BE CONSISTENT WITH APPLICABLE FEDERAL AND CALIFORNIA STATE FUEL FORMULATION RULES TO THE EXTENT PRACTICABLE.

K. This section does not apply to fuel sold for use at a motor vehicle manufacturer proving ground or at a motor vehicle racing event.

Sec. 3. Department of environmental quality; CARB fuel formulations; recommendations

A. The department of environmental quality shall in consultation with the department of weights and measures do the following regarding fuels sold in area A as defined in section 49-541, Arizona Revised Statutes:

1. Collect and analyze data on the removal of the months of February and March from the winter cleaner burning gasoline season under the state implementation plan and in accordance with section 211(m)(2) of the clean air act with respect to oxygenate requirements and section 110(1) of the clean air act with respect to the reid vapor pressure standard, based on whether the modeling indicates that these two gasoline standards are not needed during the months of February and March to attain the federal carbon monoxide standard. The information shall be collected during the first January and February immediately following the effective date of section 41-2124, Arizona Revised Statutes, as amended by section 2 of this act. The information collected shall be used to evaluate carbon monoxide emissions, ambient air quality and predicted air quality impacts using the most recent environmental protection agency models.

2. Cooperate with other interested parties in working to revise the current models used by the United States environmental protection agency to better estimate the impact of gasoline vapor pressure and oxygen content on winter season carbon monoxide emissions for late model vehicles.

3. As soon a practical, but not later than December 31, 2004, complete all necessary data collection and analysis to support the submission of a carbon monoxide state implementation plan amendment for area A addressing the removal of February and March from the period of required use of California phase 2 reformulated gasoline.

4. As soon as practical, but not later than June 31, 2005, complete all necessary data collection and analysis to support the submission of ozone and carbon monoxide state implementation plan revisions for area A addressing the use of California air resources board phase 3 gasoline.

5. The data collection and analysis shall include the estimated emissions and supply impacts as well as the ability of refineries to supply gasoline to area A associated with the adoption of California air resources board phase 3 gasoline standards for the period of November through March of each year, and California air resources board phase 3 gasoline and federal phase 2 reformulated gasoline standards for the period of April through October of each year.

B. On or before September 1, 2005, the department of environmental quality shall report on the activities prescribed by subsection A of this section.

C. The department of weights and measures in consultation with the department of environmental quality shall conduct at least one public workshop on the preliminary findings made by the department of environmental quality pursuant to subsection A of this section prior to submitting the report and state implementation plan revisions to the United States environmental protection agency.

Sec. 4. Appropriation; purpose

Notwithstanding section 49-551, Arizona Revised Statutes, the sum of $135,000 is appropriated in fiscal year 2004-2005 from the monies received by the air quality fund pursuant to section 49-543, Arizona Revised Statutes, to the department of environmental quality for the purposes of collecting and analyzing data in accordance with section 3 of this act relating to amendments to the state implementation plan. Any monies not spent by November 30, 2005 shall be returned to the air quality fund.

Sec. 5. Conditional enactment; notice

A. Section 41-2124, Arizona Revised Statutes, as amended by section 1 of this act, is not effective unless on or before November 1, 2007 the administrator of the United States environmental protection agency approves a revision to the state implementation plan as defined in section 49-401.01, Arizona Revised Statutes, that incorporates the changes contained in section 1 of this act.

B. Section 41-2124, Arizona Revised Statutes, as amended by section 2 of this act, is not effective unless on or before November 1, 2007 the administrator of the United States environmental protection agency approves a revision to the state implementation plan as defined in section 49-401.01, Arizona Revised Statutes, that incorporates the changes contained in section 2 of this act.

C. The director of the department of environmental quality shall promptly provide written notice to the director of the Arizona legislative council of the following:

1. The date of approval of a revision to the state implementation plan that incorporates the changes contained in section 1 of this act or the failure to incorporate those changes on or before November 1, 2007.

2. The date of approval of a revision to the state implementation plan that incorporates the changes contained in section 2 of this act or the failure to incorporate those changes on or before November 1, 2007.

APPROVED BY THE GOVERNOR JUNE 1, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 1, 2004.

State of Arizona
Senate
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 104

SENATE BILL 1275

AN ACT

AMENDING SECTIONS 41-2083 AND 41-2123, ARIZONA REVISED STATUTES; AMENDING SECTION 41-2124, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2000, CHAPTER 405, SECTION 21; AMENDING SECTION 41-2124, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2004, CHAPTER 293, SECTION 1; AMENDING SECTION 41-2124, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2004, CHAPTER 293, SECTION 2; AMENDING SECTION 41-2124, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2004, CHAPTER 293, SECTIONS 1 AND 2; RELATING TO MOTOR FUEL; PROVIDING FOR CONDITIONAL ENACTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 41-2083, Arizona Revised Statutes, is amended to read:

41-2083. Standards for motor fuel; exceptions

A. Except as provided in subsections C, D, E, F, G, K, L, M and N of this section, a retail seller or fleet owner shall not store, sell or expose or offer for sale any motor fuel, kerosene, oil or other liquid or gaseous fuel or lubricating oil, lubricant, mixtures of lubricants or other similar products if the product fails to meet the standards specified in this section and in the rules adopted by the director.

B. A person shall not misrepresent the nature, origination, quality, grade or identity of any product specified in subsection A of this section or represent the nature, origination, quality, grade or identity of such product in any manner calculated or tending to mislead or in any way deceive.

C. After consultation with the director of the department of environmental quality, the standards and test methods for motor fuels shall be established by the director of the department of weights and measures by rule.

D. Maximum vapor pressure for gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles in a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A as defined in section 49-541 shall be 9.0 pounds per square inch from and after September 30 through ~~March~~ JANUARY 31 of each year. Fuel used in motor vehicles at a manufacturer's proving ground or a motor vehicle racing event as defined by section 41-2121 is exempt from this subsection.

E. From and after September 30 through March 31 of each year a person shall not supply or sell gasoline that exceeds the ASTM D4814 class A vapor pressure/distillation class ten volume per cent evaporated distillation temperature.

F. Maximum vapor pressure for gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles in a county with a population of one million two hundred thousand persons or more and any portion of a county contained in area A as defined in section 49-541 shall be 7.0 pounds per square inch from and after May 31 through September 30 of each year. Fuel used in motor vehicles at a manufacturer's proving ground or a motor vehicle racing event as defined by section 41-2121 is exempt from this subsection.

G. Exclusively for the purposes of transportation conformity and only if the administrator of the United States environmental protection agency fails to approve the applicable plan required pursuant to section 49-406, maximum vapor pressure for gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles in area B as defined in section 49-541 shall be ten pounds per square inch from and after September 30 through March 31 of each year. Fuel used in motor

vehicles at a manufacturer's proving ground or a motor vehicle racing event as defined by section 41-2121 is exempt from this subsection.

H. Notwithstanding subsections D, F and G of this section, the director of the department of weights and measures in consultation with the director of the department of environmental quality shall approve alternate fuel control measures that are submitted by manufacturers or suppliers of gasoline and that the directors determine will result in either of the following:

1. Motor vehicle carbon monoxide emissions that are equal to or less than emissions that result under compliance with subsection D of this section and section 41-2123. In making this determination, the director of the department of weights and measures and the director of the department of environmental quality shall compare the emissions of the alternate fuel control measure with the emissions of a fuel with a maximum vapor pressure standard as prescribed by this section and with the minimum oxygen content or percentage by volume of ethanol as prescribed by section 41-2123.

2. Motor vehicle non-methane hydrocarbon emissions that are equal to or less than the emissions that result under compliance with subsection F of this section. In making this determination, the director of the department of weights and measures and the director of the department of environmental quality shall compare the motor vehicle non-methane hydrocarbon emissions of the alternate fuel control measure with the motor vehicle non-methane hydrocarbon emissions of a fuel that complies with the maximum vapor pressure standard as prescribed by subsection F of this section.

I. Any alternate fuel control measures that are approved shall not increase emissions of non-methane hydrocarbons, particulates, carbon monoxide or oxides of nitrogen. Alternate fuel control measures approved pursuant to subsection H of this section and this subsection may be used by any manufacturer or supplier of gasoline unless the approval is rescinded more than one hundred eighty days before the first day of a gasoline control period. Manufacturers and suppliers who use an approved alternate fuel control measure shall annually submit a compliance plan to the director of the department of weights and measures no later than sixty days before the first day of a gasoline control period.

J. A person shall not sell or offer or expose for sale diesel fuel grade 1, 2 or 4 as defined in ASTM D975 that contains sulfur in excess of five hundred parts per million for use in area A as defined in section 49-541.

K. A person shall not sell or offer or expose for sale biodiesel that is not tested or does not meet the specifications established by ASTM D6751 or any blend of biodiesel and diesel fuel that is not tested or does not meet the specifications established by ASTM D975 and that contains sulfur in excess of five hundred parts per million for use in area A as defined in section 49-541.

L. A person ~~that~~ WHO blends biodiesel that is intended as a final product for the fueling of motor vehicles shall report to the director by the

fifteenth day of each month the quantity and quality of biodiesel shipped to or produced in this state during the preceding month. A person who supplies biodiesel subject to this subsection shall report the following by batch:

1. The percentage of biodiesel in a final blend.

2. The volume of the finished product.

3. For neat biodiesel, the results of analysis for those parameters established by ASTM D6751.

4. For biodiesel blended with any diesel fuel, the results of the analysis of the following motor fuel parameters as established by ASTM D975:

(a) Sulfur content.

(b) Aromatic hydrocarbon content.

(c) Cetane number.

(d) Specific gravity.

(e) American petroleum institute gravity.

(f) The temperatures at which ten per cent, fifty per cent and ninety per cent of the diesel fuel boiled off during distillation.

M. The report required by subsection L of this section shall be on a form prescribed by the director and shall contain a certification of truthfulness and accuracy of the data submitted and a statement of the supplier's consent permitting the department or its authorized agent to collect samples and access records as provided in rules adopted by the department. A corporate officer who is responsible for operations at the facility that produces or ships the final product shall sign the report.

N. A person shall label dispensers at which biodiesel is dispensed in such a manner as to notify other persons of the volume percentage of biodiesel in the finished product.

Sec. 2. Section 41-2123, Arizona Revised Statutes, is amended to read:

41-2123. Area A; sale of gasoline; oxygen content

A. From and after November 1 through ~~March~~ JANUARY 31 of each year,~~:~~

~~1.~~ all gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles within a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A or that is consumed in a motor vehicle in a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A by a fleet owner:

1. Shall CONTAIN, for a gasoline-ethanol blend, ~~contain~~ not less than ten per cent by volume of ethanol nor more than the maximum percentage of oxygen allowed by provisions of a waiver issued or other limits established by the United States environmental protection agency.

~~2. All gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles within a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A or that is consumed in a motor vehicle within a county with a population of one million two hundred thousand~~

~~or more persons and any portion of a county contained in area A by a fleet owner~~

2. Shall CONTAIN, for a blend other than a gasoline-ethanol blend, ~~contain~~ not less than 2.7 per cent by weight of oxygen nor more than the maximum percentage of oxygen allowed by provisions of a waiver issued or other limits established by the United States environmental protection agency.

3. MAY CONTAIN, FOR A GASOLINE-ETHANOL BLEND, LESS THAN TEN PER CENT BY VOLUME OF ETHANOL ON APPROVAL BY THE DIRECTOR OF A PETITION FILED PURSUANT TO SECTION 41-2124, SUBSECTION D. THE APPROVAL APPLIES TO ALL REGISTERED SUPPLIERS AND OXYGENATE BLENDERS, AND FOR THE DURATION OF THAT APPROVAL, THE SUPPLY OR SALE OF GASOLINE-ETHANOL BLENDS THAT CONTAIN LESS THAN TEN PER CENT BY VOLUME OF ETHANOL IS NOT SUBJECT TO SUBSECTIONS B AND C OF THIS SECTION.

B. Notwithstanding subsection A of this section, the director of the department of weights and measures in consultation with the director of the department of environmental quality shall approve alternate fuel control measures that are submitted by manufacturers or suppliers of gasoline and that the directors determine will result in motor vehicle carbon monoxide emissions that are equal to or less than emissions that result under compliance with subsection A of this section and section 41-2083. In making this determination, the director of the department of weights and measures and the director of the department of environmental quality shall compare the emissions of the alternate fuel control measure with the emissions of a fuel with a maximum vapor pressure standard as prescribed by section 41-2083 and with the minimum oxygen content or percentage by volume of ethanol as prescribed by this section.

C. Any alternate fuel control measures that are approved shall not increase emissions of non-methane hydrocarbons, particulates, carbon monoxide or oxides of nitrogen. Alternate fuel control measures approved pursuant to subsection B of this section and this subsection may be used by any manufacturer or supplier of gasoline unless the approval is rescinded more than one hundred eighty days before the first day of a gasoline control period. Manufacturers and suppliers who use an approved alternate fuel control measure shall annually submit a compliance plan to the director of the department of weights and measures no later than sixty days before the first day of a gasoline control period.

Sec. 3. Section 41-2124, Arizona Revised Statutes, as amended by Laws 2000, chapter 405, section 21, is amended to read:

41-2124. Area A; fuel reformulation; rules

A. From and after May 1, 1999, all gasoline produced and shipped to or within this state and sold or offered for sale for use in motor vehicles in a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A, subject to an appropriate waiver granted by the administrator of the United States environmental protection agency pursuant to section 211(c)(4) of the clean air act as

defined in section 49-401.01, shall comply with either of the following fuel reformulation options:

1. A gasoline that meets standards for federal phase II reformulated gasoline, as provided in 40 Code of Federal Regulations section 80.41, paragraphs (e) through (h), in effect on January 1, 1999, except that the minimum oxygen content standard~~, including methyl tertiary butyl ether,~~ does not apply. The gasoline shall also meet the maximum vapor pressure requirements in section 41-2083, subsections D and F.

2. California phase 2 reformulated gasoline, including alternative formulations allowed by the predictive model, as adopted by the California air resources board pursuant to California code of regulations title 13, sections 2261 through 2262.7 and 2265, in effect on January 1, 1997, except that the minimum oxygen content standard~~, including methyl tertiary butyl ether,~~ does not apply. The gasoline shall also meet the maximum vapor pressure requirements in section 41-2083, subsections D and F.

B. From and after November 1, 2000 through March 31, 2001 and from the period beginning November 1 through March 31 of each subsequent year, all gasoline produced and shipped to or within this state and sold or offered for sale for use in motor vehicles in a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A, subject to an appropriate waiver granted by the administrator of the United States environmental protection agency pursuant to section 211(c)(4) of the clean air act as defined in section 49-401.01, shall comply with standards for California phase 2 reformulated gasoline, including alternative formulations allowed by the predictive model, as adopted by the California air resources board pursuant to California code of regulations title 13, sections 2261 through 2262.7 and 2265, in effect on January 1, 1997 and shall meet the maximum vapor pressure requirements in section 41-2083, subsections D and F. The fuel described in this subsection shall meet the requirements of section 41-2123, subsection A, paragraph 1.

C. From November 1, 2000 through March 31, 2001 and for each winter season of November through March thereafter, the director of the department of weights and measures shall determine the average levels of the constituents in the gasoline sold or offered for sale in area A and shall provide the results of this determination to the director of environmental quality. The director of environmental quality shall analyze the data provided by the director of the department of weights and measures and, no later than July 1, 2001 and each July thereafter, shall determine the average daily carbon monoxide reductions resulting from the use of the gasoline specified in subsection B of this section during the preceding winter season. If the average daily carbon monoxide reductions resulting from the use of the gasoline specified in subsection B of this section during the preceding winter season are less than ninety per cent of the goal of thirty-two tons per day in 2001, thirty-one tons per day in 2003, thirty tons per day in 2005, twenty-nine tons per day in 2007~~,~~ or twenty-eight tons per day in 2009, the director of the department of environmental quality shall

immediately notify the governor, the president of the senate and the speaker of the house of representatives.

D. Any registered supplier or oxygenate blender, as defined in department rules, may petition the director to request that all registered suppliers or oxygenate blenders be allowed to comply with any provision of section 41-2123, subsection A, provided the petitioner can demonstrate that ethanol supply shortages are imminent.

E. The petition shall:

1. Identify specific supply conditions that will result in a shortage of ethanol.

2. Identify which oxygenate or oxygenates AND THE CONCENTRATION THAT will be blended into gasoline for sale or use in area A.

3. Demonstrate that the alternative oxygenate blend comes closest to meeting a three and one-half per cent by weight oxygen content at reasonable cost, UNLESS THE REGISTERED SUPPLIER OR OXYGENATE BLENDER IS PETITIONING TO USE A GASOLINE-ETHANOL BLEND CONTAINING LESS THAN TEN PER CENT BY VOLUME OF ETHANOL.

4. Specify a time period for compliance with any provision of section 41-2123, subsection A, not to exceed sixty days.

F. The director shall either grant or deny the petition in writing within seven days of its receipt. Any decision by the director to grant the petition shall be equally applicable to all registered suppliers or oxygenate blenders and shall not be selectively applied to any single registered supplier or oxygenate blender. The petition may be granted only if the director verifies that the basis for requesting the petition is factual.

G. The director may reauthorize a petition if the petitioner can demonstrate that the conditions have continued. The reauthorization of a petition shall not exceed thirty days.

H. The director of the department of weights and measures shall consult with the director of the department of environmental quality prior to granting, reauthorizing or denying any such petition.

~~I. From and after November 1, 1999 through March 31, 2000, the fuels described in subsection A of this section shall meet the requirements of section 41-2123.~~

~~J.~~ I. The director of environmental quality in consultation with the director of the department of weights and measures shall adopt by rule:

1. Requirements to implement subsections A through E of this section.

2. Requirements for record keeping, reporting and analytical methods for fuel providers to demonstrate compliance with subsections A through E of this section.

~~K.~~ J. This section does not apply to fuel sold for use at a motor vehicle manufacturer proving ground or at a motor vehicle racing event.

Sec. 4. Section 41-2124, Arizona Revised Statutes, as amended by Laws 2004, chapter 293, section 1, is amended to read:

41-2124. Area A; fuel reformulation; rules

A. All gasoline produced and shipped to or within this state and sold or offered for sale for use in motor vehicles in a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A, subject to an appropriate waiver granted by the administrator of the United States environmental protection agency pursuant to section 211(c)(4) of the clean air act as defined in section 49-401.01, shall comply with either of the following fuel reformulation options:

1. A gasoline that meets standards for federal phase II reformulated gasoline, as provided in 40 Code of Federal Regulations section 80.41, paragraphs (e) through (h), in effect on January 1, 1999, except that the minimum oxygen content standard~~, including methyl tertiary butyl ether,~~ does not apply. The gasoline shall also meet the maximum vapor pressure requirements in section 41-2083, subsections D and F.

2. California phase 3 reformulated gasoline, including alternative formulations allowed by the predictive model, as adopted by the California air resources board pursuant to California code of regulations title 13, sections 2261 through 2263, 2265 and 2266.5, in effect on May 1, 2003, including vapor pressure requirements contained in section 2262.4.

B. From and after November 1, 2000 through March 31, 2001 and from the period beginning November 1 through March 31 of each subsequent year, all gasoline produced and shipped to or within this state and sold or offered for sale for use in motor vehicles in a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A, subject to an appropriate waiver granted by the administrator of the United States environmental protection agency pursuant to section 211(c)(4) of the clean air act as defined in section 49-401.01, shall comply with standards for California phase 3 reformulated gasoline, including alternative formulations allowed by the predictive model, as adopted by the California air resources board pursuant to California code of regulations title 13, sections 2261 through 2263, 2265 and 2266.5, in effect on May 1, 2003 and shall meet the maximum vapor pressure requirements in section 41-2083, subsections D and F. The fuel described in this subsection shall meet the requirements of section 41-2123, subsection A, paragraph 1.

C. From November 1, 2000 through March 31, 2001 and for each winter season of November through March thereafter, the director of the department of weights and measures shall determine the average levels of the constituents in the gasoline sold or offered for sale in area A and shall provide the results of this determination to the director of the department of environmental quality. The director of the department of environmental quality shall analyze the data provided by the director of the department of weights and measures and, no later than July 1, 2001 and each July thereafter, shall determine the average daily carbon monoxide reductions resulting from the use of the gasoline specified in subsection B of this section during the preceding winter season. If the average daily carbon monoxide reductions resulting from the use of the gasoline specified in subsection B of this section during the preceding winter season are less than

ninety per cent of the goal of thirty-two tons per day in 2001, thirty-one tons per day in 2003, thirty tons per day in 2005, twenty-nine tons per day in 2007~~,~~ ~~—~~ or twenty-eight tons per day in 2009, the director of the department of environmental quality shall immediately notify the governor, the president of the senate and the speaker of the house of representatives.

D. Any registered supplier or oxygenate blender, as defined in department rules, may petition the director to request that all registered suppliers or oxygenate blenders be allowed to comply with any provision of section 41-2123, subsection A, provided the petitioner can demonstrate that ethanol supply shortages are imminent.

E. The petition shall:

1. Identify specific supply conditions that will result in a shortage of ethanol.

2. Identify which oxygenate or oxygenates AND THE CONCENTRATION THAT will be blended into gasoline for sale or use in area A.

3. Demonstrate that the alternative oxygenate blend comes closest to meeting a three and one-half per cent by weight oxygen content at reasonable cost, UNLESS THE REGISTERED SUPPLIER OR OXYGENATE BLENDER IS PETITIONING TO USE A GASOLINE-ETHANOL BLEND CONTAINING LESS THAN TEN PER CENT BY VOLUME OF ETHANOL.

4. Specify a time period for compliance with any provision of section 41-2123, subsection A, not to exceed sixty days.

F. The director shall either grant or deny the petition in writing within seven days of its receipt. Any decision by the director to grant the petition shall be equally applicable to all registered suppliers or oxygenate blenders and shall not be selectively applied to any single registered supplier or oxygenate blender. The petition may be granted only if the director verifies that the basis for requesting the petition is factual.

G. The director may reauthorize a petition if the petitioner can demonstrate that the conditions have continued. The reauthorization of a petition shall not exceed thirty days.

H. The director of the department of weights and measures shall consult with the director of the department of environmental quality prior to granting, reauthorizing or denying any such petition.

I. The director of the department of environmental quality in consultation with the director of the department of weights and measures shall adopt by rule:

1. Requirements to implement subsections A through E of this section.

2. Requirements for record keeping, reporting and analytical methods for fuel providers to demonstrate compliance with subsections A through E of this section.

J. The director of the department of environmental quality in consultation with the director of the department of weights and measures shall adopt rules to implement this section to be consistent with applicable federal and California state fuel formulation rules to the extent practicable.

K. This section does not apply to fuel sold for use at a motor vehicle manufacturer proving ground or at a motor vehicle racing event.

Sec. 5. Section 41-2124, Arizona Revised Statutes, as amended by Laws 2004, chapter 293, section 2, is amended to read:

41-2124. Area A; fuel reformulation; rules

A. From and after May 1, 1999, all gasoline produced and shipped to or within this state and sold or offered for sale for use in motor vehicles in a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A, subject to an appropriate waiver granted by the administrator of the United States environmental protection agency pursuant to section 211(c)(4) of the clean air act as defined in section 49-401.01, shall comply with either of the following fuel reformulation options:

1. A gasoline that meets standards for federal phase II reformulated gasoline, as provided in 40 Code of Federal Regulations section 80.41, paragraphs (e) through (h), in effect on January 1, 1999, except that the minimum oxygen content standard~~, including methyl tertiary butyl ether,~~ does not apply. The gasoline shall also meet the maximum vapor pressure requirements in section 41-2083, subsections D and F.

2. California phase 2 reformulated gasoline, including alternative formulations allowed by the predictive model, as adopted by the California air resources board pursuant to California code of regulations title 13, sections 2261 through 2262.7 and 2265, in effect on January 1, 1997, except that the minimum oxygen content standard~~, including methyl tertiary butyl ether,~~ does not apply. The gasoline shall also meet the maximum vapor pressure requirements in section 41-2083, subsections D and F.

B. Beginning November 1 through January 31 of each year, all gasoline produced and shipped to or within this state and sold or offered for sale for use in motor vehicles in a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A, subject to an appropriate waiver granted by the administrator of the United States environmental protection agency pursuant to section 211(c)(4) of the clean air act as defined in section 49-401.01, shall comply with standards for California phase 2 reformulated gasoline, including alternative formulations allowed by the predictive model, as adopted by the California air resources board pursuant to California code of regulations title 13, sections 2261 through 2262.7 and 2265, in effect on January 1, 1997 and shall meet the maximum vapor pressure requirements in section 41-2083, subsections D and F. The fuel described in this subsection shall meet the requirements of section 41-2123, subsection A, paragraph 1.

C. For November 1, 2000 through January 31, 2001 and for each winter season of November through January thereafter, the director of the department of weights and measures shall determine the average levels of the constituents in the gasoline sold or offered for sale in area A and shall provide the results of this determination to the director of the department of environmental quality. The director of the department of environmental

quality shall analyze the data provided by the director of the department of weights and measures and, no later than July 1, 2001 and each July thereafter, shall determine the average daily carbon monoxide reductions resulting from the use of the gasoline specified in subsection B of this section during the preceding winter season. If the average daily carbon monoxide reductions resulting from the use of the gasoline specified in subsection B of this section during the preceding winter season are less than ninety per cent of the goal of thirty-two tons per day in 2001, thirty-one tons per day in 2003, thirty tons per day in 2005, twenty-nine tons per day in 2007~~,~~ or twenty-eight tons per day in 2009, the director of the department of environmental quality shall immediately notify the governor, the president of the senate and the speaker of the house of representatives.

D. Any registered supplier or oxygenate blender, as defined in department rules, may petition the director to request that all registered suppliers or oxygenate blenders be allowed to comply with any provision of section 41-2123, subsection A, provided the petitioner can demonstrate that ethanol supply shortages are imminent.

E. The petition shall:

1. Identify specific supply conditions that will result in a shortage of ethanol.

2. Identify which oxygenate or oxygenates AND THE CONCENTRATION THAT will be blended into gasoline for sale or use in area A.

3. Demonstrate that the alternative oxygenate blend comes closest to meeting a three and one-half per cent by weight oxygen content at reasonable cost, UNLESS THE REGISTERED SUPPLIER OR OXYGENATE BLENDER IS PETITIONING TO USE A GASOLINE-ETHANOL BLEND CONTAINING LESS THAN TEN PER CENT BY VOLUME OF ETHANOL.

4. Specify a time period for compliance with any provision of section 41-2123, subsection A, not to exceed sixty days.

F. The director shall either grant or deny the petition in writing within seven days of its receipt. Any decision by the director to grant the petition shall be equally applicable to all registered suppliers or oxygenate blenders and shall not be selectively applied to any single registered supplier or oxygenate blender. The petition may be granted only if the director verifies that the basis for requesting the petition is factual.

G. The director may reauthorize a petition if the petitioner can demonstrate that the conditions have continued. The reauthorization of a petition shall not exceed thirty days.

H. The director of the department of weights and measures shall consult with the director of the department of environmental quality prior to granting, reauthorizing or denying any such petition.

I. The director of the department of environmental quality in consultation with the director of the department of weights and measures shall adopt by rule:

1. Requirements to implement subsections A through E of this section.

2. Requirements for record keeping, reporting and analytical methods for fuel providers to demonstrate compliance with subsections A through E of this section.

J. The director of the department of environmental quality in consultation with the director of the department of weights and measures shall adopt rules to implement this section to be consistent with applicable federal and California state fuel formulation rules to the extent practicable.

K. This section does not apply to fuel sold for use at a motor vehicle manufacturer proving ground or at a motor vehicle racing event.

Sec. 6. Section 41-2124, Arizona Revised Statutes, as amended by Laws 2004, chapter 293, sections 1 and 2, is amended to read:

41-2124. Area A; fuel reformulation; rules

A. All gasoline produced and shipped to or within this state and sold or offered for sale for use in motor vehicles in a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A, subject to an appropriate waiver granted by the administrator of the United States environmental protection agency pursuant to section 211(c)(4) of the clean air act as defined in section 49-401.01, shall comply with either of the following fuel reformulation options:

1. A gasoline that meets standards for federal phase II reformulated gasoline, as provided in 40 Code of Federal Regulations section 80.41, paragraphs (e) through (h), in effect on January 1, 1999, except that the minimum oxygen content standard~~, including methyl tertiary butyl ether,~~ does not apply. The gasoline shall also meet the maximum vapor pressure requirements in section 41-2083, subsections D and F.

2. California phase 3 reformulated gasoline, including alternative formulations allowed by the predictive model, as adopted by the California air resources board pursuant to California code of regulations title 13, sections 2261 through 2263, 2265 and 2266.5, in effect on May 1, 2003, including vapor pressure requirements contained in section 2262.4.

B. Beginning November 1 through January 31 of each year, all gasoline produced and shipped to or within this state and sold or offered for sale for use in motor vehicles in a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A, subject to an appropriate waiver granted by the administrator of the United States environmental protection agency pursuant to section 211(c)(4) of the clean air act as defined in section 49-401.01, shall comply with standards for California phase 3 reformulated gasoline, including alternative formulations allowed by the predictive model, as adopted by the California air resources board pursuant to California code of regulations title 13, sections 2261 through 2263, 2265 and 2266.5, in effect on May 1, 2003 and shall meet the maximum vapor pressure requirements in section 41-2083, subsections D and F. The fuel described in this subsection shall meet the requirements of section 41-2123, subsection A, paragraph 1.

C. For November 1, 2000 through January 31, 2001 and for each winter season of November through January thereafter, the director of the department of weights and measures shall determine the average levels of the constituents in the gasoline sold or offered for sale in area A and shall provide the results of this determination to the director of the department of environmental quality. The director of the department of environmental quality shall analyze the data provided by the director of the department of weights and measures and, no later than July 1, 2001 and each July thereafter, shall determine the average daily carbon monoxide reductions resulting from the use of the gasoline specified in subsection B of this section during the preceding winter season. If the average daily carbon monoxide reductions resulting from the use of the gasoline specified in subsection B of this section during the preceding winter season are less than ninety per cent of the goal of thirty-two tons per day in 2001, thirty-one tons per day in 2003, thirty tons per day in 2005, twenty-nine tons per day in 2007~~,~~ or twenty-eight tons per day in 2009, the director of the department of environmental quality shall immediately notify the governor, the president of the senate and the speaker of the house of representatives.

D. Any registered supplier or oxygenate blender, as defined in department rules, may petition the director to request that all registered suppliers or oxygenate blenders be allowed to comply with any provision of section 41-2123, subsection A, provided the petitioner can demonstrate that ethanol supply shortages are imminent.

E. The petition shall:

1. Identify specific supply conditions that will result in a shortage of ethanol.

2. Identify which oxygenate or oxygenates AND THE CONCENTRATION THAT will be blended into gasoline for sale or use in area A.

3. Demonstrate that the alternative oxygenate blend comes closest to meeting a three and one-half per cent by weight oxygen content at reasonable cost, UNLESS THE REGISTERED SUPPLIER OR OXYGENATE BLENDER IS PETITIONING TO USE A GASOLINE-ETHANOL BLEND CONTAINING LESS THAN TEN PER CENT BY VOLUME OF ETHANOL.

4. Specify a time period for compliance with any provision of section 41-2123, subsection A, not to exceed sixty days.

F. The director shall either grant or deny the petition in writing within seven days of its receipt. Any decision by the director to grant the petition shall be equally applicable to all registered suppliers or oxygenate blenders and shall not be selectively applied to any single registered supplier or oxygenate blender. The petition may be granted only if the director verifies that the basis for requesting the petition is factual.

G. The director may reauthorize a petition if the petitioner can demonstrate that the conditions have continued. The reauthorization of a petition shall not exceed thirty days.

H. The director of the department of weights and measures shall consult with the director of the department of environmental quality prior to granting, reauthorizing or denying any such petition.

I. The director of the department of environmental quality in consultation with the director of the department of weights and measures shall adopt by rule:

1. Requirements to implement subsections A through E of this section.

2. Requirements for record keeping, reporting and analytical methods for fuel providers to demonstrate compliance with subsections A through E of this section.

J. The director of the department of environmental quality in consultation with the director of the department of weights and measures shall adopt rules to implement this section to be consistent with applicable federal and California state fuel formulation rules to the extent practicable.

K. This section does not apply to fuel sold for use at a motor vehicle manufacturer proving ground or at a motor vehicle racing event.

Sec. 7. Conditional enactment

A. Section 41-2083, Arizona Revised Statutes, as amended by section 1 of this act and section 41-2123, Arizona Revised Statutes, as amended by section 2 of this act, are not effective unless on or before November 1, 2007 the administrator of the United States environmental protection agency approves a revision to the state implementation plan as defined in section 49-401.01, Arizona Revised Statutes, that incorporates the changes contained in sections 1 and 2 of this act.

B. Section 41-2124, Arizona Revised Statutes, as amended by Laws 2004, chapter 293, section 1 and section 4 of this act, is not effective unless only the condition prescribed in Laws 2004, chapter 293, section 5, subsection A is met and notice is provided pursuant to Laws 2004, chapter 293, section 5, subsection C.

C. Section 41-2124, Arizona Revised Statutes, as amended by Laws 2004, chapter 293, section 2 and section 5 of this act, is not effective unless only the condition prescribed in Laws 2004, chapter 293, section 5, subsection B is met and notice is provided pursuant to Laws 2004, chapter 293, section 5, subsection C.

D. Section 41-2124, Arizona Revised Statutes, as amended by Laws 2004, chapter 293, sections 1 and 2 and section 6 of this act, is not effective unless the conditions prescribed in Laws 2004, chapter 293, section 5, subsections A and B are met and notice is provided pursuant to Laws 2004, chapter 293, section 5, subsection C.

APPROVED BY THE GOVERNOR APRIL 18, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 18, 2005.

House Engrossed

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

CHAPTER 98

HOUSE BILL 2590

AN ACT

AMENDING SECTIONS 41-2051, 41-2121 AND 41-2123, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 15, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-2122.01; RELATING TO MOTOR FUEL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 41-2051, Arizona Revised Statutes, is amended to read:

41-2051. Definitions

In this chapter, unless the context otherwise requires:

1. "Biodiesel" means a diesel fuel substitute that satisfies all of the following:

(a) Is produced from nonpetroleum renewable resources if the qualifying volume of nonpetroleum renewable resources meets the standards for California diesel fuel as adopted by the California air resources board pursuant to 13 California code of regulations sections 2281 and 2282 in effect on January 1, 2000.

(b) Meets the registration requirement for fuels and additives established by the environmental protection agency pursuant to section 211 of the clean air act as defined in section 49-401.01.

(c) The use of the diesel fuel substitute complies with the requirements listed in 10 Code of Federal Regulations part 490, as printed in the federal register, volume 64, number 96, May 19, 1999.

(d) Is sold, offered or exposed for sale as a neat product or blended with diesel fuel.

2. "Certification" means the process of determining the accuracy of a commercial device to the standards of this state by a registered service representative or the department.

3. "Commercial device" means any weighing, measuring, metering or counting device that is used to determine the direct cost of things sold or offered or exposed for sale, or used to establish a fee for service if the cost is based on weight, measure or count, except that it does not include those devices used for in-house packaging, inventory control or law enforcement purposes.

4. "Commodity" means any merchandise, product or substance produced or distributed for sale to or use by others.

5. "Correct" as used in connection with weights and measures means conformance to all applicable requirements of this chapter.

6. "Department" means the department of weights and measures.

7. "Diesel" means a refined middle distillate for use as a fuel in a compression-ignition internal combustion engine.

8. "Director" means the director of the department of weights and measures.

9. "Inspector" means state officials of the department of weights and measures.

10. "Limousine" means a motor vehicle providing prearranged ground transportation service for an individual passenger, or a group of passengers, that is arranged in advance or is operated on a regular route or between specified points and includes ground transportation under a contract or agreement for services that includes a fixed rate or time and is provided in

a motor vehicle with a seating capacity not exceeding fifteen passengers, including the driver.

11. "Liquid fuel measuring device" means any meter, pump, tank, gauge or apparatus used for volumetrically determining the quantity of any internal combustion engine fuel, liquefied petroleum gas or low viscosity heating oil.

12. "Livery vehicle" means a motor vehicle that:

(a) Has a seating capacity not exceeding fifteen passengers, including the driver.

(b) Provides passenger services for a fare determined by a flat rate or flat hourly rate between geographic zones or within a geographic area.

(c) Is available for hire on an exclusive or shared ride basis.

(d) May do any of the following:

(i) Operate on a regular route or between specified places.

(ii) Offer prearranged ground transportation SERVICE as defined in section 28-141.

(iii) Offer on demand ground transportation service pursuant to a contract with a public airport, licensed business entity or organization.

13. "Motor fuel" means ~~biodiesel or~~ a petroleum or a petroleum based substance that is motor gasoline, aviation gasoline, number one or number two diesel fuel or any grade of oxygenated gasoline typically used in the operation of a motor engine, INCLUDING BIODIESEL BLENDS AND THE ETHANOL BLEND E85 AS DEFINED IN ASTM D5798-99.

14. "Package" means any commodity enclosed in a container or wrapped in any manner in advance of sale in units suitable for either wholesale or retail trade.

15. "Person" means both the plural and the singular, as the case demands, and includes individuals, partnerships, corporations, companies, societies and associations.

16. "Primary standards" means the physical standards of the state that serve as the legal reference from which all other standards and weights and measures are derived.

17. "Public weighmaster" means any person who is engaged in any of the following:

(a) The business of weighing any object or thing for the public generally for hire or for internal use and issuing for that weighing a weight certificate intended to be accepted as an accurate weight upon which a purchase or sale is to be based or on which a service fee is to be charged.

(b) The business of weighing for hire motor vehicles, trailers or semitrailers and issuing weight certificates intended to be accepted as an accurate weight for the purpose of determining the amount of any tax, fee or other assessment on the vehicles.

18. "Registered service agency" means any agency, firm, company or corporation that for hire, award, commission or any other payment of any kind installs, services, repairs or reconditions a commercial device or tests or repairs vapor recovery systems or vapor recovery components and that has been issued a license by the department.

19. "Registered service representative" means any individual who for hire, award, commission or any other payment of any kind installs, services, repairs or reconditions a commercial device or tests or repairs vapor recovery systems or vapor recovery components and who has been issued a license by the department.

20. "Retail seller" means a person whose business purpose is to sell, expose or offer for sale or use any package or commodity by weight, measure or count.

21. "Sale from bulk" means the sale of commodities when the quantity is determined at the time of sale.

22. "Secondary standards" means the physical standards that are traceable to the primary standards through comparisons, using acceptable laboratory procedures, and that are used in the enforcement of weights and measures laws and rules.

23. "Taxi" means a motor vehicle that has a seating capacity not exceeding fifteen passengers, including the driver, that is registered as a taxi in this state or any other state, that provides passenger services and that:

(a) Does not operate on a regular route or between specified places.

(b) Offers local transportation for a fare determined primarily on the basis of the distance traveled.

24. "Taxi meter" means a commercial device that meets the requirements of the national institute of standards and technology handbook 44 as prescribed by section 41-2064.

25. "Weight" as used in connection with any commodity means net weight.

26. "Weights" or "measures", or both, means all weights, measures, meters or counters of every kind, instruments and devices for weighing, measuring, metering or counting and any appliance and accessories associated with any or all such instruments and devices.

Sec. 2. Section 41-2121, Arizona Revised Statutes, is amended to read:

41-2121. Definitions

In this article, unless the context otherwise requires:

1. "Area A" has the same meaning prescribed in section 49-541.

2. "Area B" has the same meaning prescribed in section 49-541.

3. "Fleet owner" means a registered owner or lessee of at least twenty-five vehicles.

4. "Gasoline" means a volatile, highly flammable liquid mixture of hydrocarbons that does not contain more than five one-hundredths grams of lead for each United States gallon, that is produced, refined, manufactured, blended, distilled or compounded from petroleum, natural gas, oil, shale oils or coal and other flammable liquids free from undissolved water, sediment or suspended matter, with or without additives, and that is commonly used as a fuel for spark ignition internal combustion engines. Gasoline does not include diesel fuel OR THE ETHANOL BLEND E85 AS DEFINED IN ASTM D5798-99.

5. "Manufacturer's proving ground" means a facility whose sole purpose is to develop complete advanced vehicles for an automotive manufacturer.

6. "Motor vehicle racing event" means a race that uses unlicensed vehicles that are designed and manufactured specifically for racing purposes and that is conducted on a public or private racecourse for the entertainment of the general public. A motor vehicle racing event includes practice, qualifying and demonstration laps conducted as part of the activities related to a motor vehicle race.

7. "Oxygenate" means any oxygen-containing ashless, organic compound, including aliphatic alcohols and aliphatic ethers, that may be used as a fuel or as a gasoline blending component and that is approved as a blending agent under the provisions of a waiver issued by the United States environmental protection agency pursuant to 42 United States Code section 7545(f).

8. "Oxygenated fuel" means an unleaded motor fuel blend that consists primarily of gasoline and at least one and one-half per cent by weight of one or more oxygenates and that has been blended consistent with the provisions of a waiver issued by the United States environmental protection agency pursuant to 42 United States Code section 7545(f).

9. "Product transfer document" means any bill of lading, loading ticket, manifest, delivery receipt, invoice or other documentation used on any occasion when a person transfers custody or title of motor fuel other than when motor fuel is sold or dispensed at a service station or fleet vehicle fueling facility.

10. "Supplier" means any person who imports gasoline into a vehicle emissions control area by means of a pipeline or in truckload quantities for the person's own use within the vehicle emissions control area or any person who sells gasoline intended for ultimate consumption within a vehicle emissions control area, except that supplier does not mean a person with respect to gasoline supplied or sold by the person to another for resale to a retailer within a vehicle emissions control area or to a fleet owner for consumption within a vehicle emissions control area.

11. "Vehicle emissions control area" has the same meaning prescribed in section 49-541, except that such an area does not include a manufacturer's proving ground that is located in the vehicle emissions control area.

Sec. 3. Title 41, chapter 15, article 6, Arizona Revised Statutes, is amended by adding section 41-2122.01, to read:

41-2122.01. E85 ethanol blend; requirements; notice; reports

A. A PERSON WHO PRODUCES THE ETHANOL BLEND E85 OR WHO IS A RETAIL SELLER OF THE ETHANOL BLEND E85 SHALL ENSURE THAT:

1. THE FUEL COMPLIES WITH ALL THE REQUIREMENTS OF ASTM D5798-99.

2. THE FUEL DISPENSER AND PUMP NOZZLE FOR THE ETHANOL BLEND E85 BEAR A NOTICE STATING THAT THE ETHANOL BLEND E85 IS NOT GASOLINE AND THAT IT IS INTENDED FOR USE ONLY IN FLEXIBLE FUEL VEHICLES AND THAT THE DRIVER SHOULD REVIEW THE OWNER'S MANUAL FOR THAT VEHICLE BEFORE USING THIS FUEL.

B. A PERSON WHO PRODUCES MOTOR FUEL SHALL REPORT TO THE DEPARTMENT NOT LATER THAN THE FIFTEENTH DAY OF EACH MONTH FOLLOWING THE MONTH IN WHICH THE PERSON PRODUCED OR SOLD THE ETHANOL BLEND E85 ALL OF THE FOLLOWING INFORMATION:

1. THE AMOUNT OF THE ETHANOL BLEND E85 PRODUCED IN THE PREVIOUS MONTH.
2. THE AMOUNT OF ETHANOL USED IN THE PREVIOUS MONTH.
3. THE AMOUNT OF GASOLINE USED IN THE PREVIOUS MONTH.
4. THE AMOUNT OF THE ETHANOL BLEND E85 SOLD IN THE PREVIOUS MONTH.
5. THE FUEL QUALITY PARAMETERS FOR THE ETHANOL AND GASOLINE THAT ARE THE SUBJECT OF THE REPORT.

C. THE PERSON WHO OWNS OR OPERATES A MOTOR FUEL DISPENSING SITE DISPENSING ETHANOL BLEND E85 SHALL ENSURE THAT THE EQUIPMENT DISPENSING ETHANOL BLEND E85 IS COMPATIBLE WITH THE PRODUCT BEING DISPENSED AND THAT THE DISPENSER HAS RECEIVED A NATIONAL TYPE EVALUATION PROGRAM CERTIFICATE OF CONFORMANCE AS REQUIRED IN R20-2-203.

D. THE PERSON WHO PRODUCES ETHANOL BLEND E85 FOR SALE IN THE CBG COVERED AREA IS REQUIRED TO USE CBG OR AZRBOB AS THE GASOLINE PORTION OF THE ETHANOL BLEND E85.

E. A RETAIL SELLER OF THE ETHANOL BLEND E85, IN COMPLIANCE WITH THE REQUIREMENTS SET FORTH IN SECTION 41-2122.01, SHALL NOT BE HELD LIABLE IF A CONSUMER MISFUELS AND PLACES ETHANOL BLEND E85 IN A NON-FLEXIBLE FUEL VEHICLE.

Sec. 4. Section 41-2123, Arizona Revised Statutes, is amended to read:

41-2123. Area A; sale of gasoline; oxygen content

A. From and after November 1 through January 31 of each year, all gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles within a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A or that is consumed in a motor vehicle in a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A by a fleet owner:

1. Shall contain, for a gasoline-ethanol blend, not less than ten per cent by volume of ethanol nor more than the maximum percentage of oxygen allowed by provisions of a waiver issued or other limits established by the United States environmental protection agency.

~~2. Shall contain, for a blend other than a gasoline-ethanol blend, not less than 2.7 per cent by weight of oxygen nor more than the maximum percentage of oxygen allowed by provisions of a waiver issued or other limits established by the United States environmental protection agency.~~

~~3.~~ 2. May contain, for a gasoline-ethanol blend, less than ten per cent by volume, BUT NOT LESS THAN 2.7 WEIGHT PER CENT OF OXYGEN, of ethanol on approval by the director of a petition filed pursuant to section 41-2124, subsection D. The approval applies to all registered suppliers and oxygenate blenders, and for the duration of that approval, the supply or sale of gasoline-ethanol blends that contain less than ten per cent by volume, BUT NOT LESS THAN 2.7 WEIGHT PER CENT OF OXYGEN, of ethanol is not subject to subsections B and C of this section.

B. Notwithstanding subsection A of this section, the director of the department of weights and measures in consultation with the director of the

department of environmental quality shall approve alternate fuel control measures that are submitted by manufacturers or suppliers of gasoline and that the directors determine will result in motor vehicle carbon monoxide emissions that are equal to or less than emissions that result under compliance with subsection A of this section and section 41-2083. In making this determination, the director of the department of weights and measures and the director of the department of environmental quality shall compare the emissions of the alternate fuel control measure with the emissions of a fuel with a maximum vapor pressure standard as prescribed by section 41-2083 and with the minimum oxygen content or percentage by volume of ethanol as prescribed by this section.

C. Any alternate fuel control measures that are approved shall not increase emissions of non-methane hydrocarbons, particulates, carbon monoxide or oxides of nitrogen. Alternate fuel control measures approved pursuant to subsection B of this section and this subsection may be used by any manufacturer or supplier of gasoline unless the approval is rescinded more than one hundred eighty days before the first day of a gasoline control period. Manufacturers and suppliers who use an approved alternate fuel control measure shall annually submit a compliance plan to the director of the department of weights and measures no later than sixty days before the first day of a gasoline control period.

APPROVED BY THE GOVERNOR APRIL 11, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 11, 2006.

REFERENCE TITLE: biofuel standards

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2621

Introduced by
Representative Boone

AN ACT

AMENDING SECTION 41-2051, ARIZONA REVISED STATUTES; AMENDING SECTION 41-2083, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2007, CHAPTER 292, SECTION 8; REPEALING SECTION 41-2122.01, ARIZONA REVISED STATUTES; RELATING TO THE DEPARTMENT OF WEIGHTS AND MEASURES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 41-2051, Arizona Revised Statutes, is amended to read:

41-2051. Definitions

In this chapter, unless the context otherwise requires:

1. "Biodiesel" means a ~~diesel~~ MOTOR fuel ~~substitute~~ OR FUEL ADDITIVE that satisfies all of the following:

~~(a) Is produced from nonpetroleum renewable resources if the qualifying volume of nonpetroleum renewable resources meets the standards for California diesel fuel as adopted by the California air resources board pursuant to 13 California code of regulations sections 2281 and 2282 in effect on January 1, 2000.~~

~~(b) Meets the registration requirement for fuels and additives established by the environmental protection agency pursuant to section 211 of the clean air act as defined in section 49-401.01.~~

~~(c) The use of the diesel fuel substitute complies with the requirements listed in 10 Code of Federal Regulations part 490, as printed in the federal register, volume 64, number 96, May 19, 1999.~~

~~(d) Is sold, offered or exposed for sale as a neat product or blended with diesel fuel.~~

(a) IS REGISTERED AS A MOTOR VEHICLE FUEL OR FUEL ADDITIVE PURSUANT TO 40 CODE OF FEDERAL REGULATIONS PART 79.

(b) IS A MONO-ALKYL ESTER.

(c) MEETS THE SPECIFICATIONS OF ASTM D6751.

(d) IS INTENDED FOR USE IN ENGINES THAT ARE DESIGNED TO RUN ON DIESEL FUEL.

(e) IS DERIVED FROM NONPETROLEUM RENEWABLE RESOURCES AS DEFINED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.

2. "BIODIESEL BLEND" MEANS A BIOFUEL THAT CONSISTS OF BIODIESEL THAT MEETS THE SPECIFICATIONS OF ASTM D6751 AND PETROLEUM-BASED DIESEL FUEL THAT MEETS THE SPECIFICATIONS OF ASTM D975 AND THAT IS DESIGNATED AS "B__", IN WHICH "__" REPRESENTS THE VOLUME PERCENTAGE OF BIODIESEL IN THE BLEND, EXCEPT THAT BIODIESEL BLENDS OF B20 AND LESS SHALL MEET THE SPECIFICATIONS OF ASTM D975 AND BIODIESEL BLENDS OF B99 AND GREATER SHALL MEET THE SPECIFICATIONS OF ASTM D6751.

3. "BIOFUEL" MEANS A SOLID, LIQUID OR GASEOUS FUEL DERIVED FROM BIOMASS AND USED FOR HEATING, POWER OR TRANSPORTATION AS A MOTOR FUEL.

4. "BIOMASS" MEANS BIOLOGICAL MATERIAL, SUCH AS PLANT OR ANIMAL MATTER, EXCLUDING ORGANIC MATERIAL THAT HAS BEEN TRANSFORMED BY GEOLOGICAL PROCESSES INTO SUBSTANCES SUCH AS COAL, PETROLEUM OR THEIR DERIVATIVES, THAT MAY BE TRANSFORMED INTO BIOFUEL.

~~2.~~ 5. "Certification" means the process of determining the accuracy of a commercial device to the standards of this state by a registered service representative or the department.

~~3.~~ 6. "Commercial device" means any weighing, measuring, metering or counting device that is used to determine the direct cost of things sold or offered or exposed for sale, or used to establish a fee for service if the cost is based on weight, measure or count, except that it does not include those devices used for in-house packaging, inventory control or law enforcement purposes.

~~4.~~ 7. "Commodity" means any merchandise, product or substance produced or distributed for sale to or use by others.

~~5.~~ 8. "Correct" as used in connection with weights and measures means conformance to all applicable requirements of this chapter.

~~6.~~ 9. "Department" means the department of weights and measures.

~~7.~~ 10. "Diesel FUEL" means a refined middle distillate ~~for use~~ THAT IS USED as a fuel in a compression-ignition internal combustion engine AND THAT MEETS THE SPECIFICATIONS OF ASTM D975.

~~8.~~ 11. "Director" means the director of the department of weights and measures.

12. "E85" MEANS A BIOFUEL COMPOSED OF FUEL ETHANOL AND GASOLINE THAT MEETS THE SPECIFICATIONS OF ASTM D5798.

13. "FUEL ETHANOL" MEANS NOMINALLY ANHYDROUS ETHYL ALCOHOL THAT MEETS THE SPECIFICATIONS OF ASTM D4806 AND THAT IS BLENDED WITH GASOLINE FOR USE AS A FUEL IN A SPARK-IGNITION INTERNAL COMBUSTION ENGINE.

~~9.~~ 14. "Inspector" means state officials of the department of weights and measures.

~~10.~~ 15. "Limousine" means a motor vehicle providing prearranged ground transportation service for an individual passenger, or a group of passengers, that is arranged in advance or is operated on a regular route or between specified points and includes ground transportation under a contract or agreement for services that includes a fixed rate or time and is provided in a motor vehicle with a seating capacity not exceeding fifteen passengers, including the driver.

~~11.~~ 16. "Liquid fuel measuring device" means any meter, pump, tank, gauge or apparatus used for volumetrically determining the quantity of any internal combustion engine fuel, liquefied petroleum gas or low viscosity heating oil.

~~12.~~ 17. "Livery vehicle" means a motor vehicle that:

(a) Has a seating capacity not exceeding fifteen passengers, including the driver.

(b) Provides passenger services for a fare determined by a flat rate or flat hourly rate between geographic zones or within a geographic area.

(c) Is available for hire on an exclusive or shared ride basis.

(d) May do any of the following:

(i) Operate on a regular route or between specified places.

(ii) Offer prearranged ground transportation service as defined in section 28-141.

(iii) Offer on demand ground transportation service pursuant to a contract with a public airport, licensed business entity or organization.

~~13.~~ 18. "Motor fuel" means a petroleum or a petroleum based substance that is motor gasoline, aviation gasoline, number one or number two diesel fuel, ~~or~~ any grade of oxygenated gasoline typically used in the operation of a motor engine~~, including biodiesel blends and the ethanol blend e85 as defined in ASTM D5798-99~~ AND BIOFUEL.

~~14.~~ 19. "Package" means any commodity enclosed in a container or wrapped in any manner in advance of sale in units suitable for either wholesale or retail trade.

~~15.~~ 20. "Person" means both the plural and the singular, as the case demands, and includes individuals, partnerships, corporations, companies, societies and associations.

~~16.~~ 21. "Public weighmaster" means any person who is engaged in any of the following:

(a) The business of weighing any object or thing for the public generally for hire or for internal use and issuing for that weighing a weight certificate intended to be accepted as an accurate weight upon which a purchase or sale is to be based or on which a service fee is to be charged.

(b) The business of weighing for hire motor vehicles, trailers or semitrailers and issuing weight certificates intended to be accepted as an accurate weight for the purpose of determining the amount of any tax, fee or other assessment on the vehicles.

~~17.~~ 22. "Reference standards" means the physical standards of the state that serve as the legal reference from which all other standards and weights and measures are derived.

~~18.~~ 23. "Registered service agency" means any agency, firm, company or corporation that for hire, award, commission or any other payment of any kind installs, services, repairs or reconditions a commercial device or tests or repairs vapor recovery systems or vapor recovery components and that has been issued a license by the department.

~~19.~~ 24. "Registered service representative" means any individual who for hire, award, commission or any other payment of any kind installs, services, repairs or reconditions a commercial device or tests or repairs vapor recovery systems or vapor recovery components and who has been issued a license by the department.

~~20.~~ 25. "Retail seller" means a person whose business purpose is to sell, expose or offer for sale or use any package or commodity by weight, measure or count.

~~21.~~ 26. "Sale from bulk" means the sale of commodities when the quantity is determined at the time of sale.

~~22.~~ 27. "Secondary standards" means the physical standards that are traceable to the reference standards through comparisons, using acceptable laboratory procedures, and that are used in the enforcement of weights and measures laws and rules.

~~23.~~ 28. "Taxi" means a motor vehicle that has a seating capacity not exceeding fifteen passengers, including the driver, that is registered as a taxi in this state or any other state, that provides passenger services and that:

(a) Does not operate on a regular route or between specified places.

(b) Offers local transportation for a fare determined primarily on the basis of the distance traveled.

~~24.~~ 29. "Taxi meter" means a commercial device that meets the requirements of the national institute of standards and technology handbook 44 as prescribed by section 41-2064.

~~25.~~ 30. "Weight" as used in connection with any commodity means net weight.

~~26.~~ 31. "Weights" or "measures", or both, means all weights, measures, meters or counters of every kind, instruments and devices for weighing, measuring, metering or counting and any appliance and accessories associated with any or all such instruments and devices.

Sec. 2. Section 41-2083, Arizona Revised Statutes, as amended by Laws 2007, chapter 292, section 8, is amended to read:

41-2083. Standards for motor fuel; exceptions; rules; liability

A. Except as provided in section 41-2083.01 and subsections C, D, E, F~~,~~ AND G~~, K, L, M and N~~ of this section, a retail seller or fleet owner shall not store, sell or expose or offer for sale any motor fuel, kerosene, oil or other liquid or gaseous fuel or lubricating oil, lubricant, mixtures of lubricants or other similar products if the product fails to meet the standards specified in this section and in the rules adopted by the director.

B. A person shall not misrepresent the nature, origination, quality, grade or identity of any product specified in subsection A of this section or represent the nature, origination, quality, grade or identity of such product in any manner calculated or tending to mislead or in any way deceive.

C. After consultation with the director of the department of environmental quality, the standards and test methods for motor fuels shall be established by the director of the department of weights and measures by rule.

D. Maximum vapor pressure for gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles in a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A as defined in section 49-541 shall be 9.0 pounds per square inch from and after September 30 through January 31 of each year. Fuel used in motor vehicles at a manufacturer's proving ground or a motor vehicle racing event as defined by section 41-2121 is exempt from this subsection.

E. From and after September 30 through March 31 of each year a person shall not supply or sell gasoline that exceeds the ASTM D4814 class A vapor pressure/distillation class ten volume per cent evaporated distillation temperature.

F. Maximum vapor pressure for gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles in a county with a population of one million two hundred thousand persons or more and any portion of a county contained in area A as defined in section 49-541 shall be 7.0 pounds per square inch from and after May 31 through September 30 of each year. Fuel used in motor vehicles at a manufacturer's proving ground or a motor vehicle racing event as defined by section 41-2121 is exempt from this subsection.

G. Exclusively for the purposes of transportation conformity and only if the administrator of the United States environmental protection agency fails to approve the applicable plan required pursuant to section 49-406, maximum vapor pressure for gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles in area B as defined in section 49-541 shall be ten pounds per square inch from and after September 30 through March 31 of each year. Fuel used in motor vehicles at a manufacturer's proving ground or a motor vehicle racing event as defined by section 41-2121 is exempt from this subsection.

H. Notwithstanding subsections D, F and G of this section, the director of the department of weights and measures in consultation with the director of the department of environmental quality shall approve alternate fuel control measures that are submitted by manufacturers or suppliers of gasoline and that the directors determine will result in either of the following:

1. Motor vehicle carbon monoxide emissions that are equal to or less than emissions that result under compliance with subsection D of this section and section 41-2123. In making this determination, the director of the department of weights and measures and the director of the department of environmental quality shall compare the emissions of the alternate fuel control measure with the emissions of a fuel with a maximum vapor pressure standard as prescribed by this section and with the minimum oxygen content or percentage by volume of ethanol as prescribed by section 41-2123.

2. Motor vehicle non-methane hydrocarbon emissions that are equal to or less than the emissions that result under compliance with subsection F of this section. In making this determination, the director of the department of weights and measures and the director of the department of environmental quality shall compare the motor vehicle non-methane hydrocarbon emissions of the alternate fuel control measure with the motor vehicle non-methane hydrocarbon emissions of a fuel that complies with the maximum vapor pressure standard as prescribed by subsection F of this section.

I. Any alternate fuel control measures that are approved shall not increase emissions of non-methane hydrocarbons, particulates, carbon monoxide or oxides of nitrogen. Alternate fuel control measures approved pursuant to subsection H of this section and this subsection may be used by any manufacturer or supplier of gasoline unless the approval is rescinded more than one hundred eighty days before the first day of a gasoline control

period. Manufacturers and suppliers who use an approved alternate fuel control measure shall annually submit a compliance plan to the director of the department of weights and measures no later than sixty days before the first day of a gasoline control period.

J. A person shall not sell or offer or expose for sale diesel fuel grade 1, 2 or 4 as defined in ASTM D975 that contains sulfur in excess of:

1. For low sulfur diesel fuel, five hundred parts per million by weight for use in area A as defined in section 49-541.

2. For ultra low sulfur diesel fuel, the amount that conforms with 40 Code of Federal Regulations section 80.520(a)(1).

~~K. A person shall not sell or offer or expose for sale biodiesel that is not tested or does not meet the specifications established by ASTM D6751 or any blend of biodiesel and diesel fuel that is not tested or does not meet the specifications established by ASTM D975 and that contains sulfur in excess of five hundred parts per million for use in area A as defined in section 49-541.~~

~~L. A person who blends biodiesel that is intended as a final product for the fueling of motor vehicles shall report to the director by the fifteenth day of each month the quantity and quality of biodiesel shipped to or produced in this state during the preceding month. A person who supplies biodiesel subject to this subsection shall report the following by batch:~~

~~1. The percentage of biodiesel in a final blend.~~

~~2. The volume of the finished product.~~

~~3. For neat biodiesel, the results of analysis for those parameters established by ASTM D6751.~~

~~4. For biodiesel blended with any diesel fuel, the results of the analysis of the following motor fuel parameters as established by ASTM D975:~~

~~(a) Sulfur content.~~

~~(b) Aromatic hydrocarbon content.~~

~~(c) Cetane number.~~

~~(d) Specific gravity.~~

~~(e) American petroleum institute gravity.~~

~~(f) The temperatures at which ten per cent, fifty per cent and ninety per cent of the diesel fuel boiled off during distillation.~~

~~M. The report required by subsection L of this section shall be on a form prescribed by the director and shall contain a certification of truthfulness and accuracy of the data submitted and a statement of the supplier's consent permitting the department or its authorized agent to collect samples and access records as provided in rules adopted by the department. A corporate officer who is responsible for operations at the facility that produces or ships the final product shall sign the report.~~

~~N. A person shall label dispensers at which biodiesel is dispensed in such a manner as to notify other persons of the volume percentage of biodiesel in the finished product and that conforms with 40 Code of Federal~~

~~Regulations sections 80.570, 80.571, 80.572, 80.573 and 80.574 to inform the customer of the sulfur content of the diesel fuel being dispensed.~~

~~O.~~ K. A person shall label each dispenser at which ultra low sulfur diesel fuel is dispensed in a manner that conforms with 40 Code of Federal Regulations sections 80.570, 80.571, 80.572, 80.573 and 80.574 to inform the customer of the sulfur content of the diesel fuel being dispensed.

~~P.~~ L. A person shall label each dispenser at which low sulfur diesel fuel is dispensed in a manner that conforms with 40 Code of Federal Regulations sections 80.570, 80.571, 80.572, 80.573 and 80.574 to inform the customer of the sulfur content of the diesel fuel being dispensed.

~~Q.~~ M. If any person transfers custody or title of a diesel fuel or distillate, except if the diesel fuel is dispensed into a motor vehicle or nonroad, locomotive or marine equipment, the transferor shall provide to the transferee product transfer documents that conform with 40 Code of Federal Regulations section 80.590.

~~R.~~ N. If the transfer of a motor fuel is from a terminal, storage facility, or transmix facility, the product transfer documents shall contain the information prescribed in subsection ~~Q~~ M of this section as well as the name and address of the final destination for the shipment, as prescribed by department rule, and must accompany the shipment to its final destination.

O. THE DIRECTOR SHALL ADOPT RULES REGARDING THE ESTABLISHMENT, DEVELOPMENT AND ENFORCEMENT OF STANDARDS FOR BIOFUELS AS FOLLOWS:

1. STANDARDS AND TEST METHODS FOR INDIVIDUAL BIOFUELS.

2. REPORTING REQUIREMENTS.

3. LABELING REQUIREMENTS.

4. QUALITY ASSURANCE PROGRAMS FOR PRODUCERS OR SUPPLIERS OF A BIOFUEL.

5. ROUTINE QUALITY CONTROL SAMPLING AND TESTING REQUIREMENTS FOR BIOFUELS.

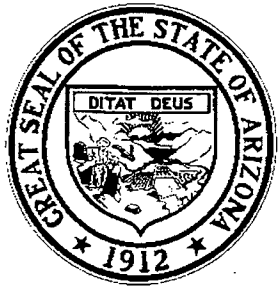
P. A RETAIL SELLER OF E85 WHO IS IN COMPLIANCE WITH THIS SECTION AND RULES ADOPTED PURSUANT TO THIS SECTION IS NOT LIABLE TO A CONSUMER IF A CONSUMER MISFUELS A VEHICLE BY PLACING E85 IN A VEHICLE THAT IS NOT A FLEXIBLE FUEL VEHICLE.

Sec. 3. Repeal

Section 41-2122.01, Arizona Revised Statutes, is repealed.

SESSION LAWS

STATE OF ARIZONA



Forty-eighth Legislature
SECOND REGULAR SESSION

Chapters 219 to End

Convened -- January 14, 2008
Sine Die -- June 27, 2008

2008

2. If the excess is over two million five hundred thousand dollars, the credit is equal to five hundred fifty thousand dollars plus thirteen per cent of any amount exceeding two million five hundred thousand dollars.

B. Notwithstanding section 43-1168, subsection A, paragraph 1, Arizona Revised Statutes, as amended by this act, for taxable years beginning from and after December 31, 2009 through December 31, 2010, the amount of the credit is computed as follows:

1. Add:

(a) The excess, if any, of the qualified research expenses for the taxable year over the base amount as defined in section 41(c) of the internal revenue code.

(b) The basic research payments determined under section 41(e)(1)(A) of the internal revenue code.

2. If the sum computed under paragraph 1 of this subsection is two million five hundred thousand dollars or less, the credit is equal to twenty-two per cent of that amount.

3. If the sum computed under paragraph 1 of this subsection is over two million five hundred thousand dollars, the credit is equal to five hundred fifty thousand dollars plus thirteen per cent of any amount exceeding two million five hundred thousand dollars.

Sec. 12. Effective date

Sections 43-1074.01 and 43-1168, Arizona Revised Statutes, as amended by this act, are effective from and after December 31, 2009.

Sec. 13. Effective date

Sections 43-1074.01 and 43-1168, Arizona Revised Statutes, as added by this act, are effective from and after December 31, 2017.

Approved by the Governor June 27, 2008.
Filed in the Office of the Secretary of State June 27, 2008.

BUDGET PROCEDURES FOR BUDGET RECONCILIATION

CHAPTER 291

H. B. 2462

AN ACT AMENDING SECTIONS 28-5801 AND 28-5808, ARIZONA REVISED STATUTES; AMENDING SECTION 38-891, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2008, CHAPTER 234, SECTION 1; AMENDING SECTIONS 41-1517, 41-2115 AND 41-3505, ARIZONA REVISED STATUTES; AMENDING LAWS 2007, CHAPTER 260, SECTION 6; MAKING APPROPRIATIONS; RELATING TO BUDGET PROCEDURES FOR BUDGET RECONCILIATION.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 28-5801, Arizona Revised Statutes, is amended to read:

28-5801. Vehicle license tax rate

A. At the time of application for and before registration each year of a vehicle, the registering officer shall collect the vehicle license tax imposed by article IX, section 11,

Constitution of Arizona. On the taxpayer's vehicle license tax bill, the registering officer shall provide the taxpayer with the following:

1. Information showing the amount of the vehicle license tax that each category of recipient will receive and the amount that is owed by the taxpayer.

2. The amount of vehicle license tax the taxpayer would pay pursuant to section 28-5805 if the taxpayer's motor vehicle was powered by alternative fuel.

B. Except as provided in subsections C and D of this section:

1. During the first twelve months of the life of a vehicle as determined by its initial registration, the vehicle license tax is based on each one hundred dollars in value, the value of the vehicle is sixty per cent of the manufacturer's base retail price of the vehicle and the vehicle license tax rate for each of the recipients is as follows:

(a) The rate for the Arizona highway user revenue fund is one dollar twenty-six cents.

(b) The rate for the county general fund is sixty-nine cents.

(c) The rate for counties for ~~the same use as highway user revenue fund monies~~ ANY PURPOSES RELATED TO TRANSPORTATION, AS DETERMINED BY THE BOARD OF SUPERVISORS, is sixteen cents.

(d) The rate for incorporated cities and towns is sixty-nine cents.

2. During each succeeding twelve month period, the vehicle license tax is based on each one hundred dollars in value, the value of the vehicle is 16.25 per cent less than the value for the preceding twelve month period and the vehicle license tax rate for each of the recipients is as follows:

(a) The rate for the Arizona highway user revenue fund is one dollar thirty cents.

(b) The rate for the county general fund is seventy-one cents.

(c) The rate for counties for the same use as highway user revenue fund monies is seventeen cents.

(d) The rate for incorporated cities and towns is seventy-one cents.

3. The minimum amount of the vehicle license tax computed under this section is ten dollars per year for each vehicle that is subject to the tax. If the product of all of the rates prescribed in paragraph 1 or 2 of this subsection is less than ten dollars, the vehicle license tax is ten dollars. The vehicle license tax collected pursuant to this paragraph shall be distributed to the recipients prescribed in this subsection based on the percentage of each recipient's rate to the sum of all of the rates.

C. The vehicle license tax is as follows for noncommercial trailers that are not travel trailers and that are less than six thousand pounds gross vehicle weight:

1. On initial registration, a one-time vehicle license tax of one hundred five dollars.

2. On renewal of registration, a one-time vehicle license tax of seventy dollars.

D. The vehicle license tax is as follows for a trailer or semitrailer that exceeds ten thousand pounds gross vehicle weight:

1. On initial registration, a one-time vehicle license tax of five hundred fifty-five dollars.

2. On renewal of registration or if previously registered in another state, a one-time vehicle license tax of:

(a) If the trailer's or semitrailer's model year is less than six years old, three hundred fifty-five dollars.

(b) If the trailer's or semitrailer's model year is at least six years old, one hundred dollars.

E. The vehicle license tax collected pursuant to subsection C or D of this section shall be distributed to the recipients prescribed in subsection B of this section based on the percentage of each recipient's rate to the sum of all of the rates.

F. For the purposes of subsection C of this section, "travel trailer" has the same meaning prescribed in section 28-2003.

Sec. 2. Section 28-5808, Arizona Revised Statutes, is amended to read:

28-5808. Vehicle license tax distribution

A. The director shall distribute monies collected by the director pursuant to section 28-5801, except monies deposited in the state general fund, on the first and fifteenth calendar day of each month as follows:

1. On the first calendar day, the director shall deposit, pursuant to sections 35-146 and 35-147, all of the Arizona highway user revenue fund monies received from the first through the fifteenth calendar day of the preceding month in the Arizona highway user revenue fund, except that on the first calendar day the director shall deposit, pursuant to sections 35-146 and 35-147, in the parity compensation fund established by section 41-1720, 1.51 per cent of the portion of vehicle license tax revenues that otherwise would be deposited in the state highway fund from the first through the fifteenth calendar day of the preceding month.

2. On the fifteenth calendar day, the director shall deposit, pursuant to sections 35-146 and 35-147, all of the Arizona highway user revenue fund monies received from the sixteenth through the last day of the preceding month in the Arizona highway user revenue fund, except that on the fifteenth calendar day, the director shall deposit, pursuant to sections 35-146 and 35-147, in the parity compensation fund established by section 41-1720, 1.51 per cent of the portion of vehicle license tax revenues that otherwise would be deposited in the state highway fund from the sixteenth through the last day of the preceding month. On the fifteenth calendar day, the director shall distribute or deposit all other monies received during the entire preceding month as follows:

(a) The county general fund monies to the county general fund.

(b) The county ~~highway~~ TRANSPORTATION monies to the state treasurer to be apportioned among the counties for ~~the same use as highway user revenue fund monies~~ ANY PURPOSES RELATED TO TRANSPORTATION, AS DETERMINED BY THE BOARD OF SUPERVISORS, on the basis that the population of the unincorporated area of each county bears to the population of the unincorporated areas of all counties in this state.

(c) The incorporated cities and towns monies to the incorporated cities and towns of the county in proportion to the population of each.

3. The deposit of the monies in the parity compensation fund pursuant to paragraphs 1 and 2 of this subsection shall not impact the distribution of vehicle license tax revenues to the state general fund and to cities, towns and counties pursuant to this section.

B. The director shall distribute monies collected by the director pursuant to sections 28-5804, 28-5805, 28-5806 and 28-5810, except monies deposited in the state general fund, on the first and fifteenth calendar day of each month as follows:

1. On the first calendar day, the director shall deposit, pursuant to sections 35-146 and 35-147, 37.61 per cent of all monies received from the first through the fifteenth calendar day of the preceding month in the highway user revenue fund.

2. On the fifteenth calendar day, the director shall deposit, pursuant to sections 35-146 and 35-147, 37.61 per cent of all monies received from the sixteenth through the last day of the preceding month in the highway user revenue fund and distribute or deposit

the following amounts as a percentage of all monies received pursuant to sections 28-5804, 28-5805, 28-5806 and 28-5810 during the entire preceding month as follows:

(a) 20.45 per cent to the county general fund.

(b) 4.91 per cent to the state treasurer to be apportioned among the counties for ~~the same use as highway user revenue fund monies~~ ANY PURPOSES RELATED TO TRANSPORTATION, AS DETERMINED BY THE BOARD OF SUPERVISORS, on the basis that the population of the unincorporated area of each county bears to the population of the unincorporated areas of all counties in this state.

(c) 20.45 per cent to the incorporated cities and towns of the county in proportion to the population of each.

(d) Except as provided in subsection C of this section, 1.64 per cent shall be deposited, pursuant to sections 35-146 and 35-147, in the state highway fund established by section 28-6991.

(e) 4.09 per cent in the state highway fund established by section 28-6991.

(f) 10.85 per cent shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund to aid school financial assistance.

C. Through September 30, 2003, if the department's authorized share of federal surface transportation program monies in each year is more than forty-two million dollars, the director shall deposit each year in equal installments during the year an annual amount equal to the difference between this state's authorized share of federal surface transportation program monies and forty-two million dollars from the amount prescribed in subsection B, paragraph 2, subdivision (d) of this section in the local transportation assistance fund established by section 28-8101. Monies deposited in the local transportation assistance fund pursuant to this subsection shall be distributed to eligible cities, towns and counties as provided in section 28-8103. The amount distributed pursuant to this subsection shall not exceed the amount prescribed in subsection B, paragraph 2, subdivision (d) of this section.

D. For purposes of this section the population of a county, city or town shall be determined as provided by section 28-6532 or 42-5033.01. If an incorporated city or town has had no federal enumeration of population, the supervisors shall both:

1. Appoint a qualified person to take an accurate census of the incorporated city or town.

2. Certify the results to the county treasurer, and the incorporated city or town shall share in the distribution as provided by this section.

Sec. 3. Section 38-891, Arizona Revised Statutes, as amended by Laws 2008, chapter 234, section 1, is amended to read:

38-891. Employer and member contributions

A. As determined by actuarial valuations reported to the employers and the local boards by the fund manager, each employer shall make level per cent of salary contributions sufficient under the actuarial valuations to meet both the normal cost plus the actuarially determined amount required to amortize the unfunded accrued liability over, beginning July 1, 2005 a rolling period of at least twenty and not more than thirty years that is established by the fund manager taking into account the recommendation of the plan's actuary, except that, beginning with fiscal year 2006-2007, except as otherwise provided, the employer contribution rate shall not be less than six per cent of salary. For any employer whose actual contribution rate is less than six per cent of salary for fiscal year 2006-2007 and each year thereafter, that employer's contribution rate shall be at least five per cent and not more than the employer's actual contribution rate. An employer may

pay a higher level per cent of salary thereby reducing its unfunded past service liability. All contributions made by the employers and all state taxes allocated to the fund shall be irrevocable and shall be used to pay benefits under the plan or to pay expenses of the plan and fund. The minimum employer contribution that is paid and that is in excess of the normal cost plus the actuarially determined amount required to amortize the unfunded accrued liability as calculated pursuant to this subsection shall be used to reduce future employer contribution increases and shall not be used to pay for an increase in benefits that are otherwise payable to members. The fund manager shall separately account for these monies in the fund. Forfeitures arising because of severance of employment before a member becomes eligible for a pension or for any other reason shall be applied to reduce the cost to the employer, not to increase the benefits otherwise payable to members. After the close of any fiscal year, if the plan's actuary determines that the actuarial valuation of an employer's account contains excess valuation assets other than excess valuation assets that were in the employer's account as of fiscal year 2004-2005 and is more than one hundred per cent funded, the fund manager shall account for fifty per cent of the excess valuation assets in a stabilization reserve account. After the close of any fiscal year, if the plan's actuary determines that the actuarial valuation of an employer's account has a valuation asset deficiency and an unfunded actuarial accrued liability, the fund manager shall use any valuation assets in the stabilization reserve account for that employer, to the extent available, to limit the decline in that employer's funding ratio to not more than two per cent.

B. Except as provided by subsection H, each member shall contribute 7.96 per cent of the member's salary to the retirement plan. Member contributions shall be made by payroll deduction. Continuation of employment by the member constitutes consent and agreement to the deduction of the applicable member contribution. Payment of the member's salary less the deducted contributions constitutes full and complete discharge and satisfaction of all claims and demands of the member relating to salary for services rendered during the period covered by the payment.

C. Each participating employer shall cause the member contributions to be deducted from the salary of each member. The deducted member contributions shall be paid to the retirement plan within five working days and shall be credited to the member's individual account.

D. During a period when an employee is on industrial leave and the employee elects to continue contributions during the period of industrial leave, the employer and employee shall make contributions based on the salary the employee would have received in the employee's job classification if the employee was in normal employment status.

E. The local board of the state department of corrections or the local board of the department of juvenile corrections may specify a position within that department as a designated position if the position is filled by an employee who has at least five years of credited service under the plan, who is transferred to temporarily fill the position and who makes a written request to the local board to specify the position as a designated position within ninety days of being transferred. On the employee leaving the position, the position is no longer a designated position.

F. The local board of the state department of corrections or the local board of the department of juvenile corrections may specify a designated position within the department as a nondesignated position if the position is filled by an employee who has at least five years of credited service under the Arizona state retirement system and who makes a written request to the local board to specify the position as a nondesignated position within

ninety days of accepting the position. On the employee leaving the position, the position reverts to a designated position.

G. Beginning with fiscal year 2008-2009, if the aggregate computed employer contribution rate that is calculated pursuant to subsection A is less than six per cent of salary, beginning on July 1 of the following fiscal year the member contribution rate prescribed in subsection B OR H is permanently reduced by an amount that is equal to the difference between six per cent and the aggregate computed employer contribution rate. Notwithstanding this subsection, the member contribution rate shall not be less than 7.65 per cent of the member's salary.

H. Notwithstanding subsection B, except for a full-time dispatcher, ~~beginning on July 1, 2009,~~ a member shall contribute 8.41 per cent of the member's salary to the retirement plan. After the close of any fiscal year, if the plan's actuary determines that the aggregate ratio of the funding value of accrued assets to the accrued liabilities of the fund is at least one hundred per cent, from and after June 30 of the following year, except for a full-time dispatcher, a member shall contribute 7.96 per cent of the member's salary to the retirement plan. Additionally, the member's contribution to the retirement plan may also be permanently reduced pursuant to subsection G.

Sec. 4. Section 41-1517, Arizona Revised Statutes, is amended to read:

41-1517. Motion picture production tax incentives; duties; definitions

A. From and after December 31, 2005 through December 31, 2010, the department of commerce shall qualify motion picture production companies that produce one or more motion pictures in this state for motion picture production tax incentives, subject to the following requirements and conditions:

1. Except as provided in subsection K of this section, a motion picture production company must spend at least two hundred fifty thousand dollars toward production costs in this state producing each motion picture.

2. For the purpose of this section, production costs are limited to and subject to the following conditions:

(a) Salaries and other compensation for talent, management and labor paid to residents of this state, as defined by section 43-104.

(b) A story and scenario to be used for a motion picture.

(c) Set construction and operations, wardrobe, props, accessories and related services in this state. Expenses paid for construction contracts are limited to contractors who are licensed under title 32, chapter 10.

(d) Photography, sound synchronization, lighting and related costs incurred in this state.

(e) Editing and related services performed in this state.

(f) Rental of facilities and equipment in this state.

(g) Catered food, drink and condiment purchased in this state.

(h) Other direct in-state costs of producing the motion picture, pursuant to rules adopted by the department of revenue that follow generally accepted accounting standards for the motion picture industry.

(i) Payments for penalties and fines do not qualify as production costs.

(j) Expenses incurred before the date of notice of preapproval under subsection D of this section do not qualify as production costs.

3. A motion picture production company or its authorized payroll service company must employ residents of this state in its production activities as follows:

(a) In 2006, at least twenty-five per cent of full-time employees working in this state must be residents of this state.

(b) In 2007, at least thirty-five per cent of full-time employees working in this state must be residents of this state.

(c) In 2008 and every subsequent taxable year, at least fifty per cent of full-time employees working in this state must be residents of this state.

4. A motion picture production company must submit a completed application pursuant to subsection C of this section. An application is complete on receipt of all requested information.

5. A motion picture production company must include in the credits for each motion picture, other than a commercial advertisement or music video, an acknowledgement that the production was filmed in Arizona.

B. Only a motion picture production company that demonstrates that it has the lawful right to produce a particular production may apply for qualification under this section with respect to that production.

C. A motion picture production company initially applying for qualification under this section must report the following to the department of commerce on a form and in a manner prescribed by the department, with the cooperation of the department of revenue:

1. The name, address, telephone number and ~~web-site~~ WEBSITE of the motion picture production company.

2. The name and address of an individual who will maintain records of expenditures in this state.

3. The projected first preproduction date and last production date in this state.

4. The production office address and office telephone number in this state.

5. The estimated total budget of the production.

6. The estimated total expenditures in this state.

7. The estimated total percentage of the production taking place in this state.

8. The estimated level of employment of residents of this state in the cast and crew.

9. A script, including a synopsis, the proposed director and a preliminary list of the cast and producer, except that, with respect to a television series, other than a pilot production, in lieu of a script the applicant must include:

(a) A synopsis of the general nature of the series.

(b) A description of the characters and the intended nature of their interaction with each other.

(c) A description of the locations.

(d) A description of the sets.

(e) The intended distribution or broadcast medium with specific television channels, if known.

10. An affirmation signed by any person who will be credited on screen as the producer or producers of the motion picture, not including the executive producers, associate producers, assistant producers or line producers, that:

(a) The motion picture production company agrees to furnish records of expenditures in this state to the department of revenue on request.

(b) Any items purchased with a ~~certification~~ CERTIFICATE issued under section 42-5009, subsection H are intended for use by the applicant directly in motion picture production.

D. The department of commerce shall review all applications within thirty days after submission of a complete application pursuant to subsection C of this section to determine whether the motion picture production company satisfies all of the criteria provided in subsection A of this section and shall establish the process by which the department qualifies and preapproves a company for motion picture production tax incentives. This process shall preapprove a company for motion picture production tax incentives based on priority placement established by the date that such motion picture production company filed its initial application for qualification with the department.

E. The department of commerce may conduct a site visit to verify that production has begun. Within ninety days after the department preapproves the company's initial application, the company must submit notice to the department that production has begun and provide at least one of the following:

1. A copy of a contract, loan out agreement or deal memo with a cameraman and crew.

2. A copy of the crew call sheet for the first day of production.

3. Evidence that residents of this state have been paid a total of at least five thousand dollars for work on the preapproved motion picture.

4. A copy of a contract or agreement directly attributable to the preapproved motion picture.

F. Preapproval by the department of commerce under subsection D of this section lapses, the application is void and the amount of the preapproved incentives does not apply against the dollar limit prescribed by subsection J of this section if, within ninety days after the department preapproves the company, the company fails to provide documentation of either:

1. Its expenditure in this state of the lesser of:

(a) Ten per cent of the estimated total state budget of the production.

(b) Two hundred fifty thousand dollars.

2. A completion bond, equal to the estimated total budget of the production, for the production of the motion picture for which the company was preapproved. For the purposes of this paragraph, "completion bond" means an executed written contract, issued by an insurance company with an insurance industry rating of B+ or better by A.M. Best company guarantying to the financiers of the project that it will be completed according to the terms of the preapproved application submitted by the production company in its application.

G. The preapproved amount applies against the dollar limit prescribed by subsection J of this section for the year in which the application was submitted regardless of whether the initial preapproval period extends into the following year or years. Before the expiration of the initial preapproval or requalification period, a company may voluntarily relinquish unused credit amounts.

H. The department of commerce shall reallocate the amount of credits that is voluntarily relinquished under subsection G of this section, that ~~lapse~~ LAPSES under subsection F of this section or that ~~lapse~~ LAPSES under subsection O of this section. The reallocation shall be to other motion picture production companies that applied in the original credit year based on priority placement. The amount of the reallocated credits shall continue to apply against the dollar limit of the original credit year regardless of the year in which the reallocation occurs. If for any year an unused balance occurs in the income tax credits authorized under the dollar limit prescribed by subsection J of this section:

1. The balance shall be allocated to motion picture production companies that successfully appeal the denial of approval under this section or section 41-1517.01. Any amount of income tax credits due to successful appeals that are not paid from an unused balance in any year shall be paid against the dollar limit allowed by subsection J of this section in the following year.

2. Any remaining unused balance shall be reallocated for the purposes of this section in the following year.

I. Beginning with the tax credits allocated for 2006 pursuant to subsection J of this section, an approved credit offsets tax liability for the taxable year for which the credit was originally allocated or any subsequent taxable year within the applicable carryforward period pursuant to section 43-1075, subsection G or section 43-1163, subsection G. The credits must be claimed on a timely filed original income tax return, including extensions.

J. Subject to the requirements of section 41-1517.01 and subsections K and U of this section, the department of commerce shall not preapprove income tax credits exceeding a total of:

1. Thirty million dollars for 2006.
2. Forty million dollars for 2007.
3. Fifty million dollars for 2008.
4. Sixty million dollars for 2009.
5. From and after December 31, 2009, seventy million dollars for a single year.
6. Five million dollars for an individual motion picture application in 2007.
7. Seven million dollars for an individual motion picture application in 2008.
8. Eight million dollars for an individual motion picture application in 2009.
9. From and after December 31, 2009, nine million dollars for an individual motion picture application.

K. Beginning in 2008, the following provisions apply with respect to commercial advertisement and music video production:

1. Five per cent of the maximum dollar amount of income tax credits prescribed for any year by subsection J of this section is reserved for use with respect to commercial advertisement and music video production.

2. A commercial advertisement or music video production company may apply for qualification under subsection C of this section before the company reaches the minimum expenditure threshold requirements of subsection A, paragraph 1 of this section.

3. In lieu of a script under subsection C, paragraph 9 of this section, the applicant must submit a synopsis or storyboard that:

(a) Identifies the product, service, person or event for a commercial advertisement or the artist and song for a music video.
(b) Describes the general content or message to be conveyed.
(c) Describes the location or locations.
(d) Describes the sets.
(e) Describes the intended distribution or medium and specific channels, if known.

4. The department must review the completed application within fifteen business days.

5. Expenses incurred before the date of submission of a completed application under subsection C of this section do not qualify as production costs.

6. The department shall allocate the income tax credit incentives based on priority placement established by the date that the company files its application and based on the

percentage of estimated total expenditures in this state allowed as a credit under section 43-1075 or 43-1163.

7. Within sixty days after applying with the department under subsection C of this section, a company that is preapproved for a specific production must notify and provide documentation of expenditures to the department of the total amount of eligible production costs associated with the production.

8. The company is not eligible for income tax credit incentives until the company's eligible production expenditures reach two hundred fifty thousand dollars in a period of twelve consecutive months. When the company reaches that threshold, the company may apply to the department for approval of the income tax credit incentives pursuant to subsection ~~P~~ O of this section. Applications for approval of income tax credit incentives may not be submitted by the same company more frequently than once a calendar month.

9. Notwithstanding any other provision of this section, the department of commerce shall adopt rules and prescribe forms and procedures as necessary for the purposes of this subsection.

L. Except for applications with respect to commercial advertisement and music video production under subsection K of this section, after October 31 of each year, if the department has preapproved the maximum calendar year tax credit amount pursuant to subsection J of this section, the department may accept initial applications for the next calendar year. The preapproval of any application pursuant to this subsection shall not be effective prior to the first business day of the following calendar year. The department may accept initial applications with respect to commercial advertisement and music video production under subsection K of this section only during the calendar year in which the credits would be allotted.

M. Subject to ~~the provisions of~~ subsection O of this section, the department of commerce shall deny an application submitted on completion of the production pursuant to subsection O of this section if it determines that:

1. The motion picture production company does not meet all of the established criteria provided in subsection A of this section.

2. The production would constitute an obscene motion picture film or obscene pictorial publication under title 12, chapter 7, article 1.1.

3. The production depicts sexual activity as defined in title 13, chapter 35.

4. The production would constitute sexual exploitation of a minor or commercial sexual exploitation of a minor under title 13, chapter 35.1.

N. On a determination by the department of commerce that a motion picture production company qualifies for motion picture production tax incentives, the department shall issue the company a written letter of qualification and transmit a copy of the letter to the department of revenue. Beginning from and after December 31, 2007, a letter of qualification is effective for twenty-four consecutive months as stated in the letter.

O. Upon completion of the motion picture production, a motion picture production company that qualifies for the motion picture tax incentives shall apply to the department in writing for approval of income tax credits, submit a viewable copy of the motion picture, EXCEPT AS PROVIDED IN SUBSECTION P OF THIS SECTION, and certify the total amount of eligible production costs associated with the project incurred from and after December 31, 2005. From and after June 30, 2006, the department shall provide approval to a motion picture production company that it has met the eligibility requirements of this section and shall notify the department of revenue that the motion picture production company may claim the tax credits pursuant to sections 43-1075 and

43-1163. If the eligible production costs actually spent are less than the amount preapproved for income tax credits, the preapproved amount not incurred lapses and does not apply against the dollar limit prescribed by subsection J of this section for that year.

P. A motion picture production company may apply for postapproval of the production before a viewable copy of the production UNDER SUBSECTION O OF THIS SECTION is available. To do so, the company must submit with its application a letter of credit, payable to the department of revenue, providing that within two business days after the issuer receives a written determination from the department of commerce that the production fails to qualify for the tax credits the issuer will pay to the department of revenue the full face value of the income tax credits in the application. If the department of revenue draws on the letter of credit, the monies shall be transferred to and held in an interest bearing account pending the final outcome of an appeal, if any. The letter of credit may be released on the determination by the department of commerce that the completed production qualifies for the tax credits.

Q. If a preapproved motion picture production company fails to undertake production, as described in subsection F of this section, and also fails to voluntarily relinquish the unused credit amounts for reallocation by the department as provided by subsection G of this section within the ninety-day period, the company and all persons signing the application for preapproval are disqualified from receiving, or participating in any motion picture production company that applies for or receives, tax incentives pursuant to this section for three years after the original application.

R. The department of commerce, with the cooperation of the department of revenue, shall adopt rules and publish and prescribe forms and procedures as necessary to effectuate the purposes of this section.

S. Any information gathered from motion picture production companies for the purposes of this section, OR APPLICANTS FOR INFRASTRUCTURE INCENTIVES FOR THE PURPOSES OF SECTION 41-1517.01, shall be considered confidential taxpayer information and shall be disclosed only as provided in section 42-2003, subsection B, paragraph 12, except that the department shall publish the following information in its annual report:

1. The name of each motion picture production company and infrastructure applicant and the amount of income tax credits preapproved for each production and infrastructure project.

2. The amount of credits approved with respect to each production.

T. The department of commerce shall:

1. Keep annual records of the information provided on applications for motion picture production tax incentives. These records shall reflect a percentage comparison of the annual amount of monies exempted or credited to qualifying motion picture production companies to the estimated amount of monies spent on in-state production costs by motion picture production companies.

2. Maintain annual data on growth in Arizona-based motion picture industry companies and motion picture industry employment and wages.

3. Not later than April 30 of each year, prepare and publish a report summarizing the information collected pursuant to this subsection. The department shall make copies of the annual report available to the public on request.

U. Subject to annual legislative authorization, the amount of ~~one hundred eighty~~ THREE HUNDRED THIRTY SEVEN thousand SEVEN HUNDRED dollars from the dollar amount of income tax credits under subsection J of this section is allocated each year to the department of commerce for up to ~~two~~ SIX full-time equivalent positions dedicated solely for the purposes of this section and section 41-1517.01. If the income tax credits terminate pursuant to subsection A of this section and section 41-1517.01, subsection A, the authorization under this subsection and any positions dedicated for those purposes also terminate.

V. For the purposes of this section:

1. "Commercial advertisement" means an advertising message designed for delivery through either:

(a) A motion picture film or video medium to attract the attention of consumers or influence consumers' feelings toward a particular product, service, event or cause.

(b) Still photography that is used in national or international print media to attract the attention of consumers or influence consumers' feelings toward a particular product, service event or cause.

2. "Motion picture" means a single medium or multimedia program, including a commercial advertisement, music video or television series, that:

(a) Is created by production activities conducted in whole or in part in this state.

(b) Can be viewed or reproduced.

(c) Is intended for commercial distribution or licensing in the delivery medium used.

Motion picture does not include any production featuring actual news, current events, weather, locally produced and locally broadcast television productions, financial market reports, concerts, Internet broadcasts, talk shows and interviews, game shows, sporting events, award or other gala events, a production whose sole purpose is fund-raising, a production used for corporate or organizational training or in-house corporate advertising or other similar production activities.

3. "Motion picture production company" or "production company" means any person primarily engaged in the business of producing motion pictures and that has a physical business office and bank account in this state.

4. "Motion picture production tax incentives" means the tax deductions for transaction privilege and use taxes listed in section 42-5009, subsection H and the credit against income taxes provided under section 43-1075 or 43-1163.

5. "Music video" means a filmed or videotaped rendition of a song or songs, portraying musicians performing the song or other visual images set to the lyrics of the song.

6. "Television series" means a group of productions THAT IS created or adapted for television broadcast with a common series title, THAT IS related to each other in subject or theme, ~~which~~ THAT is produced seasonally for appearing at scheduled intervals, but subject to discretionary programming and scheduling decisions, and with or without a predetermined number of episodes. Television series includes a pilot production for the promotion or introduction of a television series.

Sec. 5. Section 41-2115, Arizona Revised Statutes, is amended to read:

41-2115. Civil penalties

A. A person who violates this chapter, any rule of the department or any license requirement is subject to a civil penalty imposed by the director. A person who violates this chapter, any rule of the department or any license requirement may request a hearing

to review a civil penalty imposed under this section. The department shall conduct the hearing in accordance with chapter 6, article 10 of this title. Except as prescribed in subsection B of this section, the civil penalty shall not exceed ~~five hundred~~ ONE THOUSAND dollars for each infraction nor more than ~~five~~ TEN thousand dollars for any thirty day period at each business location, for each registered service representative or for each public weighmaster, provided that no person shall be assessed more than fifty thousand dollars per thirty day period.

B. The director may double the maximum civil penalty if any of the following applies:

1. A commercial device is found to be in violation with results that favor the retailer at more than twice the allowable tolerance as stated in national institute of standards and technology handbook 44.

2. A package is found to exceed the maximum allowable variation for the labeled quantity allowed in national institute of standards and technology handbook 133 or the average error of the lot is twice the sample error limit in favor of the retailer.

3. A stage II vapor recovery system reinspection fails the required tests.

4. A maximum civil penalty has been imposed on a retailer for a price posting or price verification violation and in a reinspection, if conducted within ninety days, the failure rate is ten per cent or more and at least one error is in favor of the retailer.

5. A maximum civil penalty has been imposed on a refiner, refinery, registered supplier or transmix processing facility for a violation of motor fuel quality standards or producing a product transfer document that is incorrect, incomplete or produced in any manner tending to mislead or deceive a person.

C. The attorney general shall bring actions to recover civil penalties pursuant to this section in the superior court in the county in which the violation occurred or in a county where the agency has its office. All monies derived from civil penalties shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

Sec. 6. Section 41-3505, Arizona Revised Statutes, is amended to read:

41-3505. Information technology fund

A. The information technology fund is established for use by the agency and the committee. Monies in the fund are subject to legislative appropriation.

B. Beginning January 1, 1997, state service agencies subject to section 41-764, and, beginning July 1, 1997, all budget units and the legislative and judicial branches of state government, shall contribute a pro rata share of the overall cost of information technology services provided by the agency or committee. The pro rata share is payable by payroll fund source, and the resultant amount shall be deposited in the information technology fund. Beginning ~~January 1, 1997, for state service agencies subject to section 41-764 and beginning July 1, 1997~~ JULY 1, 2008, for all budget units and the legislative and judicial branches of state government, the pro rata share shall be ~~.15~~ .20 per cent of the total payroll. Total payroll includes all fund sources including the state general fund, federal monies, special revenue funds, intergovernmental revenue monies, trust funds and other payroll fund sources.

C. A claim for the pro rata share percentage payment shall be submitted according to the fund source, with the accompanying payroll, to the department of administration for deposit in the information technology fund.

D. Notwithstanding section 35-190, monies in the information technology fund do not revert to the state general fund at the end of each fiscal year.

Sec. 7. Laws 2007, chapter 260, section 6 is amended to read:

Sec. 6. Arizona twenty-first century competitive initiative fund; appropriations

A. The sum of $22,500,000 IS APPROPRIATED FROM THE STATE GENERAL FUND IN FISCAL YEAR 2008-2009, THE SUM OF $25,000,000 is appropriated from the state general fund in ~~each of the~~ fiscal ~~years 2007-2008 through 2010-2011~~ YEAR 2009-2010 AND THE SUM OF $27,500,000 IS APPROPRIATED FROM THE STATE GENERAL FUND IN FISCAL YEAR 2010-2011 for deposit into the Arizona twenty-first century competitive initiative fund established by section 41-1505.09, Arizona Revised Statutes, and the same amounts are appropriated from that fund to the commerce and economic development commission in each fiscal year for the purposes prescribed in Laws 2006, chapter 334.

B. In order to amend the existing memorandum of understanding or enter into a new memorandum of understanding with the commission pursuant to section 41-1505.09, Arizona Revised Statutes, a nonprofit corporation shall identify and document written agreements for private, ~~or~~ philanthropic OR GOVERNMENTAL investments, EXCEPT MONIES RECEIVED FOR AND BELONGING TO THE STATE, either for specific grants or for general grant investment areas that are equivalent to ~~$25,000,000~~ $22,500,000 or more in ~~each of the~~ fiscal ~~years 2007-2008,~~ YEAR 2008-2009, $25,000,000 IN FISCAL YEAR 2009-2010 and $27,500,000 IN FISCAL YEAR 2010-2011. Unless prohibited by the organization's governing documents, the private, ~~or~~ philanthropic OR GOVERNMENTAL investments shall be cash OR AUDITABLE CASH EQUIVALENT contributions to the nonprofit. State funds shall be drawn down incrementally as ~~the~~ EACH cash OR CASH EQUIVALENT match is received OR OTHERWISE SECURED AS PART OF THE COST SHARE FOR A WRITTEN GRANT AGREEMENT by the nonprofit and documented by the commission.

C. CONTRIBUTIONS FROM GOVERNMENT ENTITIES OR ANY AUDITABLE CASH EQUIVALENT CONTRIBUTIONS SHALL NOT CONSTITUTE MORE THAN FIFTY PER CENT OF THE MATCH REQUIRED BY SUBSECTION B OF THIS SECTION.

~~C.~~ D. The appropriations made in subsection A of this section are exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to the lapsing of appropriations.

Sec. 8. Information technology retirement appropriations; lapsing extension; retroactivity

A. Notwithstanding any other law, the amounts appropriated to the information technology plan line item for the Arizona state retirement system for fiscal year 2004-2005 by Laws 2003, chapter 262, section 88, as amended by Laws 2005, chapter 331, section 12, and exempted from lapsing by Laws 2006, chapter 316, section 6 and Laws 2007, chapter 259, section 17, and for fiscal year 2005-2006 by Laws 2005, chapter 286, section 87, as exempted from lapsing by Laws 2006, chapter 316, section 6 and Laws 2007, chapter 259, section 17, are exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations, through June 30, 2009.

B. This section is effective retroactively to from and after June 30, 2008.

Sec. 9. Delayed implementation; professional employer organization registration; retroactivity

A. Notwithstanding any other law, the secretary of state shall not implement title 23, chapter 3, article 4, Arizona Revised Statutes, relating to professional employer

organization registration, or any rules adopted pursuant to title 23, chapter 3, article 4, Arizona Revised Statutes, until July 1, 2010.

B. This section is effective retroactively to from and after February 29, 2008.

Sec. 10. Unrestricted federal monies; retroactivity

A. Any unrestricted federal monies received from May 1, 2008 through June 30, 2009 shall be deposited in the state general fund. The monies shall be used for the payment of essential governmental services.

B. This section is effective retroactively to from and after April 30, 2008.

Sec. 11. Authorization

Pursuant to section 41-1517, subsection U, Arizona Revised Statutes, as amended by this act, the department of commerce is authorized to use $337,700 in fiscal year 2008-2009 for up to six full-time equivalent positions.

Sec. 12. Fees for providing services; increases; fiscal year 2008-2009; intent; appropriations; exemption from rule making

A. Notwithstanding any other law, the director of each of the following agencies may raise fees in fiscal year 2008-2009 for services it provides:

1. Department of public safety.
2. Department of agriculture.
3. Department of environmental quality.
4. Department of health services.
5. State land department.
6. Radiation regulatory agency.

B. It is the intent of the legislature that the additional revenue generated by the fee increases shall not exceed the amounts listed below:

1. Department of public safety - $7,800,300.
2. Department of agriculture - $1,100,000.
3. Department of environmental quality - $600,000.
4. Department of health services - $600,000.
5. State land department - $600,000.
6. Radiation regulatory agency - $400,000.

C. Monies generated from any fees raised pursuant to subsection A are appropriated to the respective agencies.

D. The agencies described in subsection A are exempt from the rule making requirements of title 41, chapter 6, Arizona Revised Statutes, for the purpose of raising fees pursuant to this section for a period of one year from the effective date of this act.

Sec. 13. Calculation adjustments; fiscal year 2008-2009 closing state general fund balance; supplemental continuing appropriations

Notwithstanding any other law, for purposes of calculating the state general fund balance at the close of fiscal year 2008-2009, any monies appropriated from the state general fund that are exempted from lapsing pursuant to section 35-190, Arizona Revised Statutes, and that remain unexpended and unencumbered at the close of fiscal year 2008-2009 shall be included in the closing balance as if the appropriations had lapsed or otherwise reverted to the state general fund.

Sec. 14. Counties; revenue sources; expenditure limitation

A. Notwithstanding any other law, a county may meet any statutory funding requirements of section 12 of this act, relating to fees for providing services, from any source of county revenue designated by the county, including funds of any countywide special taxing district in which the board of supervisors serves as the board of directors.

B. County contributions that are made pursuant to section 12 of this act, relating to fees for providing services, are excluded from the county expenditure limitations.

Sec. 15. Exemption from rule making

The department of weights and measures is exempt from the rule making requirements of title 41, chapter 6, Arizona Revised Statutes, for the purpose of raising civil penalties pursuant to section 41-2115, Arizona Revised Statutes, as amended by this act, for a period of one year from the effective date of this act.

Sec. 16. Declaration of emergency; limitation

Notwithstanding section 35-192, Arizona Revised Statutes, or any other law, the aggregate amount of all liabilities incurred during a declaration of emergency shall not exceed three million five hundred thousand dollars in fiscal year 2008-2009.

Sec. 17. Retroactivity

Section 41-3505, Arizona Revised Statutes, as amended by this act, applies retroactively to from and after June 30, 2008.

Approved by the Governor June 27, 2008.
Filed in the Office of the Secretary of State June 27, 2008.

HEALTH CARE INSTITUTIONS—LICENSURE

CHAPTER 292

S. B. 1117

AN ACT AMENDING SECTION 36-422, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2008, CHAPTER 66, SECTION 1; AMENDING SECTION 36-425, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2008, CHAPTER 66, SECTION 3; RELATING TO HEALTH CARE INSTITUTIONS.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 36-422, Arizona Revised Statutes, as amended by Laws 2008, chapter 66, section 1, is amended to read:

36-422. Application for license; notification of proposed change in status; joint licenses; definitions

A. A person who wishes to apply for an initial license or to renew a license to operate a health care institution pursuant to this chapter shall file with the department an application on a written or electronic form prescribed, prepared and furnished by the department. The application shall contain the following:

ARIZONA STATE SENATE

Fifty-Second Legislature, First Regular Session

FINAL AMENDED

FACT SHEET FOR H.B. 2480

~~municipalities; pawnbrokers; gold; prohibited fees~~
(NOW: weights and measures department; transfer)

Purpose

Establishes the Weights and Measures Services Division (Division) within the Arizona Department of Agriculture (ADA) and transfers certain specified authority, powers, duties and responsibilities currently granted to the Arizona Department of Weights and Measures (ADWM) to the ADA. Transfers authority, powers, duties and responsibilities currently granted to ADWM with regard to vehicles for hire to the Arizona Department of Transportation (ADOT).

Background

The ADWM was established on August 18, 1987. The statutory duties of the ADWM include: 1) providing standards and oversight in the use of weights and measurements; 2) ensuring commercial devices, including scales, taxi cab meters and gas pumps used for the sale of commodities by weight, measure or count are correct and accurate; 3) ensuring proper labeling of products sold by weight, measure or count, and that prices are posted and items scan correctly; and 4) licensing weightmasters and registered service agencies responsible for the installation and repair of measuring devices in the marketplace. ADWM investigates consumer complaints concerning violations, in addition to other duties prescribed by law (A.R.S. § 41-2065).

The ADA was established by Laws 1989, Chapter 162 and consists of three main divisions: Animal Services, Plant Services and Environmental Services. ADA additionally includes a State Agricultural Laboratory, an Office of Agriculture Safety, an Office of Inspections and an Office of Commodity Development and Promotion. Among its responsibilities, ADA regulates livestock, aquaculture, agricultural pesticides, fertilizer and seeds, and maintains worker safety and environmental standards. ADA also issues a variety of permits, licenses and certifications.

The ADOT was established in 1974 and is statutorily charged under A.R.S. § 28-331 with providing an "integrated and balanced state transportation system." ADOT is granted the exclusive control and jurisdiction over state highways, state routes, state owned airports and all state owned transportation systems. The Director of ADOT is appointed by the Governor. The Director is responsible for the overall activities of ADOT and its divisions (A.R.S. § 28-363).

The fiscal impact to the state General Fund associated with this legislation in unknown.

Provisions

1. Establishes the Division within ADA and clarifies that the Division is responsible for the inspection, testing, and licensing of commercial weighing and measuring devices.

2. States that ADA and ADOT, as applicable, succeed to the authority, powers, duties and responsibilities of ADWM and transfers the authority, powers, duties and responsibilities of the ADWM to ADA and ADOT as follows:

3. Grants applicable licensing, certification, enforcement, complaint investigation, testing and regulation authority currently granted to ADWM to ADA and ADOT as appropriate.

4. Transfers the applicable powers and duties currently granted to ADWM regarding the administration of departmental responsibilities to the ADA and ADOT as appropriate.

5. Grants authority over the sales of commodities, bulk sales and the regulation of packaging of commodities to the ADA.

6. Grants ADA authority over standard weights and measures, physical standards and technical requirements for commercial devices, with certain exceptions related to vehicles for hire.

7. Transfers authority over and prescribed requirements related to vehicles for hire, including taxis, limousines, and livery vehicles, to ADOT. Directs ADOT to inspect and test taxi meters to determine whether they meet applicable requirements.

8. Transfers current prescribed requirements relating to motor fuel regulation and gasoline vapor control to ADA.

9. Transfers authority over and prescribed requirements with regard to livestock and agricultural product weights to ADA.

10. Transfers oversight over the State Metrology Laboratory to ADA.

11. Transfers relevant definitions from ADWM statutes to ADA and ADOT as appropriate.

12. Applies the current statutory responsibilities of the Director of ADWM to the Associate Director of the Division as appropriate.

13. States that this legislation does not alter the effect of any actions taken by or impair the obligations of ADWM that were in existence prior to the effective date of this legislation.

14. Maintains that administrative rules and orders adopted by ADWM continue in effect until superseded by administrative action by ADA and ADOT, as applicable.

15. Specifies that all administrative matters, contracts, judicial and quasi-judicial actions of ADWM are transferred to and retain the same status with the Department and ADOT, as applicable.

16. States that all certificates, licenses, registrations, permits and other indicia of qualification and authority issued by ADWM retain their validity for the duration of their lawful terms of validity.

17. Transfers all equipment, records, furnishings, data, investigative findings, property of ADWM and all appropriated monies of ADWM that remain unencumbered and unexpended on the effective date of this legislation to ADA and ADOT, as applicable.

18. Requires the Director of the Department of Administration to determine and allocate the transfer of the aforementioned property and monies.

19. Directs the Department of Administration, on or before March 1, 2016, to submit a succession plan to the Joint Legislative Budget Committee for review.

20. Stipulates that all personnel under the state personnel system and employed by ADWM are transferred to comparable positions and pay classifications in the respective administrative units of ADA and ADOT, as applicable, on the effective date of this legislation.

21. Exempts ADA and ADOT from rulemaking requirements for one year after the effective date of this legislation.

22. Directs Legislative Council to prepare proposed legislation that conforms the provisions of this legislation for consideration in the Fifty-Third Legislature, First Regular Session.

23. Repeals A.R.S. § 41-2061 and § 40-3021.02 relating to the administration and continuation of ADWM.

24. Makes technical and conforming changes.

25. Becomes effective July 1, 2016.

<u>Amendments Adopted by Committee</u>

- Adopted the strike everything amendment.

<u>Amendments Adopted by Committee of the Whole</u>

1. Establishes the Division within the Department and transfers certain specified authority, powers, duties and responsibilities currently granted to ADWM to ADA and ADOT, rather than transferring them to the Arizona Department of Environmental Quality, the Arizona Department of Health Services and ADOT.

2. Applies the current responsibilities of the Director of ADWM to the Associate Director of the Division as appropriate.

3. Removes language requiring that certain fees received by ADOT be deposited into the State Highway Fund and specifies that fees collected by ADOT in relation to vehicles for hire must be deposited into the state General Fund.

4. Directs ADOT to inspect and test taxi meters to determine whether they meet applicable requirements.

5. Directs the Department of Administration, on or before March 1, 2016, to submit a succession plan to the Joint Legislative Budget Committee (JLBC) for review.

6. Directs Legislative Council to prepare proposed legislation conforming the provisions of this legislation.

7. Changes the effective date of this legislation from January 1, 2016 to July 1, 2016.

8. Makes technical and conforming changes.

Senate Action				House Action		
GOV	3/18/15	DPA/SE	4-3-0-0	Final Read	4/3/15	36-22-2-0
3rd Read	4/2/15		17-8-5-0			

Signed by the Governor 4/9/15
Chapter 244

Prepared by Senate Research
April 14, 2015
CRS/LL/ls

State of Arizona
House of Representatives
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 232

HOUSE BILL 2171

AN ACT

AMENDING SECTION 3-102, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2015, CHAPTER 244, SECTION 3; AMENDING SECTIONS 3-105, 3-615, 3-3401, 3-3412, 3-3414, 3-3415, 3-3416 AND 3-3417, ARIZONA REVISED STATUTES; AMENDING TITLE 3, CHAPTER 19, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 3-3419; AMENDING SECTIONS 3-3431, 3-3433, 3-3434, 3-3436, 3-3437, 3-3451, 3-3452, 3-3453, 3-3454, 3-3473, 3-3475 AND 3-3476, ARIZONA REVISED STATUTES; REPEALING SECTION 3-3491, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2015, CHAPTER 244, SECTION 2; PROVIDING FOR RENUMBERING; AMENDING SECTIONS 3-3491, 3-3492, 3-3493, 3-3494 AND 3-3498, ARIZONA REVISED STATUTES, AS RENUMBERED BY THIS ACT; AMENDING SECTIONS 3-3512 AND 3-3514, ARIZONA REVISED STATUTES; AMENDING SECTION 9-499.18, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2015, CHAPTER 244, SECTION 26; AMENDING SECTIONS 28-101, 28-141 AND 28-2401, ARIZONA REVISED STATUTES; REPEALING SECTION 28-2515, ARIZONA REVISED STATUTES; AMENDING SECTION 28-4038, ARIZONA REVISED STATUTES; REPEALING SECTIONS 28-5493 AND 28-5860, ARIZONA REVISED STATUTES; AMENDING TITLE 28, CHAPTER 30, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 28-9527; AMENDING SECTIONS 28-9501, 28-9502, 28-9503, 28-9506, 28-9507, 28-9521, 28-9522, 28-9523, 28-9524, 28-9525, 28-9526, 28-9551, 28-9552, 28-9556, 41-1092.02, 42-5062 AND 42-6004, ARIZONA REVISED STATUTES; AMENDING LAWS 2014, CHAPTER 132, SECTION 11; RELATING TO WEIGHTS AND MEASURES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 3-102, Arizona Revised Statutes, as amended by Laws 2015, chapter 244, section 3, is amended to read:

3-102. Department organization

A. The Arizona department of agriculture is established consisting of the following divisions:

1. The animal services division, which is responsible for milk, dairy, livestock and aquaculture regulation, the state veterinarian, meat, poultry and egg inspection and performing the administrative functions authorized or contracted pursuant to law for the Arizona beef council.

2. The plant services division, which is responsible for the fruit and vegetable standardization program and entomological services.

3. The environmental services division, which is responsible for regulating seed, feed and agricultural chemicals, including pesticides and fertilizers, and for native plant protection.

4. The weights and measures services division, which is responsible for the inspection, testing and licensing of commercial weighing, ~~and~~ measuring AND COUNTING devices.

B. The following are established in addition to and separate from the divisions of the department:

1. A state agricultural laboratory.

2. An office of agriculture safety.

3. An office of inspections.

4. An office of commodity development and promotion.

C. The department shall have a central administrative service office providing:

1. Data processing, accounting and budgeting, records management, publications, property control and personnel services and training.

2. A program to cross-train appropriate personnel to enable them to perform similar functions or comparable work for different administrative units in the department.

Sec. 2. Section 3-105, Arizona Revised Statutes, is amended to read:

3-105. Division councils

A. The director may appoint a division council within any division of the department, and shall appoint an animal services division council AND A WEIGHTS AND MEASURES SERVICES DIVISION COUNCIL, consisting of representatives of the various industries and commodities regulated by ~~that division~~ THOSE DIVISIONS. Any such organization may request representation on the RESPECTIVE division council, but the actual appointments to the division council are at the discretion of the director.

B. Members shall serve two-year terms of office ~~which~~ THAT are staggered among the members. Members of division councils serve without compensation but are eligible for reimbursement for travel and other expenses as provided by law. Each division council shall select a chairman and vice-chairman from among its members. Division councils are public bodies for purposes of title 38, chapter 3, article 3.1. ~~The~~ EACH division council

shall assist and make recommendations to the associate director of the division regarding the administration and implementation of the various programs within the division. The associate director shall make a written response to the division council within fifteen days to each formal recommendation made by the council.

Sec. 3. Section 3-615, Arizona Revised Statutes, is amended to read:

3-615. Milk holding tanks; structural requirements; measuring device

A. A milk holding tank shall be so designed, constructed and installed as to withstand ordinary usage and permit accurate measurement of the fluid contents thereof, and shall be so maintained by the owner. The tanks shall be so designed, constructed, installed and maintained that complete delivery of the contents may be made through delivery faucets or valves. Each tank shall be plainly marked by die stamping in letters or numerals THAT ARE not less than one-fourth inch in height showing the approved calibrated capacity to the nearest gallon, and shall be equipped with a means by which the calibration level may be readily determined. The shell, bulkheads and supporting framework shall be so constructed that they will not become distorted under any condition of liquid lading, and means shall be provided for the sealing of adjustable parts in such A manner as to prevent the removal or changing of position without destroying or mutilating the seal. Each milk holding tank shall be equipped with a measuring device approved by the state inspector of THE weights and measures SERVICES DIVISION OF THE DEPARTMENT.

B. It shall be unlawful to alter or tamper with a milk holding tank or any part thereof in such a way as to give an inaccurate measurement of the fluid contents thereof.

Sec. 4. Section 3-3401, Arizona Revised Statutes, is amended to read:

3-3401. Definitions

In this chapter, unless the context otherwise requires:

1. "AREA A" HAS THE SAME MEANING PRESCRIBED IN SECTION 49-541.

2. "AREA B" HAS THE SAME MEANING PRESCRIBED IN SECTION 49-541.

3. "AREA C" MEANS THAT PORTION OF PINAL COUNTY LYING WEST OF RANGE 11 EAST, EXCLUDING THAT PORTION OF THE COUNTY LYING WITHIN AREA A AS DEFINED IN SECTION 49-541 AND THAT PORTION OF THE COUNTY WITHIN THE JURISDICTION OF ANY INDIAN TRIBE, BAND, GROUP OR COMMUNITY THAT IS RECOGNIZED BY THE UNITED STATES SECRETARY OF THE INTERIOR AND THAT EXERCISES GOVERNMENTAL AUTHORITY WITHIN THE LIMITS OF ANY INDIAN RESERVATION UNDER THE JURISDICTION OF THE UNITED STATES GOVERNMENT, NOTWITHSTANDING THE ISSUANCE OF ANY PATENT AND INCLUDING RIGHTS-OF-WAY RUNNING THROUGH THE RESERVATION.

~~1.~~ 4. "Associate director" means the associate director of the division.

~~2.~~ 5. "Biodiesel" means a ~~diesel fuel substitute that is produced from nonpetroleum renewable resources as defined by the United States environmental protection agency and that meets the registration requirements for fuels and fuel additives established by the United States environmental~~

~~protection agency pursuant to section 211 of the clean air act, as defined in section 49-401.01~~ MONO-ALKYL ESTER THAT MEETS ASTM D6751.

~~3.~~ 6. "Biodiesel blend" means a motor fuel that is composed of biodiesel and diesel fuel and that is designated by the letter "B", followed by the numeric value of the volume percentage of biodiesel in the blend.

~~4.~~ 7. "Biofuel" means a solid, liquid or gaseous fuel that is derived from biomass and that can be used directly for heating or power or as a BLEND COMPONENT IN motor fuel.

~~5.~~ 8. "Biofuel blend" means a motor fuel that is composed of a biofuel, that is combined with a ~~petroleum-based~~ PETROLEUM-BASED fuel and that is designated by the volume percentage of biofuel in the blend.

~~6.~~ 9. "Biomass" means biological material, such as plant or animal matter, excluding organic material that has been transformed by geological processes into substances such as coal or petroleum or derivatives thereof, that may be transformed into biofuel.

10. "BIOMASS-BASED DIESEL" MEANS A DIESEL FUEL SUBSTITUTE PRODUCED FROM NONPETROLEUM RENEWABLE RESOURCES THAT MEETS THE REGISTRATION REQUIREMENTS FOR FUELS AND FUEL ADDITIVES ESTABLISHED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY UNDER 42 UNITED STATES CODE 7545 AND INCLUDES FUEL DERIVED FROM ANIMAL WASTES, INCLUDING POULTRY WASTES AND OTHER WASTE MATERIALS, MUNICIPAL SOLID WASTE AND SLUDGE AND OIL DERIVED FROM WASTEWATER AND THE TREATMENT OF WASTEWATER. BIOMASS-BASED DIESEL DOES NOT INCLUDE BIODIESEL.

11. "BIOMASS-BASED DIESEL BLEND" MEANS A BLEND OF PETROLEUM-BASED DIESEL FUEL WITH BIOMASS-BASED DIESEL.

~~7.~~ 12. "Certification" means the process of determining the accuracy of a commercial device to the standards of this state by a registered service representative or the ~~department~~ DIVISION.

~~8.~~ 13. "Commercial device" means any weighing, measuring, metering or counting device that is used to determine the direct cost of things sold or offered or exposed for sale, or used to establish a fee for service if the cost is based on weight, measure or count, except that it does not include those devices used for in-house packaging, inventory control or law enforcement purposes.

~~9.~~ 14. "Commodity" means any merchandise, product or substance produced or distributed for sale to or use by others.

~~10.~~ 15. "Correct" as used in connection with weights and measures means conformance to all applicable requirements of this chapter.

~~11.~~ 16. "Diesel fuel" means a refined middle distillate that is used as a fuel in a compression-ignition internal combustion engine and that meets the specifications of ASTM D975.

~~12.~~ 17. "Division" means the weights and measures services division of the department.

~~13.~~ 18. ~~"E85"~~ "ETHANOL FLEX FUEL" means a fuel ethanol gasoline blend that meets the specifications of ASTM D5798 STANDARD SPECIFICATION FOR ETHANOL FUEL BLENDS FOR FLEXIBLE-FUEL AUTOMOTIVE SPARK-IGNITION ENGINES.

19. "FLEET OWNER" MEANS A REGISTERED OWNER OR LESSEE OF AT LEAST TWENTY-FIVE VEHICLES.

20. "GASOLINE" MEANS A VOLATILE, HIGHLY FLAMMABLE LIQUID MIXTURE OF HYDROCARBONS THAT DOES NOT CONTAIN MORE THAN FIVE ONE-HUNDREDTHS GRAMS OF LEAD FOR EACH UNITED STATES GALLON, THAT IS PRODUCED, REFINED, MANUFACTURED, BLENDED, DISTILLED OR COMPOUNDED FROM PETROLEUM, NATURAL GAS, OIL, SHALE OILS OR COAL AND OTHER FLAMMABLE LIQUIDS FREE FROM UNDISSOLVED WATER, SEDIMENT OR SUSPENDED MATTER, WITH OR WITHOUT ADDITIVES, AND THAT IS COMMONLY USED AS A FUEL FOR SPARK-IGNITION INTERNAL COMBUSTION ENGINES. GASOLINE DOES NOT INCLUDE DIESEL FUEL OR ETHANOL FLEX FUEL.

21. "GASOLINE PROVIDER" MEANS ANY MANUFACTURER OF GASOLINE OR ANY PERSON WHO IMPORTS GASOLINE INTO A VEHICLE EMISSIONS CONTROL AREA BY MEANS OF A PIPELINE OR IN TRUCKLOAD QUANTITIES FOR THE PERSON'S OWN USE WITHIN THE VEHICLE EMISSIONS CONTROL AREA OR ANY PERSON WHO SELLS GASOLINE INTENDED FOR ULTIMATE CONSUMPTION WITHIN A VEHICLE EMISSIONS CONTROL AREA. GASOLINE PROVIDER DOES NOT MEAN A PERSON WITH RESPECT TO A GASOLINE SUPPLIED OR SOLD BY THE PERSON TO ANOTHER PERSON FOR RESALE TO A RETAILER WITHIN A VEHICLE EMISSIONS CONTROL AREA OR TO A FLEET OWNER FOR CONSUMPTION WITHIN A VEHICLE EMISSIONS CONTROL AREA.

~~14.~~ 22. "Inspector" means a state official of the division.

~~15.~~ 23. "Liquid ~~fuel~~ measuring device" means any meter, pump, tank, gauge or apparatus used for volumetrically determining the quantity of any internal combustion engine fuel, liquefied petroleum gas or low viscosity heating oil.

24. "MANUFACTURER'S PROVING GROUND" MEANS A FACILITY WHOSE SOLE PURPOSE IS TO DEVELOP COMPLETE ADVANCED VEHICLES FOR AN AUTOMOTIVE MANUFACTURER.

~~16.~~ 25. "Misfuel" means the act of dispensing into the fuel tank of a motor vehicle a motor fuel that was not intended to be used in the engine of that motor vehicle.

~~17.~~ 26. "Motor fuel" means a petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, number one or number two diesel fuel or any grade of oxygenated gasoline typically used in the operation of a motor engine, including biodiesel blends, biofuel blends and ~~the ethanol blend E85 as defined in ASTM D5798~~ ETHANOL FLEX FUELS.

27. "MOTOR VEHICLE RACING EVENT" MEANS A RACE THAT USES UNLICENSED VEHICLES DESIGNED AND MANUFACTURED SPECIFICALLY FOR RACING PURPOSES AND THAT IS CONDUCTED ON A PUBLIC OR PRIVATE RACECOURSE FOR THE ENTERTAINMENT OF THE GENERAL PUBLIC. MOTOR VEHICLE RACING EVENT INCLUDES PRACTICE, QUALIFYING AND DEMONSTRATION LAPS CONDUCTED AS PART OF THE ACTIVITIES RELATED TO A MOTOR VEHICLE RACE.

28. "OXYGENATE" MEANS ANY OXYGEN-CONTAINING ASHLESS, ORGANIC COMPOUND, INCLUDING ALIPHATIC ALCOHOLS AND ALIPHATIC ETHERS, THAT MAY BE USED AS A FUEL OR AS A GASOLINE BLENDING COMPONENT AND THAT IS APPROVED AS A BLENDING AGENT UNDER THE PROVISIONS OF A WAIVER ISSUED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY PURSUANT TO 42 UNITED STATES CODE SECTION 7545(f).

29. "OXYGENATED FUEL" MEANS AN UNLEADED MOTOR FUEL BLEND THAT CONSISTS PRIMARILY OF GASOLINE AND AT LEAST ONE AND ONE-HALF PERCENT BY WEIGHT OF ONE OR MORE OXYGENATES AND THAT HAS BEEN BLENDED CONSISTENT WITH THE PROVISIONS OF A WAIVER ISSUED BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY PURSUANT TO 42 UNITED STATES CODE SECTION 7545(f).

~~18.~~ 30. "Package" means any commodity enclosed in a container or wrapped in any manner in advance of sale in units suitable for either wholesale or retail trade.

~~19.~~ 31. "Person" means both the plural and the singular, as the case demands, and includes individuals, partnerships, corporations, companies, societies and associations.

32. "PRODUCT TRANSFER DOCUMENT" MEANS ANY BILL OF LADING, LOADING TICKET, MANIFEST, DELIVERY RECEIPT, INVOICE OR OTHER DOCUMENTATION USED ON ANY OCCASION WHEN A PERSON TRANSFERS CUSTODY OR TITLE OF MOTOR FUEL OTHER THAN WHEN MOTOR FUEL IS SOLD OR DISPENSED AT A SERVICE STATION OR FLEET VEHICLE FUELING FACILITY.

~~20.~~ 33. "Public weighmaster" means any person who is engaged in any of the following:

(a) The business of weighing any object or thing for the public generally for hire or for internal use and issuing for that weighing a weight certificate intended to be accepted as an accurate weight ~~upon~~ ON which a purchase or sale is to be based or on which a service fee is to be charged.

(b) The business of weighing ~~for hire~~ FOR-HIRE motor vehicles, trailers or semitrailers and issuing weight certificates intended to be accepted as an accurate weight for the purpose of determining the amount of any tax, fee or other assessment on the vehicles.

~~21.~~ 34. "Reference standards" means the physical standards of the state that serve as the legal reference from which all other standards and weights and measures are derived.

~~22.~~ 35. "Registered service agency" means any agency, firm, company or corporation that for hire, award, commission or any other payment of any kind installs, services, repairs or reconditions a commercial device or tests or repairs vapor recovery systems or vapor recovery components and that has been issued a license by the division.

~~23.~~ 36. "Registered service representative" means any individual who for hire, award, commission or any other payment of any kind installs, services, repairs or reconditions a commercial device or tests or repairs vapor recovery systems or vapor recovery components and who has been issued a license by the division.

~~24.~~ 37. "Retail seller" means a person whose business purpose is to sell, expose or offer for sale or use any package or commodity by weight, measure or count.

~~25.~~ 38. "Secondary standards" means the physical standards that are traceable to the reference standards through comparisons, using acceptable laboratory procedures, and that are used in the enforcement of weights and measures laws and rules.

39. "SUPPLIER" MEANS ANY PERSON THAT IMPORTS GASOLINE INTO A VEHICLE EMISSIONS CONTROL AREA BY MEANS OF A PIPELINE OR IN TRUCKLOAD QUANTITIES FOR THE PERSON'S OWN USE WITHIN THE VEHICLE EMISSIONS CONTROL AREA OR ANY PERSON THAT SELLS GASOLINE INTENDED FOR ULTIMATE CONSUMPTION WITHIN A VEHICLE EMISSIONS CONTROL AREA, EXCEPT THAT SUPPLIER DOES NOT MEAN A PERSON WITH RESPECT TO GASOLINE SUPPLIED OR SOLD BY THE PERSON TO ANOTHER FOR RESALE TO A RETAILER WITHIN A VEHICLE EMISSIONS CONTROL AREA OR TO A FLEET OWNER FOR CONSUMPTION WITHIN A VEHICLE EMISSIONS CONTROL AREA.

40. "VEHICLE EMISSIONS CONTROL AREA" MEANS A COUNTY WITH A POPULATION OF ONE MILLION TWO HUNDRED THOUSAND OR MORE PERSONS AND ANY PORTION OF A COUNTY CONTAINED IN AREA A, OR ANY PORTION OF AREA B OR C, EXCEPT THAT SUCH AN AREA DOES NOT INCLUDE A MANUFACTURER'S PROVING GROUND THAT IS LOCATED IN THE VEHICLE EMISSIONS CONTROL AREA.

~~26.~~ 41. "Weight" as used in connection with any commodity means net weight.

~~27.~~ 42. "Weights" or "measures", or both, means all weights, measures, meters or counters of every kind, instruments and devices for weighing, measuring, metering or counting and any appliance and accessories associated with any or all such instruments and devices.

Sec. 5. Section 3-3412, Arizona Revised Statutes, is amended to read:

3-3412. Physical standards

Weights and measures that are traceable to the United States prototype standards supplied by the federal government, or approved as being satisfactory by the national institute of standards and technology, shall be the state reference standards of weights and measures~~,~~ and shall be maintained in such calibration as prescribed by the national institute of standards and technology. All secondary standards may be prescribed by the ASSOCIATE director and shall be verified ~~upon their~~ ON initial receipt and as often thereafter as deemed necessary by the ASSOCIATE director.

Sec. 6. Section 3-3414, Arizona Revised Statutes, is amended to read:

3-3414. Powers and duties; definition

A. The division shall:

1. Maintain custody of the state reference standards of weights and measures that are traceable to the United States prototype standards and that are supplied to the states by the federal government or that are otherwise approved as being satisfactory by the national institute of standards and technology.

2. Keep the state reference standards in a safe and suitable place in the metrology laboratory of the division and ensure that they ~~shall~~ ARE not ~~be~~ removed from the laboratory except for repairs or for calibration as may be prescribed by the national institute of standards and technology.

3. Keep accurate records of all standards and equipment.

4. Adopt any rules necessary to carry out this chapter and adopt reasonable rules for the enforcement of this chapter. These rules have the force and effect of law and shall be adopted pursuant to title 41, chapter 6. In adopting these rules, the associate director shall consider, as far as is

practicable, the requirements established by other states and by authority of the United States, except that rules shall not be made in conflict with this chapter.

5. Publish rules adopted pursuant to this chapter and issue appropriate copies at no cost to all new applicants for licensure and certification. Updated copies of the rules shall be distributed, on request, at no cost to the public.

6. Investigate complaints made to the division concerning violations of this chapter and, on its own initiative, conduct investigations it deems appropriate to develop information relating to prevailing procedures in commercial quantity determination and relating to possible violations of this chapter, ~~and~~ in order to EDUCATE THE PUBLIC AND REGULATED PERSONS TO ENCOURAGE AND promote the general objective of accuracy in the determination and representation of quantity in commercial transactions.

7. Establish labeling standards, establish standards of weight, measure or count and establish reasonable standards of fill for any packaged commodity, and may establish standards for open dating information.

8. Grant, pursuant to this chapter, exemptions from the licensing provisions of this chapter for weighing and measuring instruments, standards or devices when the ownership or use of the instrument or device is limited to federal, state or local government agencies in the performance of official functions. On request, the division may conduct inspections of instruments, standards or devices and shall charge a fee pursuant to section 3-3452.

9. Delegate to appropriate personnel any of the responsibilities of the associate director for the proper administration of this chapter.

10. Inspect and test weights and measures THAT ARE kept, offered or exposed for sale.

11. Inspect and test, to ascertain if they are correct, weights and measures commercially used either:

(a) In determining the weight, measure or count of commodities or things sold, or offered or exposed for sale, on the basis of weight, measure or count.

(b) In computing the basic charge or payment for services rendered on the basis of weight, measure or count.

12. Test, at random, commodities, weights and measures used in public institutions for which monies are appropriated by the legislature. The testing of commodities, weights and measures in public institutions ~~shall include~~ INCLUDES items:

(a) That have historically been of short weight, measure or count.

(b) THAT HAVE BEEN found to be of short weight, measure or count by other jurisdictions.

(c) THAT ARE to be tested as part of a regional or national survey.

13. Test, approve for use and affix a seal of approval for use ~~of~~ ON all weights, measures and commercial devices manufactured in or brought into this state as it finds to be correct and shall reject and mark as rejected weights, measures and devices it finds to be incorrect. Weights, measures

and devices that have been rejected may be seized by the division if not corrected within the time specified or if used or disposed of in a manner not specifically authorized. The division shall condemn and may seize weights, measures and devices that are found to be incorrect and that are not capable of being made correct.

14. Sample and test motor fuel that is stored, sold or exposed or offered for sale or that is stored for use by a fleet owner to determine whether the motor fuel meets the standards for motor fuel set forth in section 3-3433 and article 6 of this chapter and in any rule adopted by the associate director pursuant to this chapter. ~~For the purposes of this paragraph, "fleet owner" has the same meaning prescribed in section 3-3491.~~

15. Randomly witness tests on all mandated vapor recovery systems that are installed or operated in this state and, if the systems are determined to be in compliance with the law, approve those systems for use and reject, mark as rejected and stop the use of those systems THAT ARE determined not to be in compliance with the law.

16. Inspect facilities at which motor fuel is stored, sold or exposed or offered for sale to determine whether dispensing devices are properly labeled.

17. Publish and distribute to consumers AND REGULATED PERSONS weighing and measuring information.

18. Weigh, measure or inspect commodities THAT ARE kept, offered or exposed for sale, sold or in the process of delivery to determine whether they contain the amounts represented and whether they are kept, offered or exposed for sale in accordance with this chapter or rules adopted pursuant to this chapter. In carrying out this section, the associate director shall employ recognized sampling procedures, such as are designated in appropriate national institute of standards and technology handbooks and supplements to those handbooks, except as modified or rejected by rule.

19. Allow reasonable variations from the stated quantity of contents only after a commodity has entered intrastate commerce. These variations shall include those caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice.

20. Prescribe the standards of weight and measure and additional equipment methods of test and inspection to be employed in the enforcement of this chapter. The associate director may prescribe or provide the official test and inspection forms to be used in the enforcement of this chapter.

21. Apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating this chapter.

22. Report to the governor on or before August 1 of each year and at such other times as may be required on the work accomplished under this chapter.

23. Subject to title 41, chapter 4, article 4, employ such personnel as needed to assist in administering this chapter.

24. Ensure that any information that is required to be filed with the ~~department~~ DIVISION, that relates to the contents of motor fuels that are sold in this state and that is a trade secret as defined in section 49-201 is not disclosed.

25. Establish by rule labeling standards for tanks and containers of motor fuels.

B. The associate director may provide for the periodic examination and inspection of metering devices, including devices used to measure usage of electricity, natural gas or water by a consumer. Examination and inspection authority shall not apply to metering devices owned by federal, state or local government agencies unless requested by the government agency that owns the metering devices.

C. The associate director may establish standards for the presentation of cost-per-unit information. This subsection does not mandate the use of cost-per-unit information in connection with the sale of any standard packed commodity.

D. The associate director, when necessary to carry out this chapter, may adopt and enforce rules relating to quality standards for motor fuel, kerosene, oil, except used oil fuel, and hazardous waste fuel, lubricating oils, lubricants, antifreeze and other liquid or gaseous fuels. The associate director shall adopt rules to ensure that oxygenated fuels, as described in article 6 of this chapter, that are stored, used, sold or exposed or offered for use or sale are blended and stored, sold, exposed or offered in such a manner as to ensure that the oxygenated fuels are properly blended, that they meet the standards set forth in section 3-3433 and article 6 of this chapter, and in rules adopted pursuant to this chapter, and that dispensers at which the oxygenated fuels are dispensed are labeled as defined by rule of the division in such a manner as to notify persons of the type of oxygenated fuel being dispensed and the maximum percentage of oxygenate by volume contained in the oxygenated fuel. The associate director of the division shall consult with the director of the department of environmental quality in adopting rules pursuant to this subsection.

E. Testing and inspection conducted pursuant to this chapter shall be done, to the extent practicable, without prior notice, by a random systematic method determined by the associate director or in response to a complaint by the public. The testing and inspection may be done by private persons and firms pursuant to contracts entered into by the associate director in accordance with title 41, chapter 23 or by a registered service agency or registered service representative licensed pursuant to section 3-3454. The associate director shall establish qualifications of persons and firms for selection for purposes of this subsection. The persons or firms conducting the testing and inspection shall immediately report to the division any violations of this chapter and incorrect weights, measures, devices, vapor recovery systems or vapor recovery components for investigation and enforcement by the ~~department~~ DIVISION. A person or firm that tests or inspects a weight, measure, device, vapor recovery system or vapor recovery

component that is rejected shall not correct the defect causing the rejection without the permission of the division.

F. During the course of an investigation or an enforcement action by the division, information regarding the complainant is confidential and is exempt from title 39, chapter 1, unless the complainant authorizes the information to be public.

G. For the purposes of the labeling requirements prescribed in this section, "oxygenated fuel" means a motor fuel blend containing 1.5 percent or more by weight of oxygen.

Sec. 7. Section 3-3415, Arizona Revised Statutes, is amended to read:

3-3415. Enforcement powers of the associate director, agents and inspectors

A. When necessary for the enforcement of this chapter and rules adopted pursuant to this chapter, the ASSOCIATE director or the ASSOCIATE director's agents and inspectors shall:

1. Enter any commercial, nonprofit business or governmental premises during normal operating hours, except that if the premises are not open to the public, the ASSOCIATE director or the ASSOCIATE director's agents and inspectors shall first present their credentials.

2. Issue stop-use, hold and removal orders with respect to any weights and measures commercially used, stop-sale, hold and removal orders with respect to any commodities, bulk commodities or motor fuel kept, offered or exposed for sale, stop-use and hold orders with respect to a vapor recovery system or parts of a vapor recovery system and stop-use, stop-sale, hold and removal orders with respect to any motor fuel found to be in violation of this chapter or rules adopted pursuant to this chapter.

3. Seize for use as evidence, without formal warrant, any incorrect or unapproved weight, measure, package or commodity found to be used, retained, offered or exposed for sale or sold in violation of this chapter or rules adopted pursuant to this chapter.

4. Stop any commercial vehicle ~~upon~~ ON reasonable cause to believe that the vehicle contains evidence of a violation of this chapter and, after presentment of the ~~director's~~ CREDENTIALS OF THE ASSOCIATE DIRECTOR or the ASSOCIATE director's ~~agent's~~ AGENTS or ~~inspector's credentials~~ INSPECTORS, inspect the contents, require that the person in charge of the vehicle produce any documents in the person's possession concerning the contents and require the person to proceed with the vehicle to some specified place for inspection.

B. With respect to the enforcement of this chapter, the ASSOCIATE director or the ASSOCIATE director's agents or inspectors may issue A WARNING REQUIRING CORRECTIVE ACTION OR a citation to any violators of this chapter in accordance with ~~the provisions of~~ section 13-3903.

C. The ASSOCIATE director or the ASSOCIATE director's agents or inspectors may apply for a special inspection warrant for inspection of real or personal property for the purpose of enforcement of this chapter. The special inspection warrant shall be issued as provided in section 49-433.

Sec. 8. Section 3-3416, Arizona Revised Statutes, is amended to read:

3-3416. State metrology laboratory; operation; standards; testing

A. The ASSOCIATE director shall establish and operate within the ~~department~~ DIVISION the state metrology laboratory.

B. A commercial device shall not be approved for use in the state unless the design and construction comply with national institute of standards and technology requirements.

C. All commercial devices approved and certified shall meet the tolerance, design and construction requirements prescribed by the national institute of standards and technology.

D. All commercial devices THAT ARE determined unfit for approval shall be rejected without testing.

E. All weights, weight sets, measures, meters, counters or other devices THAT ARE used by registered service representatives shall show an indication of the approval date and jurisdiction issuing the approval.

F. All persons who install, service or repair commercial devices in this state shall submit the test equipment used to the ~~department's~~ DIVISION'S metrology laboratory for approval at least annually. A certificate of approval that specifically identifies the test equipment and that is issued by another state laboratory may be accepted in lieu of submitting equipment if the other state laboratory is certified by the national institute of standards and technology.

G. All weights, measures, meters, counters or other devices shall be tested in the order they are scheduled in the laboratory unless arrangements for testing have been made in advance.

H. Work THAT IS completed in the metrology laboratory shall be paid for pursuant to the fees prescribed in the rules of the ~~department~~ DIVISION.

Sec. 9. Section 3-3417, Arizona Revised Statutes, is amended to read:

3-3417. Fees to state general fund

The ASSOCIATE director shall deposit, pursuant to sections 35-146 and 35-147, all fees collected in the state general fund.

Sec. 10. Title 3, chapter 19, article 2, Arizona Revised Statutes, is amended by adding section 3-3419, to read:

3-3419. Consultation and training program; inspection training program

THE ASSOCIATE DIRECTOR MAY DEVELOP AND IMPLEMENT THE FOLLOWING TRAINING PROGRAMS:

1. A CONSULTATION AND TRAINING PROGRAM FOR ENTITIES REGULATED UNDER THIS CHAPTER THAT USES ON-SITE VISITS, TRAINING AND EDUCATIONAL MATERIALS, AND INFORMATIONAL PRESENTATIONS TO PROVIDE TRAINING AND ADVICE ON INTERPRETING, APPLYING AND COMPLYING, INCLUDING ALTERNATIVE METHODS OF COMPLYING, WITH THE STATUTES, RULES, REGULATIONS, STANDARDS OR OTHER MATTERS RELATING TO COMPLIANCE WITH THIS CHAPTER.

2. AN INSPECTION TRAINING PROGRAM FOR DIVISION INSPECTORS AND EMPLOYEES TO ENSURE THAT ALL INSPECTIONS AND TESTS PROVIDED FOR IN THIS CHAPTER ARE CONDUCTED IN A CONSISTENT MANNER TO THE EXTENT PRACTICABLE.

Sec. 11. Section 3-3431, Arizona Revised Statutes, is amended to read:

3-3431. Sale of commodities

A. A person shall not sell or offer or expose for sale less than the quantity the person represents.

B. As a buyer, a person shall not take any more than the quantity the person represents when the person furnishes the weight or measure by means of which the quantity is determined.

C. A person shall not misrepresent the price of any commodity or service sold or offered, exposed or advertised for sale by weight, measure or count or represent the price in any manner calculated or tending to mislead or in any way deceive a person.

D. Except as otherwise provided by the associate director, commodities in liquid form shall be sold by liquid measure or by weight, and commodities not in liquid form shall be sold only by weight, by measure or by count, as long as the method of sale provides accurate quantity information.

E. If the quantity is determined by the seller, bulk sales shall be accompanied by a delivery ticket containing the following information unless exempted by rule:

1. The name and address of the vendor and purchaser.

2. The date delivered.

3. The quantity delivered and the quantity on which the price is based, if this differs from the delivered quantity.

4. The identity in the most descriptive terms commercially practicable, including any quality representation made in connection with the sale.

5. The count of individually wrapped packages, if more than one.

F. Except as otherwise provided in this chapter or by rules adopted pursuant to this chapter, any package kept for the purpose of sale or offered or exposed for sale shall bear on the outside of the package a definite, plain and conspicuous declaration of:

1. The identity of the commodity in the package, unless the commodity can easily be identified through the wrapper or container.

2. The quantity of contents in terms of weight, measure or count.

3. The name and place of business of the manufacturer, packer or distributor, in the case of any package kept, offered or exposed for sale or sold in any place other than on the premises where packed.

4. The price, except as provided in subsections L, ~~and~~ M AND N of this section.

G. In addition to the declarations required by subsection F of this section, any package being one of a lot containing random weights of the same commodity and bearing the total selling price of the package shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight.

H. If a packaged commodity is advertised in any manner with the retail price stated, there shall be closely and conspicuously associated with the retail price a declaration of quantity as is required by law or rule to appear on the package. If a dual declaration is required, only the declaration that sets forth the quantity in terms of the smaller unit of weight or measure need appear in the advertisement.

I. The packager of a short weighted item offered for sale is liable under this chapter.

J. If a retail seller engaging in the sale of motor fuel posts the selling price of the fuel on the premises, the seller shall post the selling price only by the price per gallon, except that if the fuel is dispensed by a measure other than whole gallons the seller shall represent the selling price for each unit of such other measure on the individual pump or other dispensing device. If a retail seller engaging in the sale of motor fuel advertises the price of the fuel off the premises, the retail seller shall advertise the price only by the price per gallon.

K. The owner or operator of a motor fuel dispensing site shall ensure that a sticker provided by the department of transportation that is three inches by five inches and that depicts the amount of federal and state taxes imposed on one gallon of gasoline is displayed on one side of each motor fuel dispenser. The sticker required by this subsection shall contain white lettering on a black background or black lettering on a white background to ensure a contrasting color to the motor fuel dispenser and shall be placed on the upper sixty percent of the dispenser. The division shall use stickers provided by the department of transportation. A template of the sticker shall be placed on the division's website for use by retailers. ~~During the course of its normal random inspections, the division shall apply the stickers with a compliance schedule of four years after July 29, 2010.~~

L. Instead of each package bearing the price as required under subsection F, paragraph 4 of this section, the seller may post the price of the package on the shelf or MAY display THE PRICE at OR NEAR the point of display of the product.

M. INSTEAD OF EACH PACKAGE BEARING THE PRICE AS REQUIRED UNDER SUBSECTION F, PARAGRAPH 4 OF THIS SECTION, IF THE PACKAGE IS AVAILABLE FOR SALE ONLY WITH THE ASSISTANCE OF A SALESPERSON, THE SELLER MAY DISPLAY THE PACKAGE AT A SERVICE COUNTER STAFFED BY THE SALESPERSON.

~~M.~~ N. INSTEAD OF EACH PACKAGE BEARING THE PRICE AS REQUIRED UNDER SUBSECTION F, PARAGRAPH 4 OF THIS SECTION, if the package is offered for sale at a price reduced by a percentage or a fixed amount from a previously offered price OR AT A REDUCED PRICE FOR THE PURCHASE OF MULTIPLE ITEMS, the reduction shall be displayed at the point of display of the package OR NEAR THE POINT OF DISPLAY OF THE PACKAGE in the manner required by this section.

~~N.~~ O. On the request of a consumer, a retail seller shall provide:

1. A means of recording prices such as grease pencils, felt markers, scanners or other similar instruments for recording the price.

2. A written statement of the retail seller's policies regarding errors in pricing.

Sec. 12. Section 3-3433, Arizona Revised Statutes, is amended to read:

3-3433. Standards for motor fuel; exceptions

A. Except as provided in section 3-3434 and subsections C, D, E, F, G~~,~~ AND K ~~and L~~ of this section, a retail seller or fleet owner shall not store, sell or expose or offer for sale any motor fuel, kerosene, oil or other liquid or gaseous fuel or lubricating oil, lubricant, mixtures of lubricants or other similar products if the product fails to meet the standards specified in this section and in the rules adopted by the associate director.

B. A person shall not misrepresent the nature, origination, quality, grade or identity of any product specified in subsection A of this section or represent the nature, origination, quality, grade or identity of such product in any manner calculated or tending to mislead or in any way deceive. This subsection does not prohibit product origination disclaimer labeling on the retail dispenser.

C. After consultation with the director of the department of environmental quality, the standards and test methods for motor fuels shall be established by the associate director of the division by rule.

D. Maximum vapor pressure for gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles in a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A ~~as defined in section 49-541~~ shall be 9.0 pounds per square inch from and after September 30 through March 31 of each year. Fuel used in motor vehicles at a manufacturer's proving ground or a motor vehicle racing event ~~as defined by section 3-3491~~ is exempt from this subsection.

E. From and after September 30 through March 31 of each year, a person shall not supply or sell gasoline that exceeds the ASTM D4814 class A vapor pressure/distillation class ten volume percent evaporated distillation temperature.

F. Maximum vapor pressure for gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles in a county with a population of one million two hundred thousand persons or more and any portion of a county contained in area A ~~as defined in section 49-541~~ shall be 7.0 pounds per square inch from and after May 31 through September 30 of each year. Fuel used in motor vehicles at a manufacturer's proving ground or a motor vehicle racing event ~~as defined by section 3-3491~~ is exempt from this subsection.

G. Exclusively for the purposes of transportation conformity and only if the administrator of the United States environmental protection agency fails to approve the applicable plan required pursuant to section 49-406, maximum vapor pressure for gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles in area B ~~as defined in section 49-541~~ shall be ten pounds per square inch from

and after September 30 through March 31 of each year. Fuel used in motor vehicles at a manufacturer's proving ground or a motor vehicle racing event ~~as defined by section 3-3491~~ is exempt from this subsection.

H. Notwithstanding subsections D, F and G of this section, the associate director of the division in consultation with the director of the department of environmental quality shall approve alternate fuel control measures that are submitted by ~~manufacturers or suppliers of~~ gasoline PROVIDERS and that the director and the associate director determine will result in either of the following:

1. Motor vehicle carbon monoxide emissions that are equal to or less than emissions that result under compliance with subsection D of this section and section ~~3-3493~~ 3-3492. In making this determination, the associate director of the division and the director of the department of environmental quality shall compare the emissions of the alternate fuel control measure with the emissions of a fuel with a maximum vapor pressure standard as prescribed by this section and with the minimum oxygen content or percentage by volume of ethanol as prescribed by section ~~3-3493~~ 3-3492.

2. Motor vehicle non-methane hydrocarbon emissions that are equal to or less than the emissions that result under compliance with subsection F of this section. In making this determination, the associate director of the division and the director of the department of environmental quality shall compare the motor vehicle non-methane hydrocarbon emissions of the alternate fuel control measure with the motor vehicle non-methane hydrocarbon emissions of a fuel that complies with the maximum vapor pressure standard as prescribed by subsection F of this section.

I. Any alternate fuel control measures that are approved shall not increase emissions of non-methane hydrocarbons, particulates, carbon monoxide or oxides of nitrogen. Alternate fuel control measures approved pursuant to subsection H of this section and this subsection may be used by any ~~manufacturer or supplier of~~ gasoline PROVIDER unless the approval is rescinded more than one hundred eighty days before the first day of a gasoline control period. ~~Manufacturers and suppliers who~~ GASOLINE PROVIDERS THAT use an approved alternate fuel control measure shall annually submit a compliance plan to the associate director no later than sixty days before the first day of a gasoline control period.

J. A person shall not sell or offer or expose for sale diesel fuel grade 1, 2 or 4 as defined in ASTM D975, BIODIESEL, BIODIESEL BLENDS OR BIOMASS-BASED DIESEL OR BIOMASS-BASED DIESEL BLENDS that ~~contains~~ CONTAIN sulfur in excess of~~:~~

~~1. For low sulfur diesel fuel, five hundred parts per million by weight for use in area A as defined in section 49-541.~~

~~2. For ultra low sulfur diesel fuel, the amount that conforms with 40 Code of Federal Regulations section 80.520(a)(1)~~ FIFTEEN PARTS PER MILLION. LOCOMOTIVE AND MARINE DIESEL FUEL IS EXEMPT FROM THIS REQUIREMENT IF THE FUEL MEETS THE REQUIREMENTS OF 40 CODE OF FEDERAL REGULATIONS SECTION 80.513(g) AND (h).

~~K. A person shall not sell or offer or expose for sale diesel fuel, biodiesel or biodiesel blends that contain sulfur in excess of five hundred parts per million for use in area A as defined in section 49-541.~~

~~L.~~ K. A person shall label dispensers at which biodiesel, ~~or~~ biodiesel blends, BIOMASS-BASED DIESEL OR BIOMASS-BASED DIESEL BLENDS are dispensed in conformance with 16 Code of Federal Regulations part 306 ~~and 40 Code of Federal Regulations sections 80.570, 80.571, 80.572, 80.573 and 80.574~~. This section does not preclude a person from labeling a dispenser that dispenses diesel fuel that contains up to five percent biodiesel OR BIOMASS-BASED DIESEL with a label that states "may contain up to five percent biodiesel" OR "MAY CONTAIN UP TO FIVE PERCENT BIOMASS-BASED DIESEL".

~~M.~~ L. For biodiesel blends that contain more than five percent by volume of biodiesel, a person shall prepare product transfer documents in a manner that notifies the transferee of the percent by volume of biodiesel in the product. ~~For diesel fuel that contains five percent or less by volume of biodiesel, a person shall prepare product transfer documents in a manner that notifies that transferee of any volume percent of biodiesel intentionally added to or known by the transferor to be in the product.~~

~~N.~~ M. The associate director shall adopt rules regarding the establishment and enforcement of all of the following:

1. National or federal standards for individual biofuels and biofuel blends.

2. United States environmental protection agency and ASTM test methods for individual biofuels and biofuel blends.

3. Registration and reporting requirements for producers, blenders and suppliers of biofuels and biofuel blends.

4. Labeling requirements for biofuels and biofuel blends other than biodiesel or biodiesel blends.

5. Quality assurance and quality control programs for producers, blenders and suppliers of biofuels and biofuel blends addressing rack, batch or other blending.

6. Requirements that the dispensing equipment meet appropriate UL ratings where available and applicable, that the equipment comply with rules adopted by the division relating to approval, installation and sale of devices and that the equipment be compatible with the products being dispensed.

~~O.~~ N. A biofuels or biofuel blends producer, blender, distributor, supplier or retail seller that is in compliance with this section and the rules adopted pursuant to this section is not liable to a consumer for any injuries or property damage related to a consumer who misfuels.

~~P. A person shall label each dispenser at which ultra-low sulfur diesel fuel is dispensed in a manner that conforms with 40 Code of Federal Regulations sections 80.570, 80.571, 80.572, 80.573 and 80.574 to inform the customer of the sulfur content of the diesel fuel being dispensed.~~

~~Q. A person shall label each dispenser at which low sulfur diesel fuel is dispensed in a manner that conforms with 40 Code of Federal Regulations~~

~~sections 80.570, 80.571, 80.572, 80.573 and 80.574 to inform the customer of the sulfur content of the diesel fuel being dispensed.~~

~~R.~~ O. If any person transfers custody or title of a diesel fuel or distillate, BIODIESEL, A BIODIESEL BLEND, BIOMASS-BASED DIESEL OR A BIOMASS-BASED DIESEL BLEND, except if the ~~diesel~~ fuel is dispensed into a motor vehicle or nonroad, locomotive or marine equipment, the transferor shall provide to the transferee product transfer documents that conform with 40 Code of Federal Regulations section 80.590.

~~S.~~ P. If the transfer of a motor fuel is from a terminal, storage facility, or transmix facility, the product transfer documents shall contain the information prescribed in subsection ~~R~~ O of this section. ~~as well as~~ IN ADDITION, THE FUEL TRANSPORTER SHALL ENSURE THAT the name and address of the final destination for the shipment, as prescribed by division rule, ARE INCLUDED and ~~must~~ THAT THE PRODUCT TRANSFER DOCUMENTS accompany the shipment to its final destination.

Sec. 13. Section 3-3434, Arizona Revised Statutes, is amended to read:

3-3434. Area C; standards for motor fuel; exceptions

A. Except as provided in subsections C and D of this section, after May 31, 2008, a retail seller or fleet owner shall not store, sell or expose or offer for sale in area C ~~as defined in section 3-3491~~ any motor fuel, kerosene, oil or other liquid or gaseous fuel or lubricating oil, lubricant, mixtures of lubricants or other similar products if the product fails to meet the standards specified in this section and in the rules adopted by the associate director.

B. A person shall not misrepresent the nature, origination, quality, grade or identity of any product specified in subsection A of this section or represent the nature, origination, quality, grade or identity of such product in any manner calculated or tending to mislead or in any way deceive.

C. After consultation with the director of the department of environmental quality, the standards and test methods for motor fuels shall be established by the associate director of the division by rule.

D. Maximum vapor pressure for gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles in area C ~~as defined in section 3-3491~~ shall be 7.0 pounds per square inch from and after May 31 through September 30 of each year. Fuel used in motor vehicles at a manufacturer's proving ground or a motor vehicle racing event ~~as defined by section 3-3491~~ is exempt from this subsection.

E. The associate director of the division in consultation with the director of the department of environmental quality shall approve alternate fuel control measures that are submitted by ~~manufacturers or suppliers of~~ gasoline PROVIDERS and that the ~~directors~~ DIRECTOR AND ASSOCIATE DIRECTOR determine will result in motor vehicle non-methane hydrocarbon emissions that are equal to or less than the emissions that result under compliance with subsection D of this section. In making this determination, the associate director of the division and the director of the department of environmental quality shall compare the motor vehicle non-methane hydrocarbon emissions of

the alternate fuel control measure with the motor vehicle non-methane hydrocarbon emissions of a fuel that complies with the maximum vapor pressure standard as prescribed by subsection D of this section.

F. Any alternate fuel control measures that are approved shall not increase emissions of non-methane hydrocarbons, particulates, carbon monoxide or oxides of nitrogen. Alternate fuel control measures approved pursuant to subsection E of this section and this subsection may be used by any ~~manufacturer or supplier of~~ gasoline PROVIDER unless the approval is rescinded more than one hundred eighty days before the first day of a gasoline control period. ~~Manufacturers and suppliers who~~ GASOLINE PROVIDERS THAT use an approved alternate fuel control measure shall annually submit a compliance plan to the associate director no later than sixty days before the first day of a gasoline control period.

Sec. 14. Section 3-3436, Arizona Revised Statutes, is amended to read:

3-3436. Dispensing motor fuel; hold-open latches; definition

A. A retail seller may equip all nozzles from which motor fuel is dispensed with an operating hold-open latch.

B. FROM AND AFTER SEPTEMBER 30, 2018, ALL RETAIL DIESEL FUEL DISPENSERS SHALL BE EQUIPPED WITH NOZZLES THAT HAVE GREEN GRIP GUARDS AND ALL RETAIL ETHANOL FLEX FUELS SHALL BE EQUIPPED WITH YELLOW GRIP GUARDS. OTHER PRODUCT NOZZLES MAY NOT HAVE GREEN OR YELLOW GRIP GUARDS.

~~B.~~ C. For the purposes of this section, "hold-open latch" means a device that is an integral part of the automatic nozzle and that is specifically manufactured to dispense motor fuel without requiring the consumer's physical contact with the automatic nozzle.

Sec. 15. Section 3-3437, Arizona Revised Statutes, is amended to read:

3-3437. Aversive or bittering agent in engine coolant and antifreeze; liability limitation; exceptions; violation; classification

A. Engine coolant or antifreeze THAT IS sold in this state on or after January 1, 2008, that is manufactured on or after September 1, 2007 and that contains more than ten ~~per cent~~ PERCENT ethylene glycol shall include denatonium benzoate at a minimum of thirty parts per million and a maximum of fifty parts per million as an aversive or bittering agent in the product to render it unpalatable. A manufacturer or packager of engine coolant or antifreeze THAT IS subject to this section shall maintain a record of the trade name, scientific name and active ingredients of the aversive or bittering agent used pursuant to this section. A manufacturer or packager of engine coolant or antifreeze shall furnish information and documentation maintained pursuant to this section to a member of the public on request.

B. This section applies only to manufacturers, packagers, distributors, recyclers or sellers of engine coolant or antifreeze. For THE purposes of this section, selling does not include the installation of engine coolant or antifreeze for compensation.

C. A manufacturer, packager, distributor, recycler or seller of engine coolant or antifreeze that is required to contain an aversive or bittering

agent pursuant to this section is not liable to any person for personal injury, death, property damage, damage to the environment or natural resources or economic loss that results from the inclusion of denatonium benzoate in engine coolant or antifreeze.

D. The limitation on liability provided in subsection C OF THIS SECTION applies only if denatonium benzoate is included in engine coolant or antifreeze in the concentrations required by this section. The limitation on liability provided in subsection C OF THIS SECTION does not apply to a particular liability to the extent that the cause of that liability is unrelated to the inclusion of denatonium benzoate in engine coolant or antifreeze.

E. A political subdivision of this state shall not establish or continue in effect a prohibition, limitation, standard or other requirement relating to the inclusion of an aversive or bittering agent in engine coolant or antifreeze, with respect to retail containers containing less than fifty-five gallons of engine coolant or antifreeze, that is different from, or in addition to, this section.

F. This section does not apply to either:

1. The sale of a motor vehicle that contains engine coolant or antifreeze.

2. Wholesale containers of engine coolant or antifreeze containing fifty-five gallons or more of engine coolant or antifreeze.

G. The ~~department~~ DIVISION may inspect, investigate, analyze and take appropriate actions to administer and enforce this section.

H. A person who violates this section is guilty of a class 3 misdemeanor.

Sec. 16. Section 3-3451, Arizona Revised Statutes, is amended to read:

3-3451. Licensing devices used for commercial purposes; authorization to test devices used for all other purposes; fees; certification; issuance of license; violation; classification

A. A person shall not use a commercial device unless the device is licensed or certified as provided in this chapter.

B. A license shall be obtained annually from the division on forms prescribed and furnished by the division. The fee prescribed in this chapter shall be submitted with the prescribed form. A license shall be obtained not later than thirty days following the first day of commercial use for original installations. If the ownership of a device that is licensed is transferred, the ownership of the license may be transferred. On transfer of a license, new licensees shall notify the division of the licensee's name and address and the location of the device. A license for a device shall be posted at the licensed business location in a manner that provides the division WITH access to the license during normal business hours.

C. Any license issued under this chapter applies only to the instrument or device specified in the license, except that the associate

director may permit the license to be applicable to a replacement for the original instrument or device.

D. Noncommercial devices may be tested by the division pursuant to this chapter. A weighing device owned by a person who uses it only for the purpose of weighing the person's own livestock or agricultural products and for no commercial purposes is declared to be a noncommercial device, and the owner of the device is exempt from paying any licensing fees collected pursuant to this chapter.

E. If a commercial livestock scale is used for thirty or more days in a calendar year, the scale is required to be licensed. If a commercial livestock scale is used for fewer than thirty days in a calendar year, the scale is required to be certified. If an owner or operator of a commercial livestock scale requests that the division certify the scale, the certification fee shall be comparable to the license fee prescribed in section 3-3452. If an owner or operator of a noncommercial scale requests that the division certify the scale, the certification fee shall be comparable to the license fee prescribed in section 3-3452.

F. At the request of the owner or user of a portable batch plant, the division may certify the portable batch plant. If the division certifies a portable batch plant, the certification fee shall be comparable to the license fee prescribed in section 3-3452.

G. Any portable measuring device that is five gallons or less and that is properly marked by the manufacturer according to standards established by the national institute of standards and technology ~~shall be~~ IS exempt from the licensing and certification provisions of this chapter.

H. For the purpose of ascertaining compliance with the licensing provisions of this article, the department of revenue shall provide the division with a monthly report of all transaction privilege tax licenses issued in the prior month. The report shall include the business name, type of business and business address of the licensee.

I. The department of revenue shall annually notify each transaction privilege tax licensee that the licensee is required to register new or existing weighing or measuring devices with the division.

J. A person or the person's agent who knowingly files with the ~~department~~ DIVISION any notice, statement or other document required under this section that is false or that contains any material misstatement of fact is guilty of a class 2 misdemeanor.

Sec. 17. Section 3-3452, Arizona Revised Statutes, is amended to read:

3-3452. Licensing fees; proration; cancellation for nonpayment

A. The following fees shall be paid to the ~~department~~ DIVISION as license fees for devices used for commercial purposes:

Schedules of Fees

1. Weighing devices:	
0 - 500 pounds capacity (or metric equivalent)	$ 12.00
501 - 2,000 pounds capacity	18.00
2,001 - 7,500 pounds capacity	36.00

	7,501 - 20,000 pounds capacity		80.00
	20,001 - 60,000 pounds capacity		120.00
	60,001 pounds capacity and over		180.00
2.	Liquid metering devices (meters) other than for liquid petroleum gas and utility meters:		
	maximum 12 gallons per minute and under		12.00
	maximum 13 - 150 gallons per minute		36.00
	maximum 151 - 500 gallons per minute		90.00
	maximum 501 - 1,000 gallons per minute		138.00
	maximum 1,001 gallons per minute and over		168.00
3.	Motor fuel devices (dispensers) other than for liquid petroleum gas (not including satellite hoses or nozzles):		
		Standard	Vapor Recovery Test
	each meter	15.00	30.00
	each blending valve	15.00	30.00
	high volume (over 19 gallons per minute) diesel per hose and nozzle		15.00
	keylock, limited access, with accumulators, per hose and nozzle		22.50
	remote indicator and control unit (no hoses or nozzles) (accessory only)		22.50
4.	Liquid measuring devices for liquid petroleum gas (meters):		
	small bottle fill measuring devices		24.00
	motor fuel measuring devices, uncompensated		24.00
	motor fuel measuring devices, temperature compensating, including compressed natural gas filling devices		48.00
	motor fuel measuring devices, keylocks		48.00
	3/4" and 1" meters, uncompensated		48.00
	1 1/4", 1 1/2" and 1 3/4" meters, uncompensated		72.00
	2" meters and larger, uncompensated		72.00
	3/4" and 1" meters, temperature compensating		54.00
	1 1/4", 1 1/2" and 1 3/4" meters, temperature compensating		90.00
	2" meters and larger, temperature compensating		96.00
5.	Linear measuring devices:		
	all linear measuring mechanical devices		24.00
6.	Time measuring devices:		
	all time measuring mechanical, electrical and electronic devices		24.00
7.	Counting devices:		
	all mechanical and electronic counting devices		12.00

B. Testing, inspection, certification and calibration fees shall be paid pursuant to the fee schedule set forth in subsection A of this section

or the rules of the ~~department~~ DIVISION. The ~~department~~ DIVISION shall waive license fees for customer parking time measuring meters owned by municipalities.

C. Issuance or renewal of license as:

1. Public weighmaster	48.00
2. Registered service agency	24.00
3. Registered service representative	4.80

D. The fees set forth in this section are the maximum amounts that may be charged, but the ASSOCIATE director, at the ASSOCIATE director's discretion, may reduce the fees to any amount the ASSOCIATE director deems necessary.

E. The ASSOCIATE director may prorate the fees set forth in this section for ~~partial-year~~ PARTIAL-YEAR application.

F. If a person fails to pay a license, permit or certification fee on or before the date the fee is due, the ~~department~~ DIVISION shall impose a penalty equal to twenty ~~per cent~~ PERCENT of the fee. For each thirty-day period after the date the fee is due, the ~~department~~ DIVISION shall impose an additional penalty equal to twenty ~~per cent~~ PERCENT of the fee. If a person fails to pay a license, permit or certification fee and all related penalties for ninety days after the fee is due, the ~~department~~ DIVISION shall cancel the license, permit or certification.

Sec. 18. Section 3-3453, Arizona Revised Statutes, is amended to read:

3-3453. License as public weighmaster or deputy weighmaster required; application; fee; renewal; training; exemptions

A. A person shall not serve as a public weighmaster or deputy weighmaster unless the person is issued a public weighmaster or deputy weighmaster license by the division in accordance with practices and procedures to be established by the associate director. An applicant for a public weighmaster or deputy weighmaster license shall:

1. Demonstrate a thorough knowledge of all appropriate weights and measures laws, rules and policies.

2. Have possession of, or have available for use, a scale that is of sufficient capacity and size and that is licensed and certified pursuant to section 3-3451.

3. Demonstrate the necessary experience and training to operate the scale.

4. Pass the required examination administered by the division. THE ASSOCIATE DIRECTOR MAY WAIVE THE EXAMINATION REQUIRED BY THIS PARAGRAPH.

B. An application for a public weighmaster or deputy weighmaster license shall be submitted to the division on a form prescribed and furnished by the division and shall be accompanied by the license fee prescribed in section 3-3452. The division shall issue a public weighmaster or deputy weighmaster license for a period of twelve calendar months. The license expires on the first day of the month and year indicated on the license. A public weighmaster or deputy weighmaster license shall be posted at the

licensed scale site in a manner that provides the division access to the license during normal business hours.

C. If a licensee submits a license renewal application to the division before the date of expiration of the current license together with the renewal fee prescribed by the division, the existing license shall be valid for thirty days following its expiration date, or until issuance of the renewal license, whichever occurs first.

D. A PUBLIC WEIGHMASTER SHALL PROVIDE THE NECESSARY TRAINING FOR ANY DEPUTY WEIGHMASTER USING THE PUBLIC WEIGHMASTER'S SEAL TO CERTIFY WEIGH TICKETS.

~~D.~~ E. Except as otherwise provided in subsection ~~F~~ G of this section, THE certified weighing of any property, livestock or commodity shall be performed only by a public weighmaster or deputy weighmaster. The following persons are not required to obtain licenses as public weighmasters or deputy weighmasters:

1. A person weighing property, livestock or a commodity that the person or the person's employer is either buying or selling for the ~~person's~~ OWN ACCOUNT OF THE PERSON or the person's ~~employer's own account~~ EMPLOYER.

2. A person weighing property, livestock or a commodity in conjunction with or on behalf of a publicly sponsored or nonprofit organization sponsored exposition, fair or show event.

~~E.~~ F. The official weighing of vehicles or conveyances by any employee of a city, county or state agency for weight-control regulatory purposes on public highways, roads or streets does not constitute public weighing.

~~F.~~ G. On request and without charge, the division may issue a limited weighmaster license to any qualified officer or employee of a city, a county or the state authorizing the officer or employee to act as a public weighmaster only within the scope of the officer's or employee's official employment and duties in enforcing local ordinances substantially complying with the requirements of this chapter. While performing the duties of a limited weighmaster, a limited weighmaster shall have the limited weighmaster's license in the limited weighmaster's possession.

~~G.~~ H. The division shall approve all forms, certificates, seals and other documents together with practices, procedures and equipment used by public weighmasters or deputy weighmasters in the performance of their duties. A public weighmaster or deputy weighmaster shall keep for such A period as the division by rule may require a legible copy of each weight certificate the public weighmaster or deputy weighmaster issues. Copies of weight certificates shall be available at all reasonable times for inspection by the division.

Sec. 19. Section 3-3454, Arizona Revised Statutes, is amended to read:

3-3454. License required as registered service agency or registered service representative; qualifications; application; fees; renewal

A. A person shall not operate as a registered service agency or as a registered service representative until a license is issued as provided in this section.

B. An applicant for a registered service agency license shall:

1. Submit application information satisfactory to the division.

2. Comply with section 3-3416, subsection E or provide evidence that the applicant's vapor recovery test equipment has been certified by the manufacturer of the equipment within one year of the date of the application or as deemed appropriate by the division.

3. Pay all required fees.

C. An applicant for a registered service representative license shall:

1. Demonstrate a thorough working knowledge of all appropriate weights and measures laws, orders and rules.

2. Demonstrate to the division that the applicant has possession of, or has available for use, weights and testing equipment appropriate in design and adequate in amount.

3. Demonstrate the necessary knowledge, training and experience regarding appropriate standards and testing equipment to service commercial devices, vapor recovery systems or vapor recovery components.

4. Pass the required examination administered by the division.

5. Pay all required fees.

D. An application for a registered service agency or registered service representative license shall be submitted by the applicant to the division on a form prescribed and furnished by the division. The division shall issue a registered service agency or registered service representative license for a period of twelve calendar months. The license expires on the first day of the month and year indicated on the license. Each license shall contain, among other information, a license number. A registered service agency license shall be posted at the licensed business location in a manner that provides the division WITH access to the license during normal business hours. While performing the duties of a registered service representative, a registered service representative shall have ~~a~~ THE registered service representative's license in the registered service representative's possession.

E. If a licensee submits a license renewal application to the division before the date of expiration of the current license, together with the prescribed renewal fee, the existing license ~~shall be~~ IS valid for thirty days following its expiration date~~,~~ or until issuance of the renewal license, whichever occurs first.

F. The associate director shall publish, from time to time as the ASSOCIATE director deems appropriate, and may supply on request~~,~~ lists of registered service representatives and registered service agencies.

G. Each registered service representative license issued by the division shall indicate the type of service approved by the division for the licensee.

H. A registered service agency shall use forms and related procedures prescribed by the division in the performance of its duties. A registered service agency shall keep a legible copy of each form used for at least the time period prescribed by the division in its rules. Copies of the forms shall be available during normal business hours for inspection by the division.

Sec. 20. Section 3-3473, Arizona Revised Statutes, is amended to read:

3-3473. Violations; classification; jurisdiction

A. A person is guilty of a class 1 misdemeanor who:

1. Knowingly hinders, interferes with or obstructs in any way the associate director or any of the associate director's agents or inspectors in entering the premises where a commercial device may be kept for inspecting or testing or in the performance of the official duties of the associate ~~director's~~ DIRECTOR or the associate director's agent or inspector.

2. Impersonates in any way the associate director or any one of the associate director's agents or inspectors by the use of the associate director's seal~~,~~ OR BADGE or a counterfeit of the associate director's seal OR BADGE, or in any other manner.

3. Uses, or ~~has in possession~~ POSSESSES for the purpose of using for any commercial purpose, sells, offers or exposes for sale or hire, or ~~has in possession~~ POSSESSES for the purpose of selling or hiring an incorrect weight or measure or any device or instrument used or calculated to falsify any weight or measure.

4. Sells, or offers or exposes for sale, less than the quantity the person represents of any commodity, thing or service.

5. Takes more than the quantity the person represents of any commodity, thing or service, when, as buyer, the person furnishes the weight or measure by means of which the amount of the commodity, thing or service is determined.

B. A person is guilty of a class 2 misdemeanor who:

1. Uses, or ~~has in possession~~ POSSESSES for the purpose of current use for any commercial purpose, a weight or measure that does not bear a seal or mark of approval based on inspection and test as provided in section 3-3414, subsection A, paragraph 11, unless the weight or measure has been exempted from testing by order of the division, or unless the device has been placed in service as provided in this chapter. Any person or persons making use of a commercial device that is subject to this chapter shall report to the associate director or the associate director's representatives, in writing, the number and location of the commercial device and shall promptly report the installation of any new commercial device.

2. Disposes of any rejected or condemned weight or measure in a manner contrary to law or rule.

3. Removes from any weight or measure, contrary to law or rule, any tag, seal or mark placed on the weight or measure by the appropriate authority pursuant to this chapter.

4. Keeps for the purpose of selling, advertising or offering or exposing for sale or sells any commodity, thing or service in a condition or manner contrary to law or rule.

5. Uses in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure that is so positioned that its indications may not be accurately read and the weighing, metering, measuring or counting operation observed from some position that may reasonably be assumed by a customer.

6. Violates this chapter or rules adopted under this chapter. A continuing violation may be deemed to be a separate violation each day during which the violation is committed for the purpose of imposing a fine.

C. The provisions of this section are in addition to and not in limitation of any other provision of law.

D. The attorney general and the county attorney shall have concurrent jurisdiction to prosecute violations of this chapter.

Sec. 21. Section 3-3475, Arizona Revised Statutes, is amended to read:

3-3475. Civil penalties; hearing

A. A person who violates this chapter, any rule of the division or any license requirement is subject to a civil penalty imposed by the associate director.

B. A person who violates this chapter, any rule of the division or any license requirement may request ~~a~~ AN INFORMAL OR FORMAL hearing to review a civil penalty imposed under this section. IF THE PERSON REQUESTS AN INFORMAL HEARING, THE DIVISION MAY CONDUCT THE INFORMAL HEARING, IN PERSON OR TELEPHONICALLY, TO RESOLVE A WARNING OR CITATION. IF THE PERSON REQUESTS A FORMAL HEARING OR THE WARNING OR CITATION IS NOT RESOLVED IN THE INFORMAL HEARING, the division shall conduct ~~the~~ A FORMAL hearing in accordance with title 41, chapter 6, article 10. Except as prescribed in subsection ~~B~~ C of this section, the civil penalty shall not exceed one thousand dollars for each infraction nor more than ten thousand dollars for any thirty-day period at each business location, for each registered service representative or for each public weighmaster, provided that no person shall be assessed more than fifty thousand dollars per thirty-day period.

~~B.~~ C. The associate director may double the maximum civil penalty if any of the following applies:

1. A commercial device is found to be in violation with results that favor the retailer at more than twice the allowable tolerance as stated in national institute of standards and technology handbook 44.

2. A package is found to exceed the maximum allowable variation for the labeled quantity allowed in national institute of standards and technology handbook 133 or the average error of the lot is twice the sample error limit in favor of the retailer.

3. A vapor recovery system reinspection fails the required tests.

4. A maximum civil penalty has been imposed on a retailer for a price posting or price verification violation and in a reinspection, if conducted

within ninety days, the failure rate is ten percent or more and at least one error is in favor of the retailer.

5. A maximum civil penalty has been imposed on a refiner, refinery, PIPELINE, TERMINAL, FUEL TRANSPORTER, registered supplier or transmix processing facility for a violation of motor fuel quality standards or producing a product transfer document that is incorrect, incomplete or produced in any manner tending to mislead or deceive a person.

~~C.~~ D. The attorney general shall bring actions to recover civil penalties pursuant to this section in the superior court in the county in which the violation occurred or in a county where the agency has its office. All monies derived from civil penalties shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

Sec. 22. Section 3-3476, Arizona Revised Statutes, is amended to read:

3-3476. Delinquent civil penalties and fees

In addition to any other penalty, if a civil penalty or any fee due pursuant to this chapter has not been paid thirty days after the due date, the civil penalty or fee is delinquent and the ~~department~~ DIVISION may refuse to issue a license or may revoke a license pursuant to this chapter until the civil penalty or fee is paid in full.

Sec. 23. Repeal

Section 3-3491, Arizona Revised Statutes, as amended by Laws 2015, chapter 244, section 2, is repealed.

Sec. 24. Renumber

The following sections are renumbered:

Former Sections	New Sections
3-3492	3-3491
3-3493	3-3492
3-3494	3-3493
3-3495	3-3494
3-3496	3-3495
3-3497	3-3496
3-3498	3-3497
3-3499	3-3498

Sec. 25. Section 3-3491, Arizona Revised Statutes, as renumbered, is amended to read:

3-3491. Standards for oxygenated fuel; volatility; exceptions

A. From and after September 30 through March 31 of each year, in a county with a population of one million two hundred thousand or more persons and in any portion of a county contained in area A, blends of gasoline with ethanol shall not exceed the volatility requirements prescribed by section 3-3433 and rules adopted by the associate director under that section. From and after September 30 through March 31 of each year, in area B, blends of gasoline with ethanol may exceed the volatility requirements prescribed by section 3-3433 and rules adopted by the associate director under that section by up to one pound per square inch if the base fuel meets the requirements of ASTM D4814 and the final gasoline-ethanol blend contains at least six percent

ethanol by volume but does not exceed United States environmental protection agency waivers. For any other locations and period of time, blends of gasoline with ethanol shall meet the volatility requirements as determined by division rule.

B. Notwithstanding subsection D of this section, the associate director of the division in consultation with the director of the department of environmental quality shall approve alternate fuel control measures that are submitted by ~~manufacturers or suppliers of~~ gasoline PROVIDERS and that the ~~directors~~ DIRECTOR AND THE ASSOCIATE DIRECTOR determine will result in motor vehicle carbon monoxide emission reductions that will equal or exceed the reductions that result under subsection D of this section. In making those determinations, the director OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY and the associate director shall compare the alternative measure against the emission reduction that would be obtained from a fuel with the maximum vapor pressure standard prescribed by subsection D of this section and the minimum oxygen standard prescribed by section ~~3-3493~~ 3-3492 or ~~3-3496~~ 3-3495. Alternative fuel control measures approved by the associate director of the division in consultation with the director of the department of environmental quality may be used by any ~~manufacturer or supplier of~~ gasoline PROVIDER unless the approval is rescinded by the associate director of the division at least one hundred eighty days before the beginning of any oxygenate period in the future. ~~Manufacturers and suppliers who~~ GASOLINE PROVIDERS THAT choose to use an approved alternate fuel control measure shall annually submit a compliance plan to the associate director not later than sixty days ~~prior to~~ BEFORE the start of the oxygenate period.

C. From and after September 30 through March 31 of each year, all blends of gasoline with alcohol other than ethanol shall satisfy all of the requirements prescribed by section 3-3433 and rules adopted by the associate director under that section and the provisions of a waiver issued by the United States environmental protection agency pursuant to 42 United States Code section 7545(f).

D. Notwithstanding subsection A of this section, if the director of the department of environmental quality has previously raised the minimum oxygen content to the maximum percentage of oxygen allowed for each oxygenate as provided by section ~~3-3496~~ 3-3495, the designated air quality planning agency for area B has considered, analyzed and reviewed the costs and benefits of all other reasonable and available control measures in lieu of reducing volatility requirements to nine pounds per square inch and the director of the department of environmental quality finds that area B has failed to maintain the carbon monoxide national ambient air quality standards by violating the standard, beginning with the oxygenate period beginning on the following September 30 and for each oxygenate period thereafter in area B, the volatility requirements described by section 3-3433, subsection G may be reduced to nine pounds per square inch. If a violation of the carbon monoxide national ambient air quality standards is recorded after the volatility requirements have been reduced to nine pounds per square inch, the

director of the department of environmental quality shall remove the one pound per square inch waiver for gasoline-ethanol blends.

E. Gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles within this state shall not contain the following:

1. Methyl tertiary butyl ether that exceeds 0.3 percent by volume.

2. A total of more than 0.10 percent oxygen by weight collectively from all of the following oxygenates:

(a) Diisopropylether (DIPE).

(b) Ethyl tert-butylether (ETBE).

(c) Iso-butanol.

(d) Isopropanol.

(e) Methanol.

(f) N-butanol.

(g) N-propanol.

(h) Sec-butanol.

(i) Tert-amylmethylether (TAME).

(j) Tert-butanol.

(k) Tert-pentanol (tert-amylalcohol).

F. Subsection E of this section does not prohibit the transshipment through this state, including storage incident to that transshipment, of gasoline that contains the oxygenates prescribed by subsection E of this section if both of the following apply:

1. The gasoline is used or disposed outside this state.

2. The gasoline is segregated from gasoline that is intended for use inside this state.

Sec. 26. Section 3-3492, Arizona Revised Statutes, as renumbered, is amended to read:

3-3492. Area A; sale of gasoline; oxygen content

A. From and after November 1 through March 31 of each year:

1. All gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles within a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A or that is consumed in a motor vehicle in a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A by a fleet owner shall, for a gasoline-ethanol blend, contain not less than ten percent by volume of ethanol nor more than the maximum percentage of oxygen allowed by provisions of a waiver issued or other limits established by the United States environmental protection agency.

2. All gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles within a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A or that is consumed in a motor vehicle within a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A by a fleet

owner shall, for a blend other than a gasoline-ethanol blend, contain not less than 2.7 percent by weight of oxygen nor more than the maximum percentage of oxygen allowed by provisions of a waiver issued or other limits established by the United States environmental protection agency.

B. Notwithstanding subsection A of this section, the associate director of the division in consultation with the director of the department of environmental quality shall approve alternate fuel control measures that are submitted by ~~manufacturers or suppliers of~~ gasoline PROVIDERS and that the director and the associate director determine will result in motor vehicle carbon monoxide emissions that are equal to or less than emissions that result under compliance with subsection A of this section and section 3-3433. In making this determination, the associate director of the division and the director of the department of environmental quality shall compare the emissions of the alternate fuel control measure with the emissions of a fuel with a maximum vapor pressure standard as prescribed by section 3-3433 and with the minimum oxygen content or percentage by volume of ethanol as prescribed by this section.

C. Any alternate fuel control measures that are approved shall not increase emissions of non-methane hydrocarbons, particulates, carbon monoxide or oxides of nitrogen. Alternate fuel control measures approved pursuant to subsection B of this section and this subsection may be used by any ~~manufacturer or supplier of~~ gasoline PROVIDER unless the approval is rescinded more than one hundred eighty days before the first day of a gasoline control period. ~~Manufacturers and suppliers who~~ GASOLINE PROVIDERS THAT use an approved alternate fuel control measure shall annually submit a compliance plan to the associate director no later than sixty days before the first day of a gasoline control period.

Sec. 27. Section 3-3493, Arizona Revised Statutes, as renumbered, is amended to read:

3-3493. Area A; fuel reformulation; rules

A. ~~From and after May 1, 1999,~~ All gasoline produced and shipped to or within this state and sold or offered for sale for use in motor vehicles in a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A, subject to an appropriate waiver granted by the administrator of the United States environmental protection agency pursuant to section 211(c)(4) of the clean air act as defined in section 49-401.01, shall comply with either of the following fuel reformulation options:

1. A gasoline that meets standards for federal phase II reformulated gasoline, as provided in 40 Code of Federal Regulations section 80.41, paragraphs (e) through (h), in effect on January 1, 1999, except that the minimum oxygen content standard does not apply. The gasoline shall also meet the maximum vapor pressure requirements in section 3-3433, subsections D and F.

2. California phase 2 reformulated gasoline, including alternative formulations allowed by the predictive model, as adopted by the California

air resources board pursuant to California Code of Regulations title 13, sections 2261 through 2262.7 and 2265, in effect on January 1, 1997, except that the minimum oxygen content standard does not apply. The gasoline shall also meet the maximum vapor pressure requirements in section 3-3433, subsections D and F.

B. For the period beginning November 1 through March 31 of each year, all gasoline produced and shipped to or within this state and sold or offered for sale for use in motor vehicles in a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A, subject to an appropriate waiver granted by the administrator of the United States environmental protection agency pursuant to section 211(c)(4) of the clean air act as defined in section 49-401.01, shall comply with standards for California phase 2 reformulated gasoline, including alternative formulations allowed by the predictive model, as adopted by the California air resources board pursuant to California Code of Regulations title 13, sections 2261 through 2262.7 and 2265, in effect on January 1, 1997 and shall meet the maximum vapor pressure requirements in section 3-3433, subsections D and F. The fuel described in this subsection shall meet the requirements of section ~~3-3493~~ 3-3492, subsection A, paragraph 1.

~~C. For each winter season of November through March, the associate director of the division shall determine the average levels of the constituents in the gasoline sold or offered for sale in area A and shall provide the results of this determination to the director of environmental quality. The director of environmental quality shall analyze the data provided by the associate director of the division, no later than July 1 of each year, shall determine the average daily carbon monoxide reductions resulting from the use of the gasoline specified in subsection B of this section during the preceding winter season.~~

~~D.~~ C. Any registered supplier or oxygenate blender, as defined in division rules, may petition the associate director to request that all registered suppliers or oxygenate blenders be allowed to comply with ~~any provision of~~ STANDARDS OTHER THAN THE STANDARDS PRESCRIBED BY section ~~3-3493~~ 3-3492, subsection A~~, provided~~ IF the petitioner can demonstrate that ethanol supply shortages are imminent.

~~E.~~ D. The petition shall:

1. Identify specific supply conditions that will result in a shortage of ethanol.

2. Identify which oxygenate or oxygenates and the concentration that will be blended into gasoline for sale or use in area A.

3. Demonstrate that the alternative oxygenate blend comes closest to meeting a three and one-half percent by weight oxygen content at reasonable cost, unless the registered supplier or oxygenate blender is petitioning to use a gasoline-ethanol blend containing less than ten percent by volume of ethanol.

4. Specify a time period for compliance with any provision of section ~~3-3493~~ 3-3492, subsection A, not to exceed sixty days.

~~F.~~ E. The associate director shall either grant or deny the petition in writing within seven days of its receipt. Any decision by the associate director to grant the petition shall be equally applicable to all registered suppliers or oxygenate blenders and shall not be selectively applied to any single registered supplier or oxygenate blender. The petition may be granted only if the associate director verifies that the basis for requesting the petition is factual.

~~G.~~ F. The associate director may reauthorize a petition if the petitioner can demonstrate that the conditions have continued. The reauthorization of a petition shall not exceed thirty days.

~~H.~~ G. The associate director of the division shall consult with the director of the department of environmental quality before granting, reauthorizing or denying any such petition.

~~I.~~ H. The director of environmental quality in consultation with the associate director of the division shall adopt by rule:

1. Requirements to implement subsections A ~~through E~~, B, C AND D of this section.

2. Requirements for recordkeeping, reporting and analytical methods for fuel providers to demonstrate compliance with subsections A ~~through E~~, B, C AND D of this section.

~~J.~~ I. This section does not apply to fuel sold for use at a motor vehicle manufacturer proving ground or at a motor vehicle racing event.

Sec. 28. Section 3-3494, Arizona Revised Statutes, as renumbered, is amended to read:

3-3494. Area C; fuel reformulation; rules

A. From and after May ~~1~~ 31 through September 30 of each year, all gasoline produced and shipped to or within this state and sold or offered for sale for use in motor vehicles in area C shall comply with either of the following fuel reformulation options:

1. A gasoline that meets standards for federal phase II reformulated gasoline, as provided in 40 Code of Federal Regulations section 80.41, paragraphs (e) through (h), in effect on January 1, 1999, except that the minimum oxygen content standard does not apply. The gasoline shall also meet the maximum vapor pressure requirements in section 3-3434, subsection D.

2. California phase 2 reformulated gasoline, including alternative formulations allowed by the predictive model, as adopted by the California air resources board pursuant to California Code of Regulations title 13, sections 2261 through 2262.7 and 2265, in effect on January 1, 1997, except that the minimum oxygen content standard does not apply. The gasoline shall also meet the maximum vapor pressure requirements in section 3-3434, subsection D.

B. Any registered supplier OR OXYGENATE BLENDER, as defined in division rules, may petition the associate director to request that all registered suppliers OR OXYGENATE BLENDERS be allowed to supply gasoline in

area C that does not meet the standards in subsection A of this section if the petitioner demonstrates that a shortage in the supply of gasoline meeting the standards in subsection A of this section is imminent.

C. A petition under subsection B of this section shall:

1. Identify specific supply conditions that will result in a shortage of gasoline meeting the standards in subsection A of this section.

2. Identify the formulation of gasoline that will be sold in area C in lieu of gasoline meeting the standards in subsection A of this section.

3. Specify a time period for compliance with the standards of subsection A of this section not to exceed sixty days.

D. The associate director shall either grant or deny a petition under subsection B of this section in writing within seven days of its receipt. Any decision by the associate director to grant the petition shall be equally applicable to all registered suppliers OR OXYGENATE BLENDERS and shall not be selectively applied to any single registered supplier OR OXYGENATE BLENDER. The petition may be granted only if the associate director verifies that the basis for requesting the petition is factual.

E. The associate director may reauthorize a petition granted under subsection B of this section if the petitioner demonstrates that the conditions identified in the petition have continued. The reauthorization of a petition shall not exceed thirty days.

F. The associate director of the division shall consult with the director of the department of environmental quality before granting, reauthorizing or denying any petition under subsection B of this section.

G. The ASSOCIATE DIRECTOR, IN CONSULTATION WITH THE director of the department of environmental quality, ~~in consultation with the associate director of the division~~ shall adopt by rule:

1. Requirements to implement subsections A, B and C of this section.

2. Requirements for recordkeeping, reporting and analytical methods for fuel providers to demonstrate compliance with subsection A of this section.

H. This section does not apply to fuel sold for use at a motor vehicle manufacturer proving ground or at a motor vehicle racing event.

Sec. 29. Section 3-3498, Arizona Revised Statutes, as renumbered, is amended to read:

3-3498. Inspections

A. On request, an interstate pipeline terminal or a motor fuel storage or dispensing site shall provide a product transfer document to the ~~department~~ DIVISION. Product transfer documents may be stored off site as provided by ~~department~~ DIVISION rule.

B. On request, a motor fuel storage or dispensing site shall provide access to motor fuel dispensing cabinets to the ~~department~~ DIVISION for inspection of fuel dispensing meters and blending valves.

Sec. 30. Section 3-3512, Arizona Revised Statutes, is amended to read:

3-3512. Stage I vapor recovery systems

A. A person shall not offer for sale, sell, install or use a new gasoline stage I vapor recovery system, or any new or rebuilt component parts of the system, unless the system or component part has been certified by the California air resources board as of March 31, 2001 or after that date, or has been approved by a third party accredited to test equipment and recognized by industry and the ~~department~~ DIVISION, and has not been rejected by the division. The division shall maintain and keep current a list of stage I vapor recovery systems and component parts that are approved by the division. Only those systems that are approved shall be used in this state. All certified vapor recovery components must be clearly identified by a permanent identification affixed by the certified manufacturer or rebuilder.

B. For gasoline dispensing sites with a throughput of over ten thousand gallons per month in area A or area B ~~as defined in section 49-541~~, a person shall not transfer or allow the transfer of gasoline into storage tanks at gasoline dispensing sites unless the storage tank is equipped with a stage I vapor recovery system consisting of a vapor-tight return line from the storage tank or its vent to the gasoline transport vehicle.

C. An owner or operator of a gasoline storage tank, gasoline transport vehicle or gasoline dispensing site subject to stage I vapor recovery requirements shall comply with the following:

1. Install all necessary stage I vapor recovery systems and make any modifications necessary to comply with the requirements.

2. Provide adequate training and written instructions to the operator of the affected gasoline dispensing site and the gasoline transport vehicle.

3. Replace, repair or modify any worn or ineffective component or design element to ensure the vapor-tight integrity and efficiency of the stage I vapor recovery systems.

4. Connect and ensure proper operation of the stage I vapor recovery systems whenever gasoline is being loaded, unloaded or dispensed.

5. In area A and other geographical areas as provided by subsection G of this section, have the stage I vapor recovery system tested annually by a registered service representative licensed by the division.

D. Before the initial installation or modification of any stage I vapor recovery system, the owner or operator of a gasoline storage tank, gasoline transport vehicle or gasoline dispensing site shall obtain a plan review and approval from the division. Application for the plan review and approval shall be on forms prescribed and provided by the division.

E. The division in consultation with the department of environmental quality and the state fire marshal shall establish by rule standards for the installation and operation of stage I vapor recovery systems. The division shall establish by rule plan review and approval fees. In establishing those rules and standards, the associate director shall consider requirements in other states to ensure that only state-of-the-art technology is used.

F. Approval of a stage I vapor recovery system by the division does not relieve the owner or operator of the responsibility to comply with other

applicable statutes, codes and rules pertaining to fire prevention, environmental quality and safety matters.

G. Any county, city or town outside of area A or area B ~~as defined in section 49-541~~ may require gasoline dispensing sites with a throughput greater than ten thousand gallons per month to install, operate and maintain stage I vapor recovery systems in accordance with this section. Any county, city or town, including cities and towns within area B, also may require annual testing of required stage I vapor recovery systems pursuant to subsection C of this section. For a county, city or town considering the adoption of a resolution to require stage I vapor recovery systems or annual testing within its jurisdiction and on request, the department of environmental quality shall provide technical assistance in evaluating the air quality in that county, city or town and shall provide final review and approval of an adopted resolution.

H. A county board of supervisors or governing body of a city or town shall submit a resolution approved by the department of environmental quality to the associate director of the division requesting the imposition of the requirements for stage I vapor recovery systems within its jurisdiction.

I. The associate director shall adopt, by rule, compliance schedules for gasoline dispensing sites located within the jurisdiction requesting stage I vapor recovery system requirements no later than twelve months after receipt of the resolution from the county board of supervisors or governing board of a city or town. All gasoline dispensing sites shall be required to comply with stage I vapor recovery system rules within twenty-four months after the rules have been filed with the secretary of state. Sites with stage I vapor recovery systems already installed must comply with the testing requirements at the time the rules become effective.

J. A county board of supervisors or governing body of a city or town that adopts the requirements for stage I vapor recovery systems may repeal those requirements by adopting a resolution to remove the imposition of those requirements within its jurisdiction unless the county, city or town is in an ozone nonattainment area that has since been designated as moderate, serious or severe by the United States environmental protection agency under section 107(d) of the clean air act. On receipt of the resolution, the associate director of the division shall consult with the director of the department of environmental quality to verify that a county, city or town is outside of an ozone nonattainment area designated as moderate, serious or severe by the United States environmental protection agency under section 107(d) of the clean air act. After consultation with the department of environmental quality, the associate director of the division shall revise the rules to repeal the requirements for stage I vapor recovery systems within that jurisdiction as soon as practicable.

Sec. 31. Section 3-3514, Arizona Revised Statutes, is amended to read:

3-3514. Stage I rule effectiveness; enhanced enforcement

The ASSOCIATE director shall adopt rules to:

1. Enhance enforcement of the ~~department's~~ DIVISION'S stage I vapor recovery program. The enforcement shall be enhanced through programs that may include increased frequency of or targeting of inspections, increased sampling frequency, use of portable analyzers or any other technique.

2. Establish standards and fees for required inspections of vapor recovery systems.

Sec. 32. Section 9-499.18, Arizona Revised Statutes, as amended by Laws 2015, chapter 244, section 26, is amended to read:

9-499.18. Transportation safety zones; passenger convenience areas; definitions

A. A city or town may adopt a resolution or ordinance establishing passenger convenience areas and ~~vehicle-for-hire~~ VEHICLE FOR HIRE lanes within a transportation safety zone. The governing body of a city or town may adopt resolutions or ordinances establishing hours of operation and procedures for the use of passenger convenience areas and ~~vehicle-for-hire~~ VEHICLE FOR HIRE lanes.

B. The governing body of a city or town may establish, by resolution or ordinance, a transportation safety zone, if the governing body finds that a transportation safety zone is necessary to preserve the public health, safety and general welfare. A resolution or ordinance adopted pursuant to this subsection must include a map establishing the boundaries of the zone and traffic safety data used to justify the establishment of the zone. Each transportation safety zone must be no greater than three square miles, and a city or town may not create more than two transportation safety zones within its corporate boundaries. A transportation safety zone may not include any portion of a state highway or state route.

C. On establishment of a transportation safety zone, the city or town may place and maintain permanently affixed signs located in a visible manner at the public vehicular access points leading into the zone for the purpose of delineating the boundaries of the zone.

D. A city or town with a transportation safety zone may require a vehicle that is self-propelled entirely or partially by pedals operated by the passengers to operate pursuant to public safety and traffic ordinances.

E. Except in the event of a public safety emergency, a city or town may not prescribe the order in which a vehicle may load or unload passengers in a transportation safety zone. This subsection does not interfere with or restrict the ability of a city or town to regulate the flow of traffic or enforce any state law.

F. This section does not impose or authorize additional regulation, permitting or licensing requirements beyond those required by this section and title 28, chapter 30.

G. Drivers shall not leave vehicles unattended in a passenger convenience area.

H. For the purposes of this section:

1. "Passenger cart" means any motorized vehicle, except a bus, that is used to transport passengers on a public roadway in exchange for any form of

payment or gratuity and that is not ~~licensed as a livery vehicle, taxi or limousine pursuant to title 28, chapter 30~~ A VEHICLE FOR HIRE AS DEFINED IN SECTION 28-9501.

2. "Passenger convenience area" means an area designated by a city or town where taxis, passenger carts, livery vehicles or limousines may enter for the purpose of the loading and unloading of passengers.

3. "~~Vehicle for hire~~ VEHICLE FOR HIRE lane" means a designated traffic lane for use exclusively by vehicles picking up or dropping off passengers in exchange for any form of payment, including a fee, fare, donation or gratuity.

Sec. 33. Section 28-101, Arizona Revised Statutes, is amended to read:

28-101. Definitions

In this title, unless the context otherwise requires:

1. "Alcohol" means any substance containing any form of alcohol, including ethanol, methanol, propynol and isopropynol.

2. "Alcohol concentration" if expressed as a percentage means either:

(a) The number of grams of alcohol per one hundred milliliters of blood.

(b) The number of grams of alcohol per two hundred ten liters of breath.

3. "All-terrain vehicle" means either of the following:

(a) A motor vehicle that satisfies all of the following:

(i) Is designed primarily for recreational nonhighway all-terrain travel.

(ii) Is fifty or fewer inches in width.

(iii) Has an unladen weight of one thousand two hundred pounds or less.

(iv) Travels on three or more nonhighway tires.

(v) Is operated on a public highway.

(b) A recreational off-highway vehicle that satisfies all of the following:

(i) Is designed primarily for recreational nonhighway all-terrain travel.

(ii) Is sixty-five or fewer inches in width.

(iii) Has an unladen weight of one thousand eight hundred pounds or less.

(iv) Travels on four or more nonhighway tires.

4. "Authorized emergency vehicle" means any of the following:

(a) A fire department vehicle.

(b) A police vehicle.

(c) An ambulance or emergency vehicle of a municipal department or public service corporation that is designated or authorized by the department or a local authority.

(d) Any other ambulance, fire truck or rescue vehicle that is authorized by the department in its sole discretion and that meets liability insurance requirements prescribed by the department.

5. "Autocycle" means a three-wheeled motorcycle on which the driver and passengers ride in a completely enclosed seating area that is equipped with a roll cage, safety belts for each occupant and antilock brakes and that is designed to be controlled with a steering wheel and pedals.

6. "Aviation fuel" means all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating an internal combustion engine for use in an aircraft but does not include fuel for jet or turbine powered aircraft.

7. "Bicycle" means a device, including a racing wheelchair, that is propelled by human power and on which a person may ride and that has either:

(a) Two tandem wheels, either of which is more than sixteen inches in diameter.

(b) Three wheels in contact with the ground, any of which is more than sixteen inches in diameter.

8. "Board" means the transportation board.

9. "Bus" means a motor vehicle designed for carrying sixteen or more passengers, including the driver.

10. "Business district" means the territory contiguous to and including a highway if there are buildings in use for business or industrial purposes within any six hundred feet along the highway, including hotels, banks or office buildings, railroad stations and public buildings that occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway.

11. "Combination of vehicles" means a truck or truck tractor and semitrailer and any trailer that it tows but does not include a forklift designed for the purpose of loading or unloading the truck, trailer or semitrailer.

12. "Controlled substance" means a substance so classified under section 102(6) of the controlled substances act (21 United States Code section 802(6)) and includes all substances listed in schedules I through V of 21 Code of Federal Regulations part 1308.

13. "Conviction" means:

(a) An unvacated adjudication of guilt or a determination that a person violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal.

(b) An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court.

(c) A plea of guilty or no contest accepted by the court.

(d) The payment of a fine or court costs.

14. "County highway" means a public road that is constructed and maintained by a county.

15. "Dealer" means a person who is engaged in the business of buying, selling or exchanging motor vehicles, trailers or semitrailers and who has an established place of business.

16. "Department" means the department of transportation acting directly or through its duly authorized officers and agents.

17. "Digital network or software application" has the same meaning prescribed in section 28-9551.

18. "Director" means the director of the department of transportation.

19. "Drive" means to operate or be in actual physical control of a motor vehicle.

20. "Driver" means a person who drives or is in actual physical control of a vehicle.

21. "Driver license" means a license that is issued by a state to an individual and that authorizes the individual to drive a motor vehicle.

22. "Electric personal assistive mobility device" means a self-balancing two nontandem wheeled device with an electric propulsion system that limits the maximum speed of the device to fifteen miles per hour or less and that is designed to transport only one person.

23. "Farm" means any lands primarily used for agriculture production.

24. "Farm tractor" means a motor vehicle designed and used primarily as a farm implement for drawing implements of husbandry.

25. "Foreign vehicle" means a motor vehicle, trailer or semitrailer that is brought into this state other than in the ordinary course of business by or through a manufacturer or dealer and that has not been registered in this state.

26. "Golf cart" means a motor vehicle that has not less than three wheels in contact with the ground, that has an unladen weight of less than one thousand eight hundred pounds, that is designed to be and is operated at not more than twenty-five miles per hour and that is designed to carry not more than four persons including the driver.

27. "Hazardous material" means a material, and its mixtures or solutions, that the United States department of transportation determines under 49 Code of Federal Regulations is, or any quantity of a material listed as a select agent or toxin under 42 Code of Federal Regulations part 73 that is, capable of posing an unreasonable risk to health, safety and property if transported in commerce and that is required to be placarded or marked as required by the department's safety rules prescribed pursuant to chapter 14 of this title.

28. "Implement of husbandry" means a vehicle designed primarily for agricultural purposes and used exclusively in the conduct of agricultural operations, including an implement or vehicle whether self-propelled or otherwise that meets both of the following conditions:

(a) Is used solely for agricultural purposes including the preparation or harvesting of cotton, alfalfa, grains and other farm crops.

(b) Is only incidentally operated or moved on a highway whether as a trailer or self-propelled unit. For the purposes of this subdivision, "incidentally operated or moved on a highway" means travel between a farm and another part of the same farm, from one farm to another farm or between a farm and a place of repair, supply or storage.

29. "Limousine" means a motor vehicle providing prearranged ground transportation service for an individual passenger, or a group of passengers, that is arranged in advance or is operated on a regular route or between specified points and includes ground transportation under a contract or agreement for services that includes a fixed rate or time and is provided in a motor vehicle with a seating capacity not exceeding fifteen passengers including the driver.

30. "Livery vehicle" means a motor vehicle that:

(a) Has a seating capacity not exceeding fifteen passengers including the driver.

(b) Provides passenger services for a fare determined by a flat rate or flat hourly rate between geographic zones or within a geographic area.

(c) Is available for hire on an exclusive or shared ride basis.

(d) May do any of the following:

(i) Operate on a regular route or between specified places.

(ii) Offer prearranged ground transportation service as defined in section 28-141.

(iii) Offer on demand ground transportation service pursuant to a contract with a public airport, licensed business entity or organization.

31. "Local authority" means any county, municipal or other local board or body exercising jurisdiction over highways under the constitution and laws of this state.

32. "Manufacturer" means a person engaged in the business of manufacturing motor vehicles, trailers or semitrailers.

33. "Moped" means a bicycle that is equipped with a helper motor if the vehicle has a maximum piston displacement of fifty cubic centimeters or less, a brake horsepower of one and one-half or less and a maximum speed of twenty-five miles per hour or less on a flat surface with less than a one percent grade.

34. "Motor driven cycle" means a motorcycle, including every motor scooter, with a motor that produces not more than five horsepower.

35. "Motor vehicle":

(a) Means either:

(i) A self-propelled vehicle.

(ii) For the purposes of the laws relating to the imposition of a tax on motor vehicle fuel, a vehicle that is operated on the highways of this state and that is propelled by the use of motor vehicle fuel.

(b) Does not include a motorized wheelchair, an electric personal assistive mobility device or a motorized skateboard. For the purposes of this subdivision:

(i) "Motorized skateboard" means a self-propelled device that has a motor, a deck on which a person may ride and at least two tandem wheels in contact with the ground.

(ii) "Motorized wheelchair" means a self-propelled wheelchair that is used by a person for mobility.

36. "Motor vehicle fuel" includes all products that are commonly or commercially known or sold as gasoline, including casinghead gasoline, natural gasoline and all flammable liquids, and that are composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines. Motor vehicle fuel does not include inflammable liquids that are specifically manufactured for racing motor vehicles and that are distributed for and used by racing motor vehicles at a racetrack, use fuel as defined in section 28-5601, aviation fuel, fuel for jet or turbine powered aircraft or the mixture created at the interface of two different substances being transported through a pipeline, commonly known as transmix.

37. "Motorcycle" means a motor vehicle that has a seat or saddle for the use of the rider and that is designed to travel on not more than three wheels in contact with the ground but excludes a tractor and a moped.

38. "Motorized quadricycle" means a self-propelled motor vehicle to which all of the following apply:

(a) The vehicle is self-propelled by an emission-free electric motor and may include pedals operated by the passengers.

(b) The vehicle has at least four wheels in contact with the ground.

(c) The vehicle seats at least eight passengers, including the driver.

(d) The vehicle is operable on a flat surface using solely the electric motor without assistance from the pedals or passengers.

(e) The vehicle is a commercial motor vehicle as defined in section 28-5201.

(f) The vehicle is ~~licensed by the department of weights and measures to operate as~~ a limousine OPERATING UNDER A VEHICLE FOR HIRE COMPANY PERMIT ISSUED pursuant to section 28-9503.

(g) The vehicle is manufactured by a motor vehicle manufacturer that is licensed pursuant to chapter 10 of this title.

(h) The vehicle complies with the definition and standards for low-speed vehicles set forth in federal motor vehicle safety standard 500 and 49 Code of Federal Regulations ~~section~~ SECTIONS 571.3(b) and 571.500, respectively.

39. "Neighborhood electric vehicle" means a self-propelled electrically powered motor vehicle to which all of the following apply:

(a) The vehicle is emission free.

(b) The vehicle has at least four wheels in contact with the ground.

(c) The vehicle complies with the definition and standards for low speed vehicles set forth in federal motor vehicle safety standard 500 and 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.

40. "Nonresident" means a person who is not a resident of this state as defined in section 28-2001.

41. "Off-road recreational motor vehicle" means a motor vehicle that is designed primarily for recreational nonhighway all-terrain travel and that is not operated on a public highway. Off-road recreational motor vehicle

does not mean a motor vehicle used for construction, building trade, mining or agricultural purposes.

42. "Operator" means a person who drives a motor vehicle on a highway, who is in actual physical control of a motor vehicle on a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.

43. "Owner" means:

(a) A person who holds the legal title of a vehicle.

(b) If a vehicle is the subject of an agreement for the conditional sale or lease with the right of purchase on performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, the conditional vendee or lessee.

(c) If a mortgagor of a vehicle is entitled to possession of the vehicle, the mortgagor.

44. "Pedestrian" means any person afoot. A person who uses an electric personal assistive mobility device or a manual or motorized wheelchair is considered a pedestrian unless the manual wheelchair qualifies as a bicycle. For the purposes of this paragraph, "motorized wheelchair" means a self-propelled wheelchair that is used by a person for mobility.

45. "Power sweeper" means an implement, with or without motive power, that is only incidentally operated or moved on a street or highway and that is designed for the removal of debris, dirt, gravel, litter or sand whether by broom, vacuum or regenerative air system from asphaltic concrete or cement concrete surfaces, including parking lots, highways, streets and warehouses, and a vehicle on which the implement is permanently mounted.

46. "Public transit" means the transportation of passengers on scheduled routes by means of a conveyance on an individual passenger fare-paying basis excluding transportation by a sightseeing bus, school bus or taxi or a vehicle not operated on a scheduled route basis.

47. "Reconstructed vehicle" means a vehicle that has been assembled or constructed largely by means of essential parts, new or used, derived from vehicles or makes of vehicles of various names, models and types or that, if originally otherwise constructed, has been materially altered by the removal of essential parts or by the addition or substitution of essential parts, new or used, derived from other vehicles or makes of vehicles. For the purposes of this paragraph, "essential parts" means integral and body parts, the removal, alteration or substitution of which will tend to conceal the identity or substantially alter the appearance of the vehicle.

48. "Residence district" means the territory contiguous to and including a highway not comprising a business district if the property on the highway for a distance of three hundred feet or more is in the main improved with residences or residences and buildings in use for business.

49. "Right-of-way" when used within the context of the regulation of the movement of traffic on a highway means the privilege of the immediate use of the highway. Right-of-way when used within the context of the real property on which transportation facilities and appurtenances to the

facilities are constructed or maintained means the lands or interest in lands within the right-of-way boundaries.

50. "School bus" means a motor vehicle that is designed for carrying more than ten passengers and that is either:

(a) Owned by any public or governmental agency or other institution and operated for the transportation of children to or from home or school on a regularly scheduled basis.

(b) Privately owned and operated for compensation for the transportation of children to or from home or school on a regularly scheduled basis.

51. "Semitrailer" means a vehicle that is with or without motive power, other than a pole trailer, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that some part of its weight and that of its load rests on or is carried by another vehicle. For the purposes of this paragraph, "pole trailer" has the same meaning prescribed in section 28-601.

52. "State" means a state of the United States and the District of Columbia.

53. "State highway" means a state route or portion of a state route that is accepted and designated by the board as a state highway and that is maintained by the state.

54. "State route" means a right-of-way whether actually used as a highway or not that is designated by the board as a location for the construction of a state highway.

55. "Street" or "highway" means the entire width between the boundary lines of every way if a part of the way is open to the use of the public for purposes of vehicular travel.

56. "Taxi" means a motor vehicle that has a seating capacity not exceeding fifteen passengers, including the driver, ~~that is registered as a taxi in this state or any other state,~~ that provides passenger services and that:

(a) Does not primarily operate on a regular route or between specified places.

(b) Offers local transportation for a fare determined on the basis of the distance traveled or prearranged ground transportation service as defined in section 28-141 for a predetermined fare.

57. "Traffic survival school" means a school that offers educational sessions to drivers who are required to attend and successfully complete educational sessions pursuant to this title that are designed to improve the safety and habits of drivers and that are approved by the department.

58. "Trailer" means a vehicle that is with or without motive power, other than a pole trailer, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that no part of its weight rests on the towing vehicle. A semitrailer equipped with an auxiliary front axle commonly known as a dolly is deemed to be a trailer.

For the purposes of this paragraph, "pole trailer" has the same meaning prescribed in section 28-601.

59. "Transportation network company" has the same meaning prescribed in section 28-9551.

60. "Transportation network company vehicle" has the same meaning prescribed in section 28-9551.

61. "Transportation network service" has the same meaning prescribed in section 28-9551.

62. "Truck" means a motor vehicle designed or used primarily for the carrying of property other than the effects of the driver or passengers and includes a motor vehicle to which has been added a box, a platform or other equipment for such carrying.

63. "Truck tractor" means a motor vehicle that is designed and used primarily for drawing other vehicles and that is not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

64. "Vehicle" means a device in, on or by which a person or property is or may be transported or drawn on a public highway, excluding devices moved by human power or used exclusively on stationary rails or tracks.

65. "Vehicle transporter" means either:

(a) A truck tractor capable of carrying a load and drawing a semitrailer.

(b) A truck tractor with a stinger-steered fifth wheel capable of carrying a load and drawing a semitrailer or a truck tractor with a dolly mounted fifth wheel that is securely fastened to the truck tractor at two or more points and that is capable of carrying a load and drawing a semitrailer.

Sec. 34. Section 28-141, Arizona Revised Statutes, is amended to read:

28-141. Prearranged ground transportation; applicability; definitions

A. The department shall not require a ~~license~~ PERMIT or impose a fee on a motor vehicle providing prearranged ground transportation service if the motor carrier providing the service does all of the following:

1. Meets all applicable registration requirements for the interstate transportation of passengers under the ICC termination act of 1995 (P.L. 104-88; 109 Stat. 879; 49 United States Code sections 13901 through 13908).

2. Meets all applicable vehicle and intrastate passenger licensing requirements of the state in which the vehicle is domiciled or registered to do business.

3. Provides the service pursuant to a contract for either of the following:

(a) Transportation from this state, including intermediate stops, to a destination in another state.

(b) Transportation from this state, including intermediate stops in another state, to a destination in this state.

B. For the purposes of this section:

1. "Intermediate stop" means a pause in the transportation in order for one or more passengers to engage in personal or business activity, but

only if the driver providing the transportation to the passenger does not, before resuming the transportation of the passenger or at least one of the passengers, provide transportation to any other person not included among the passengers being transported when the pause began.

2. "Prearranged ground transportation service" means transportation for a passenger or a group of passengers that is arranged in advance or that is operated on a regular route or between specified points.

Sec. 35. Section 28-2401, Arizona Revised Statutes, is amended to read:

28-2401. Definitions

In this article, unless the context otherwise requires:

1. "Immediate family member" means a spouse or a parent, child, brother or sister whether by adoption or blood.

2. "Special plates" means plates issued pursuant to this article ~~or pursuant to section 28-2515~~.

Sec. 36. Repeal

Section 28-2515, Arizona Revised Statutes, is repealed.

Sec. 37. Section 28-4038, Arizona Revised Statutes, is amended to read:

28-4038. Transportation network services; financial responsibility requirements; survey

A. For a transportation network company that requires a transportation network company driver to accept rides that are booked and paid for exclusively through the transportation network company's digital network or software application and during the time in which the transportation network company driver is logged in to the transportation network company's digital network or software application to be a driver, but is not in the act of providing transportation network services, the following insurance coverage shall be maintained:

1. Before March 1, 2016, the transportation network company driver shall maintain a motor vehicle liability insurance policy that meets at least the requirements of section 28-4009. A transportation network company shall provide motor vehicle liability insurance coverage in the amount of twenty-five thousand dollars because of bodily injury to or death of one person in any one accident, subject to the limit for one person, fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident and twenty thousand dollars because of injury to or destruction of property of others in any one accident ~~coverage~~ in the event a transportation network company driver's policy excludes coverage according to the policy's terms.

2. From and after February 29, 2016, the transportation network company driver or the transportation network company, or both, shall provide primary motor vehicle liability insurance coverage in the amount of twenty-five thousand dollars because of bodily injury to or death of one person in any one accident, subject to the limit for one person, fifty thousand dollars because of bodily injury to or death of two or more persons

in any one accident and twenty thousand dollars because of injury to or destruction of property of others in any one accident. Coverage shall be maintained through any of the following:

(a) A private passenger motor vehicle policy maintained by the transportation network company driver that expressly provides liability coverage while the driver is logged in to the transportation network company's digital network or software application to be a driver.

(b) A motor vehicle liability policy maintained by the transportation network company.

(c) A commercial motor vehicle liability policy.

B. For a transportation network company that requires a transportation network company driver to accept rides that are booked and paid for exclusively through the transportation network company's digital network or software application and during the time in which the transportation network company driver is providing transportation network services, the transportation network company driver or the transportation network company, or both, shall maintain the following insurance coverages:

1. Primary commercial motor vehicle liability insurance that covers the transportation network company driver's provision of transportation network services in a minimum amount of two hundred fifty thousand dollars per incident.

2. Commercial uninsured motorist coverage in a minimum amount of two hundred fifty thousand dollars per incident.

~~C. For a transportation network company that does not require a transportation network company driver to accept rides booked and paid for exclusively through a transportation network company's digital network or software application and during the time in which the transportation network company driver is logged in to the transportation network company's digital network or software application to be a driver, either the transportation network company driver or the transportation network company shall maintain the following insurance coverages:~~

~~1. During the time in which the driver is available to provide passenger transportation, but has not accepted a ride request and is not in the act of providing passenger transportation, primary commercial motor vehicle liability insurance coverage in the amount of twenty-five thousand dollars because of bodily injury to or death of any one person in any one accident, subject to the limit for one person, fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident and twenty thousand dollars because of injury to or destruction of property of others in any one accident.~~

~~2. After the driver has accepted a ride request through any communication, including a street hail, and during the time in which the driver is providing passenger transportation:~~

~~(a) Primary commercial motor vehicle liability insurance in a minimum amount of two hundred fifty thousand dollars per incident.~~

~~(b) Commercial uninsured motorist coverage in a minimum amount of two hundred fifty thousand dollars per incident.~~

~~D.~~ C. From and after February 29, 2016, unless an insurance policy expressly provides coverage or contains an amendment or endorsement that expressly provides coverage, the transportation network company driver's insurance policy and the motor vehicle owner's personal motor vehicle insurance policy shall not be required to provide coverage for the transportation network company vehicle, the transportation network company driver, the motor vehicle owner or any third party while a transportation network company driver is logged in to a transportation network company's digital network or software application to be a driver or is providing transportation network services.

~~E.~~ D. Notwithstanding subsection ~~D~~ C of this section, an insurer may offer, for the period during which a transportation network company driver is logged in to a transportation network company's digital network or software application to be a driver or is providing transportation network services, one of the following:

1. A motor vehicle liability insurance policy expressly providing such coverage.

2. An amendment or endorsement to an existing motor vehicle liability insurance policy specifically providing such coverage.

~~F.~~ E. An insurance policy required by this section is deemed to satisfy the financial responsibility requirements for a motor vehicle insurance policy under this title.

~~G.~~ F. A transportation network company driver shall carry proof of insurance in the transportation network company vehicle at all times while logged in to a transportation network company's digital network or software application to be a driver or is providing transportation network services. If an accident occurs involving a transportation network company vehicle, the transportation network company driver shall provide proof of insurance to the parties involved in the accident at the time of the accident. The transportation network company driver shall also notify the transportation network company of the accident.

~~H.~~ G. In a claims coverage investigation, transportation network companies and any insurer providing coverage as prescribed in this section shall fully cooperate in the exchange of information, including the precise times that a transportation network company driver logged on and off of the transportation network company's digital network or software application in the twenty-four-hour period immediately preceding the accident, and shall disclose to each other a clear description of the coverage, exclusions and limits provided under any insurance policy each party issued or maintained.

~~I.~~ H. From and after February 29, 2016, this section and section 28-4009 do not create an obligation for an insurer that issues coverage to which section 20-1631 applies to offer, provide or issue a motor vehicle liability insurance policy or an endorsement or amendment that includes coverage for any liability arising while a transportation network company

driver is logged in to the transportation network company's digital network or software application to be a driver or is providing transportation network services.

~~J.~~ I. An insurance policy required by this section may be placed with an insurer authorized to transact insurance in this state pursuant to title 20, chapter 2, article 1 or a surplus lines insurer pursuant to title 20, chapter 2, article 5.

~~K.~~ J. The department of insurance, as part of its annual survey of insurance companies, may request information from any property and casualty insurer authorized to write private passenger motor vehicle coverage in this state, including information regarding:

1. Whether the insurer offers for purchase a policy or an endorsement or amendment that covers transportation network company drivers while the driver is logged in to a transportation network company's digital network or software application to be a driver or is providing transportation network services.

2. The number of those policies, endorsements or amendments that have been purchased during the reporting period.

3. The number of those policies, endorsements or amendments that have been canceled during the reporting period.

Sec. 38. Repeal

Sections 28-5493 and 28-5860, Arizona Revised Statutes, are repealed.

Sec. 39. Title 28, chapter 30, article 2, Arizona Revised Statutes, is amended by adding section 28-9527, to read:

28-9527. Transaction privilege tax prohibited

A VEHICLE FOR HIRE OWNER, COMPANY OR DRIVER THAT HAS A PERMIT ISSUED PURSUANT TO ARTICLE 1 OF THIS CHAPTER IS EXEMPT FROM TRANSACTION PRIVILEGE TAX ON INCOME DERIVED FROM TRANSPORTING PERSONS FOR HIRE PURSUANT TO SECTIONS 42-5062 AND 42-6004.

Sec. 40. Section 28-9501, Arizona Revised Statutes, is amended to read:

28-9501. Definitions

In this chapter, unless the context otherwise requires:

~~1. "Commercial device" means any measuring device that is used to determine the direct cost of things or used to establish a fee for service if the cost is based on measure.~~

~~2.~~ 1. "Taxi meter" means a ~~commercial~~ device that ~~meets the requirements of the national institute of standards and technology handbook 44 as prescribed by section 3-3413~~ AUTOMATICALLY CALCULATES AT A PREDETERMINED RATE THE CHARGE FOR THE HIRE OF A VEHICLE AND THAT INDICATES THE CHARGE.

2. "VEHICLE FOR HIRE" MEANS A TAXI, LIVERY VEHICLE OR LIMOUSINE.

3. "VEHICLE FOR HIRE COMPANY" MEANS A COMPANY THAT OFFERS LOCAL TRANSPORTATION THROUGH USE OF A TAXI, LIVERY VEHICLE OR LIMOUSINE OR A COMBINATION OF TAXIS, LIVERY VEHICLES OR LIMOUSINES.

Sec. 41. Section 28-9502, Arizona Revised Statutes, is amended to read:

28-9502. Powers and duties

A. The department shall~~:~~

~~1.~~ adopt any rules necessary to carry out this chapter and adopt reasonable rules for the enforcement of this chapter. These rules have the force and effect of law and shall be adopted pursuant to title 41, chapter 6. ~~In adopting these rules, the director shall consider, as far as is practicable, the requirements established by other states and by authority of the United States, except that rules may not be made in conflict with this chapter.~~

B. THE DEPARTMENT MAY:

~~2.~~ 1. Investigate complaints made to the department concerning violations of this chapter and, on its own initiative, conduct investigations it deems appropriate in order to develop information relating to prevailing procedures in ~~commercial quantity~~ TAXI METER RATE determination and possible violations of this chapter and to promote accuracy in the determination and representation of quantity in ~~commercial transactions~~ TAXI METER RATES.

~~3.~~ 2. Inspect and test taxi meters BY A RANDOM SYSTEMATIC METHOD DETERMINED BY THE DIRECTOR OR IN RESPONSE TO A COMPLAINT BY THE PUBLIC to determine whether the taxi meters meet the requirements ~~of the national institute of standards and technology handbook 44~~ as prescribed by ~~section 3-3413~~ THE DEPARTMENT BY RULE.

~~4.~~ 3. Apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating this chapter.

~~5. Report to the governor on or before August 1 of each year and at such other times as may be required on the work accomplished under this chapter.~~

~~6.~~ 4. Subject to title 41, chapter 4, article 4, employ such personnel as needed to assist in administering this chapter.

~~B. Testing and inspection conducted pursuant to this chapter shall be done, to the extent practicable, without prior notice, by a random systematic method determined by the director or in response to a complaint by the public.~~

C. During the course of an investigation or an enforcement action by the department, information regarding the complainant is confidential and is exempt from title 39, chapter 1 unless the complainant authorizes the information to be public.

Sec. 42. Section 28-9503, Arizona Revised Statutes, is amended to read:

28-9503. Vehicle for hire company permits; fees; violation; classification

~~A. A person may not use a commercial device unless the device is licensed as provided in this chapter.~~

~~B. A license shall be obtained annually from the department on forms prescribed and furnished by the department. The fee, as determined by the~~

~~director by rule, shall be submitted with the prescribed form. A license shall be obtained not later than thirty days following the first day of commercial use for original installations. If the ownership of a licensed device is transferred, the ownership of the license may be transferred. On transfer of a license, new licensees shall notify the department of the licensee's name and address and the location of the device.~~

A. A VEHICLE FOR HIRE COMPANY MAY NOT OPERATE IN THIS STATE UNLESS THE VEHICLE FOR HIRE COMPANY IS ISSUED A PERMIT BY THE DEPARTMENT. THE VEHICLE FOR HIRE COMPANY MAY APPLY TO THE DEPARTMENT ON FORMS PRESCRIBED BY THE DEPARTMENT. THE PERMIT IS VALID FOR THREE YEARS. THE DEPARTMENT SHALL CHARGE AND COLLECT AN APPLICATION FEE OF TWENTY-FOUR DOLLARS PER VEHICLE THAT IS USED AS A TAXI BY THE VEHICLE FOR HIRE COMPANY AT THE TIME OF APPLICATION, NOT TO EXCEED A TOTAL OF ONE THOUSAND DOLLARS PER APPLICANT.

B. THE DEPARTMENT SHALL ISSUE A PERMIT TO AN APPLICANT THAT MEETS THE REQUIREMENTS OF THIS ARTICLE.

C. A VEHICLE FOR HIRE COMPANY SHALL MAINTAIN AN AGENT FOR SERVICE OF PROCESS IN THIS STATE.

~~C.~~ D. If a fare is based on time or mileage or both time and mileage, a taxi shall have a ~~commercial device and shall obtain a license as prescribed by the department~~ TAXI METER, except that if the service offered by the taxi is a prearranged ground transportation service as prescribed in section 28-141 for a predetermined fare, ~~a~~ THE taxi is not required to use a ~~commercial device~~ TAXI METER.

~~D. The department may not issue a license for a taxi, livery vehicle or limousine unless the taxi, livery vehicle or limousine meets the requirements for both of the following:~~

~~1. Motor vehicle licensing as prescribed by the department.~~

~~2. Motor vehicle insurance as prescribed by section 28-4033.~~

E. The department shall revoke a ~~license~~ PERMIT if the ~~taxi, livery vehicle or limousine~~ VEHICLE FOR HIRE COMPANY fails to maintain the requirements for either of the following:

1. Motor vehicle licensing as prescribed by the department.

2. Motor vehicle insurance as prescribed by section 28-4033.

F. A ~~taxi or livery~~ vehicle FOR HIRE shall have a ~~license~~ COPY OF THE PERMIT issued TO THE VEHICLE FOR HIRE COMPANY under this chapter ~~posted on the outside of the rear window as required by the department. A limousine shall carry a license issued under this chapter~~ inside the vehicle at all times.

G. A taxi that is ~~licensed~~ ISSUED A PERMIT by the department and that offers local transportation for a fare determined on the basis of the distance traveled or prearranged ground transportation service as prescribed in section 28-141 for a predetermined fare is not required to ~~be additionally licensed~~ HAVE AN ADDITIONAL PERMIT as a livery vehicle.

H. A person or the person's agent who knowingly files with the department any notice, statement or other document required under this

section that is false or that contains any material misstatement of fact is guilty of a class 2 misdemeanor.

Sec. 43. Section 28-9506, Arizona Revised Statutes, is amended to read:

28-9506. Taxi and livery vehicle signage

A. A taxi or livery vehicle shall display ~~interior signage that contains~~ ALL OF THE FOLLOWING INFORMATION EITHER ON AN INTERIOR SIGN THAT IS READILY VISIBLE AND THAT IS EITHER IN A PRINT OR AN ELECTRONIC FORMAT OR ON A DIGITAL NETWORK OR SOFTWARE APPLICATION:

1. The ~~licensee's~~ PERMITTEE'S business name and address. ~~and that is all of the following:~~

~~1. Permanent.~~

~~2. In letters at least one-half inch in height.~~

~~3. Readily visible.~~

~~4.~~ 2. ~~Accurately representative~~ AN ACCURATE REPRESENTATION of all fares and the fare computation method.

~~B.~~ 3. ~~A taxi or livery vehicle shall display interior signage that contains~~ The driver's name ~~and is readily visible to passengers~~.

~~C.~~ B. AT A MINIMUM, a taxi is required to display READILY VISIBLE exterior ~~signage~~ TRADE DRESS AS DEFINED IN SECTION 28-9551 that contains the ~~licensee's business name and telephone number, that contains the~~ word "taxi" or "cab". ~~and that is all of the following:~~

~~1. Permanent.~~

~~2. In letters at least three inches in height.~~

~~3. Readily visible and a minimum of one inch in height for fare information.~~

~~4. Accurately representative of all fares and the fare computation method.~~

Sec. 44. Section 28-9507, Arizona Revised Statutes, is amended to read:

28-9507. Vehicles for hire; criminal background checks; vehicle safety records; zero-tolerance policy; drug and alcohol use by driver; passenger complaints

A. ~~An owner of a livery vehicle, taxi or limousine licensed through~~ A VEHICLE FOR HIRE COMPANY THAT IS ISSUED A PERMIT BY the department shall have available for inspection at all times by the department written evidence of a criminal background check conducted for any driver operating a ~~livery vehicle, taxi or limousine~~ VEHICLE FOR HIRE for the ~~owner~~ VEHICLE FOR HIRE COMPANY, whether as an employee or lessee. The criminal background check shall be completed before the driver is engaged as an employee or lessee.

B. ~~An owner of a livery vehicle, taxi or limousine licensed through~~ A VEHICLE FOR HIRE COMPANY THAT IS ISSUED A PERMIT BY the department shall require that all of the ~~owner's taxis, livery vehicles or limousines~~ COMPANY'S VEHICLES FOR HIRE THAT ARE used to provide passenger transportation meet state vehicle safety and emissions standards for private vehicles and shall require the ~~taxis, livery vehicles or limousines~~ VEHICLES FOR HIRE to

have, at a minimum, an annual brake and tire inspection that is performed by a qualified party. The ~~owner~~ VEHICLE FOR HIRE COMPANY shall maintain vehicle safety and emissions inspection records for at least two years and make the records available to the department on request.

C. ~~An owner of a taxi, livery vehicle or limousine~~ A VEHICLE FOR HIRE COMPANY shall implement a zero-tolerance policy on the use of drugs and alcohol while a ~~taxi, livery vehicle or limousine~~ VEHICLE FOR HIRE driver is providing passenger transportation or is available to provide passenger transportation. The ~~owner of a taxi, livery vehicle or limousine~~ VEHICLE FOR HIRE COMPANY shall provide notice of this policy on its website or in the ~~taxi, livery vehicle or limousine~~ VEHICLE FOR HIRE, including procedures to file a complaint about a driver with whom a passenger was matched and who the passenger reasonably suspects was under the influence of drugs or alcohol during the course of the passenger transportation.

D. On receipt of a passenger complaint alleging a violation of the zero-tolerance policy, the ~~owner of the taxi, livery vehicle or limousine~~ VEHICLE FOR HIRE COMPANY shall do both of the following:

1. Immediately suspend the ~~taxi, livery vehicle or limousine~~ VEHICLE FOR HIRE driver's access to the ~~owner's taxi, livery vehicle or limousine~~ COMPANY'S VEHICLE FOR HIRE.

2. Conduct an investigation into the filed complaint. The suspension shall last the duration of the investigation.

E. If the ~~taxi, livery vehicle or limousine owner's~~ VEHICLE FOR HIRE COMPANY'S investigation confirms that the driver has violated the policy required by subsection C of this section, the ~~owner~~ VEHICLE FOR HIRE COMPANY shall permanently prohibit the driver's access to the ~~owner's taxi, livery vehicle or limousine~~ COMPANY'S VEHICLES FOR HIRE. The ~~owner of a taxi, livery vehicle or limousine~~ VEHICLE FOR HIRE COMPANY shall maintain enforcement records for at least two years after the date a passenger complaint is received by the ~~owner~~ COMPANY and make the records available to the department on request.

Sec. 45. Section 28-9521, Arizona Revised Statutes, is amended to read:

28-9521. Unlawful use of vehicle for hire; violation; classification

A. When any ~~commercial device~~ VEHICLE FOR HIRE specified in this chapter is in commercial use and a valid ~~license for the device~~ PERMIT has not been procured by the ~~owner, the owner's agent or the operator of the device~~ VEHICLE FOR HIRE COMPANY, the department, after giving notice of the ~~licensing~~ PERMIT requirements to the ~~owner, the owner's agent or the operator~~ VEHICLE FOR HIRE COMPANY, shall prohibit the further commercial use of the ~~unlicensed device~~ VEHICLE until the proper ~~license~~ PERMIT has been issued. ~~The department may employ and attach to the device such forms, notices or security seals as it considers necessary to prevent the continued unauthorized use of the device.~~

~~B. A registered service representative may also:~~

~~1. With approval of the department, remove an official rejection tag placed on a commercial device.~~

~~2. Place in service, until an official examination can be made, a commercial device that has been officially rejected or placed out of service.~~

~~3. Place in service, until an official examination can be made, a commercial device for which a commercial device application has been completed and submitted to the department.~~

~~C.~~ B. The owner of any business who has not applied for and has not been issued a ~~license~~ PERMIT BY THE DEPARTMENT for the right to do business involving the use of a ~~commercial device by the department~~ VEHICLE FOR HIRE and who is found ~~selling or offering for sale or delivering or distributing~~ OFFERING VEHICLE FOR HIRE SERVICES to a consumer is guilty of a class 2 misdemeanor. ~~, and the department shall confiscate and seize the commercial device or any other such measuring device used by the business for the sale, delivery or distribution as evidence.~~

~~D. The director and any other authorized personnel are not liable to the owner or any other persons, firms, partnerships, corporations, trusts or agencies for damages, directly or indirectly, caused by or resulting from the seizure.~~

~~E.~~ C. If a ~~commercial device licensed pursuant to this chapter~~ VEHICLE FOR HIRE is used contrary to any provision of this chapter or any rule adopted pursuant to this chapter, the department, in addition to any other penalty imposed by this chapter, shall suspend, revoke or refuse to renew the ~~license~~ PERMIT OF THE VEHICLE FOR HIRE COMPANY.

Sec. 46. Section 28-9522, Arizona Revised Statutes, is amended to read:

28-9522. Revocation or suspension of permits; procedure; judicial review

A. Except as otherwise provided by this section, any proceeding to revoke or suspend a ~~license~~ PERMIT issued pursuant to this chapter shall be conducted in accordance with title 41, chapter 6, article 10.

B. The director may initiate proceedings for revocation or suspension of a ~~license~~ PERMIT issued pursuant to this chapter on the director's own motion or on a verified complaint for noncompliance with or a violation of this chapter or of any rule adopted pursuant to this chapter.

C. If, after having been served with the notice of hearing as provided for in title 41, chapter 6, article 10, the ~~licensee~~ PERMITTEE fails to appear at the hearing and defend, the department shall proceed to hear evidence against the ~~licensee~~ PERMITTEE and shall enter an order as justified by the evidence. The order is final unless the ~~licensee~~ PERMITTEE petitions for a review as provided in title 41, chapter 6, article 10.

D. At all hearings, the attorney general of this state, an assistant attorney general or a special assistant designated by the attorney general shall appear and represent the department.

E. Except as provided in section 41-1092.08, subsection H, any final administrative decision made pursuant to this chapter is subject to judicial review pursuant to title 12, chapter 7, article 6.

Sec. 47. Section 28-9523, Arizona Revised Statutes, is amended to read:

28-9523. Violations; classification; jurisdiction

A. A person is guilty of a class 1 misdemeanor who:

1. Knowingly hinders, interferes with or obstructs in any way the director or any of the director's agents or inspectors in entering the premises where a ~~commercial device~~ TAXI METER may be kept for inspecting or testing or in the performance of the ~~director's~~ OFFICIAL DUTIES OF THE DIRECTOR or the director's ~~agent's~~ AGENTS or ~~inspector's official duties~~ INSPECTORS.

2. Impersonates in any way the director or any of the director's agents or inspectors by the use of the director's seal or a counterfeit of the director's seal or in any other manner.

3. Uses, or has in possession for the purpose of using for ~~any~~ A commercial purpose, ~~sells,~~ offers or exposes for sale or hire, or has in possession for the purpose of selling or hiring an incorrect ~~weight or measure or any device or instrument~~ TAXI METER used or calculated to falsify ~~any weight or measure~~ THE ACCURACY OF THE TAXI METER.

~~4. Sells, or offers or exposes for sale, less than the quantity the person represents of any commodity, thing or service.~~

~~5. Takes more than the quantity the person represents of any commodity, thing or service, when, as buyer, the person furnishes the weight or measure by means of which the amount of the commodity, thing or service is determined.~~

B. A person is guilty of a class 2 misdemeanor who:

~~1. Uses, or has in possession for the purpose of current use for any commercial purpose, a weight or measure that does not bear a seal or mark of approval based on an inspection and test, unless the weight or measure has been exempted from testing by order of the department, or unless the device has been placed in service as provided in this chapter. Any person or persons making use of a commercial device that is subject to this chapter shall report to the director or the director's representatives, in writing, the number and location of the commercial device and shall promptly report the installation of any new commercial device.~~

~~2. Disposes of any rejected or condemned weight or measure in a manner contrary to law or rule.~~

~~3. Removes from any weight or measure, contrary to law or rule, any tag, seal or mark placed on the weight or measure by the appropriate authority pursuant to this chapter.~~

~~4. Keeps for the purpose of selling, advertising or offering or exposing for sale or sells any commodity, thing or service in a condition or manner contrary to law or rule.~~

~~5.~~ 1. Uses ~~in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure~~ A TAXI METER that is so positioned that its indications cannot be accurately read and the ~~weighing,~~ metering~~, measuring or counting~~ operation cannot be observed from some position that may reasonably be assumed by a customer.

~~6.~~ 2. Violates this chapter or rules adopted under this chapter. A continuing violation may be deemed to be a separate violation each day during which the violation is committed for the purpose of imposing a fine.

C. The provisions of this section are in addition to and not in limitation of any other provision of law.

D. The attorney general and the county attorney ~~shall~~ have concurrent jurisdiction to prosecute violations of this chapter.

Sec. 48. Section 28-9524, Arizona Revised Statutes, is amended to read:

28-9524. Presumptive evidence of use

When a ~~weight, measure, meter, counter or commercial device~~ TAXI METER is in or about any place in which or from which ~~buying or selling~~ A VEHICLE FOR HIRE TRANSACTION is commonly carried on, there ~~shall be~~ IS a rebuttable presumption that the ~~weight, measure, meter, counter or commercial device~~ TAXI METER is regularly used for the business purpose of the place.

Sec. 49. Section 28-9525, Arizona Revised Statutes, is amended to read:

28-9525. Civil penalties

A. A person who violates this chapter, any rule of the department or any ~~license~~ PERMIT requirement is subject to a civil penalty imposed by the director. A person who violates this chapter, any rule of the department or any ~~license~~ PERMIT requirement may request a hearing to review a civil penalty imposed under this section. The department shall conduct the hearing in accordance with title 41, chapter 6, article 10. ~~Except as prescribed in subsection B of this section,~~ The civil penalty may not exceed one thousand dollars for each infraction ~~or more than ten thousand dollars for any thirty-day period~~ at each business location. ~~or for each public weighmaster, provided that no person shall be assessed more than fifty thousand dollars per thirty-day period.~~

~~B. The director may double the maximum civil penalty if any of the following applies:~~

~~1. A commercial device is found to be in violation with results that favor the retailer at more than twice the allowable tolerance as stated in national institute of standards and technology handbook 44.~~

~~2. A package is found to exceed the maximum allowable variation for the labeled quantity allowed in national institute of standards and technology handbook 133 or the average error of the lot is twice the sample error limit in favor of the retailer.~~

~~3. A maximum civil penalty has been imposed on a retailer for a price posting or price verification violation and in a reinspection, if conducted~~

~~within ninety days, the failure rate is ten percent or more and at least one error is in favor of the retailer.~~

~~C.~~ B. The attorney general shall bring actions to recover civil penalties pursuant to this section in the superior court in the county in which the violation occurred or in a county where the agency has its office. All monies derived from civil penalties shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

Sec. 50. Section 28-9526, Arizona Revised Statutes, is amended to read:

28-9526. Delinquent civil penalties and fees

In addition to any other penalty, if a civil penalty or any fee due pursuant to this chapter has not been paid within thirty days after the due date, the civil penalty or fee is delinquent and the department may refuse to issue a ~~license~~ PERMIT or may revoke a ~~license~~ PERMIT pursuant to this chapter until the civil penalty or fee is paid in full.

Sec. 51. Section 28-9551, Arizona Revised Statutes, is amended to read:

28-9551. Definitions

In this article, unless the context otherwise requires:

1. "Digital network or software application" means any online-enabled application, software, website or system that is offered or used by a transportation network company and that enables a potential passenger to arrange a ride with a transportation network company driver.

~~2. "Limousine" means a motor vehicle providing prearranged ground transportation service for an individual passenger, or a group of passengers, that is arranged in advance or is operated on a regular route or between specified points and includes ground transportation under a contract or agreement for services that includes a fixed rate or time and is provided in a motor vehicle with a seating capacity not exceeding fifteen passengers, including the driver.~~

~~3. "Livery vehicle" means a motor vehicle that:~~

~~(a) Has a seating capacity not exceeding fifteen passengers, including the driver.~~

~~(b) Provides passenger services for a fare determined by a flat rate or flat hourly rate between geographic zones or within a geographic area.~~

~~(c) Is available for hire on an exclusive or shared-ride basis.~~

~~(d) May do any of the following:~~

~~(i) Operate on a regular route or between specified places.~~

~~(ii) Offer prearranged ground transportation service as defined in section 28-141.~~

~~(iii) Offer on-demand ground transportation service pursuant to a contract with a public airport, licensed business entity or organization.~~

~~4. "Person" means both the plural and the singular, as the case demands, and includes individuals, partnerships, corporations, companies, societies and associations.~~

~~5. "Taxi" means a motor vehicle that has a seating capacity not exceeding fifteen passengers, including the driver, that is registered as a taxi in this state or any other state, that provides passenger services and that:~~

~~(a) Does not primarily operate on a regular route or between specified places.~~

~~(b) Offers local transportation for a fare determined on the basis of the distance traveled or prearranged ground transportation service as defined in section 28-141 for a predetermined fare.~~

~~6.~~ 2. "Trade dress" means a removable and distinct logo, insignia or emblem attached to or visible from the exterior of EITHER OF THE FOLLOWING:

(a) A transportation network company vehicle during the performance of transportation network services.

(b) A TAXI WHILE PROVIDING VEHICLE FOR HIRE SERVICES.

~~7.~~ 3. "Transportation network company" means an entity that has been issued a permit pursuant to this article, that operates in this state, that uses a digital network or software application to connect passengers to transportation network services provided by transportation network company drivers and that may but is not deemed to own, operate or control a personal motor vehicle of a transportation network company driver. Transportation network company does not include the following:

(a) This state or a county, city, town or political subdivision of this state and any related entity, a nonprofit agency or any other public body that coordinates, operates, promotes or sponsors public transportation~~,~~ OR carpool or vanpool services.

(b) A program that is in place to meet federal air quality standards pursuant to section 49-404.

(c) Any individual, company or activity that meets the requirements of a rental car agent or rental company as defined in section 20-331 if all of the following apply:

(i) Transportation is provided to another person or is arranged by the rental company but provided by another person.

(ii) The route is predetermined.

(iii) Any money exchanged between the provider of the transportation and the recipient does not exceed the cost of providing the transportation.

~~8.~~ 4. "Transportation network company driver" means an individual who receives connections to potential passengers and related services from a transportation network company in exchange for payment of a fee to the transportation network company and who operates a motor vehicle that is both of the following:

(a) Owned, leased or otherwise authorized for use by the individual.

(b) Used to provide transportation network services.

~~9.~~ 5. "Transportation network company vehicle" means a motor vehicle that meets all of the following:

(a) Has a seating capacity not exceeding eight passengers, including the driver.

(b) Is authorized by a transportation network company.

(c) Is used by a transportation network company driver to provide transportation network services.

~~10.~~ 6. "Transportation network services" means the transportation of a passenger between points chosen by the passenger and arranged with a transportation network company driver through the use of a transportation network company's digital network or software application beginning when a transportation network company driver accepts a request for transportation network services received through the transportation network company's digital network or software application, continuing while the transportation network company driver provides transportation network services in a transportation network company vehicle and ending when the passenger exits the transportation network company vehicle or when the trip is canceled.

Sec. 52. Section 28-9552, Arizona Revised Statutes, is amended to read:

28-9552. Transportation network companies; permit; fee; agent; trade dress

A. A person may not act as a transportation network company driver in this state unless the transportation network company has been issued a permit by the department. The ~~person~~ TRANSPORTATION NETWORK COMPANY may apply to the department on forms prescribed by the department. The department shall charge and collect an application fee as determined by the director.

B. The department shall issue a permit to an applicant that meets the requirements of this article.

C. A transportation network company shall maintain an agent for service of process in this state.

D. A transportation network company vehicle shall display trade dress while being used to provide transportation network services. The trade dress shall identify the transportation network company vehicle with a particular transportation network company. The transportation network company shall file an illustration of the trade dress with the department.

E. A transportation network company shall be regulated pursuant to this article and not as a ~~taxi, livery vehicle or limousine service~~ VEHICLE FOR HIRE.

Sec. 53. Section 28-9556, Arizona Revised Statutes, is amended to read:

28-9556. Transportation network services; civil penalty; street hails prohibited; records

A. A transportation network company driver shall accept rides booked and paid for exclusively through a transportation network company's digital network or software application. The department may impose a civil penalty of not more than one thousand five hundred dollars per violation against any transportation network company driver who is found to be soliciting or accepting street hails.

~~B. Subsection A of this section does not apply to a transportation network company driver of a transportation network company vehicle insured pursuant to section 28-4038, subsection C.~~

~~C.~~ B. A transportation network company shall maintain individual trip records for at least one year after the date each trip was provided and transportation network company driver records until the one-year anniversary of the date of the driver's activation on the transportation network company's digital network or software application has ended and shall make the records available to the department on request.

Sec. 54. Section 41-1092.02, Arizona Revised Statutes, is amended to read:

41-1092.02. Appealable agency actions; application of procedural rules; exemption from article

A. This article applies to all contested cases as defined in section 41-1001 and all appealable agency actions, except contested cases with or appealable agency actions of:

1. The state department of corrections.
2. The board of executive clemency.
3. The industrial commission of Arizona.
4. The Arizona corporation commission.
5. The Arizona board of regents and institutions under its jurisdiction.
6. The state personnel board.
7. The department of juvenile corrections.
8. The department of transportation, EXCEPT AS PROVIDED IN TITLE 28, CHAPTER 30, ARTICLE 2.
9. The department of economic security except as provided in section 46-458.
10. The department of revenue regarding:

(a) Income tax or withholding tax.

(b) Any tax issue related to information associated with the reporting of income tax or withholding tax unless the taxpayer requests in writing that this article apply and waives confidentiality under title 42, chapter 2, article 1.

11. The board of tax appeals.
12. The state board of equalization.
13. The state board of education, but only in connection with contested cases and appealable agency actions related to applications for issuance or renewal of a certificate and discipline of certificate holders pursuant to sections 15-203, 15-534, 15-534.01, 15-535, 15-545 and 15-550.
14. The board of fingerprinting.
15. The department of child safety except as provided in sections 8-506.01 and 8-811.

B. Unless waived by all parties, an administrative law judge shall conduct all hearings under this article, and the procedural rules set forth in this article and rules made by the director apply.

C. Except as provided in subsection A of this section:

1. A contested case heard by the office of administrative hearings regarding taxes administered under title 42 shall be subject to ~~the provisions under~~ section 42-1251.

2. A final decision of the office of administrative hearings regarding taxes administered under title 42 may be appealed by either party to the director of the department of revenue, or a taxpayer may file and appeal directly to the board of tax appeals pursuant to section 42-1253.

D. Except as provided in subsections A, B, E, F and G of this section and notwithstanding any other administrative proceeding or judicial review process established in statute or administrative rule, this article applies to all appealable agency actions and to all contested cases.

E. Except for a contested case or an appealable agency action regarding unclaimed property, sections 41-1092.03, 41-1092.08 and 41-1092.09 do not apply to the department of revenue.

F. The board of appeals established by section 37-213 is exempt from:

1. The time frames for hearings and decisions provided in section 41-1092.05, subsection A, section 41-1092.08 and section 41-1092.09.

2. The requirement in section 41-1092.06, subsection A to hold an informal settlement conference at the appellant's request if the sole subject of an appeal pursuant to section 37-215 is the estimate of value reported in an appraisal of lands or improvements.

G. Auction protest procedures pursuant to title 37, chapter 2, article 4.1 are exempt from this article.

Sec. 55. Section 42-5062, Arizona Revised Statutes, is amended to read:

42-5062. Transporting classification

A. The transporting classification is comprised of the business of transporting for hire persons, freight or property by motor vehicle, railroads or aircraft from one point to another point in this state. The transporting classification does not include:

1. Transporting for hire persons, freight or property by:

(a) Motor carriers subject to a fee prescribed in title 28, chapter 16, article 4. ~~or by~~

(b) Light motor vehicles subject to a fee under title 28, chapter 15, article 4. ~~,~~

(c) Transportation network companies subject to a fee prescribed ~~by~~ PURSUANT TO section 28-9552. ~~or~~

(d) Transportation network company drivers on transactions involving transportation network services as defined in section 28-9551.

(e) VEHICLE FOR HIRE COMPANIES THAT ARE ISSUED PERMITS PURSUANT TO SECTION 28-9503.

(f) VEHICLE FOR HIRE DRIVERS OPERATING UNDER A COMPANY PERMIT ISSUED PURSUANT TO SECTION 28-9503 ON TRANSACTIONS INVOLVING VEHICLE FOR HIRE SERVICES.

2. The business of transporting for hire persons traveling in air commerce by aircraft if taxation of the business is preempted by federal law.

3. Ambulances or ambulance services provided under title 48 or certified pursuant to title 36, chapter 21.1 or provided by a city or town in a county with a population of less than one hundred fifty thousand persons as determined in the most recent United States decennial census.

4. Public transportation program services for the dial-a-ride programs and special needs transportation services.

5. Transporting freight or property for hire by a railroad operating exclusively in this state if the transportation comprises a portion of a single shipment of freight or property, involving more than one railroad, either from a point in this state to a point outside this state or from a point outside this state to a point in this state. For the purposes of this paragraph, "a single shipment" means the transportation that begins at the point at which one of the railroads first takes possession of the freight or property and continues until the point at which one of the railroads relinquishes possession of the freight or property to a party other than one of the railroads.

6. Arranging transportation as a convenience or service to a person's customers if that person is not otherwise engaged in the business of transporting persons, freight or property for hire. This exception does not apply to businesses that dispatch vehicles pursuant to customer orders and send the billings and receive the payments associated with that activity, including when the transportation is performed by third-party independent contractors. For the purposes of this paragraph, "arranging" includes billing for or collecting transportation charges from a person's customers on behalf of the persons providing the transportation.

B. The tax base for the transporting classification is the gross proceeds of sales or gross income derived from the business, except that the following shall be deducted from the tax base:

1. The gross proceeds of sales or gross income derived from transporting for hire persons, freight or property by a railroad pursuant to a contract with another railroad that is also considered to be engaged in the businesses of transporting persons, freight or property for hire if the other railroad is liable for the tax on gross proceeds of sales or gross income attributable to the transportation.

2. The gross proceeds of sales or gross income derived from business activity that is properly included in any other business classification under this article and that is taxable to the person engaged in that classification, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.

3. The gross proceeds of sales or gross income derived from a business activity that is arranged by the person who is subject to tax under this section and that is not taxable to the person conducting the activity due to an exclusion, exemption or deduction under this section or section 42-5073,

but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.

4. The gross proceeds of sales or gross income derived from business activity that is arranged by a person who is subject to tax under this section and that is taxable to another person under this section who conducts the activity, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.

5. The gross proceeds of sales or gross income derived from transporting fertilizer by a railroad from a point in this state to another point in this state.

Sec. 56. Section 42-6004, Arizona Revised Statutes, is amended to read:

42-6004. Exemption from municipal tax; definitions

A. A city, town or special taxing district shall not levy a transaction privilege, sales, use or other similar tax on:

1. Exhibition events in this state sponsored, conducted or operated by a nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the organization is associated with a major league baseball team or a national touring professional golfing association and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

2. Interstate telecommunications services, which include that portion of telecommunications services, such as subscriber line service, allocable by federal law to interstate telecommunications service.

3. Sales of warranty or service contracts.

4. Sales of motor vehicles to nonresidents of this state for use outside this state if the motor vehicle dealer ships or delivers the motor vehicle to a destination outside this state.

5. Interest on finance contracts.

6. Dealer documentation fees on the sales of motor vehicles.

7. Sales of food or other items purchased with United States department of agriculture food stamp coupons issued under the food stamp act of 1977 (P.L. 95-113; 91 Stat. 958) or food instruments issued under section 17 of the child nutrition act (P.L. 95-627; 92 Stat. 3603; P.L. 99-661, section 4302; 42 United States Code section 1786) but may impose such a tax on other sales of food. If a city, town or special taxing district exempts sales of food from its tax or imposes a different transaction privilege rate on the gross proceeds of sales or gross income from sales of food and nonfood items, it shall use the definition of food prescribed by rule adopted by the department pursuant to section 42-5106.

8. Orthodontic devices dispensed by a dental professional who is licensed under title 32, chapter 11 to a patient as part of the practice of dentistry.

9. Sales of internet access services to the person's subscribers and customers. For the purposes of this paragraph:

(a) "Internet" means the computer and telecommunications facilities that comprise the interconnected worldwide network of networks that employ the transmission control protocol or internet protocol, or any predecessor or successor protocol, to communicate information of all kinds by wire or radio.

(b) "Internet access" means a service that enables users to access content, information, electronic mail or other services over the internet. Internet access does not include telecommunication services provided by a common carrier.

10. The gross proceeds of sales or gross income retained by the Arizona exposition and state fair board from ride ticket sales at the annual Arizona state fair.

11. Through August 31, 2014, sales of Arizona centennial medallions by the historical advisory commission.

12. Leasing real property between affiliated companies, businesses, persons or reciprocal insurers. For the purposes of this paragraph:

(a) "Affiliated companies, businesses, persons or reciprocal insurers" means the lessor holds a controlling interest in the lessee, the lessee holds a controlling interest in the lessor, affiliated persons hold a controlling interest in both the lessor and the lessee, or an unrelated person holds a controlling interest in both the lessor and lessee.

(b) "Affiliated persons" means members of the individual's family or persons who have ownership or control of a business entity.

(c) "Controlling interest" means direct or indirect ownership of at least eighty percent of the voting shares of a corporation or of the interests in a company, business or person other than a corporation.

(d) "Members of the individual's family" means the individual's spouse and brothers and sisters, whether by whole or half blood, including adopted persons, ancestors and lineal descendants.

(e) "Reciprocal insurer" has the same meaning prescribed in section 20-762.

13. The gross proceeds of sales or gross income derived from a contract for the installation, assembly, repair or maintenance of machinery, equipment or other tangible personal property that is described in section 42-5061, subsection B and that has independent functional utility, pursuant to the following provisions:

(a) The deduction provided in this paragraph includes the gross proceeds of sales or gross income derived from all of the following:

(i) Any activity performed on machinery, equipment or other tangible personal property with independent functional utility.

(ii) Any activity performed on any tangible personal property relating to machinery, equipment or other tangible personal property with independent functional utility in furtherance of any of the purposes provided for under subdivision (d) of this paragraph.

(iii) Any activity that is related to the activities described in items (i) and (ii) of this subdivision, including inspecting the installation of or testing the machinery, equipment or other tangible personal property.

(b) The deduction provided in this paragraph does not include gross proceeds of sales or gross income from the portion of any contracting activity that consists of the development of, or modification to, real property in order to facilitate the installation, assembly, repair, maintenance or removal of machinery, equipment or other tangible personal property described in section 42-5061, subsection B.

(c) The deduction provided in this paragraph shall be determined without regard to the size or useful life of the machinery, equipment or other tangible personal property.

(d) For the purposes of this paragraph, "independent functional utility" means that the machinery, equipment or other tangible personal property can independently perform its function without attachment to real property, other than attachment for any of the following purposes:

(i) Assembling the machinery, equipment or other tangible personal property.

(ii) Connecting items of machinery, equipment or other tangible personal property to each other.

(iii) Connecting the machinery, equipment or other tangible personal property, whether as an individual item or as a system of items, to water, power, gas, communication or other services.

(iv) Stabilizing or protecting the machinery, equipment or other tangible personal property during operation by bolting, burying or performing other dissimilar nonpermanent connections to either real property or real property improvements.

14. The leasing or renting of certified ignition interlock devices installed pursuant to the requirements prescribed by section 28-1461. For the purposes of this paragraph, "certified ignition interlock device" has the same meaning prescribed in section 28-1301.

15. Computer data center equipment purchased by the owner, operator or qualified colocation tenant of the computer data center or an authorized agent of the owner, operator or qualified colocation tenant during the qualification period for use in a computer data center that is certified by the Arizona commerce authority under section 41-1519. To qualify for this deduction, at the time of purchase, the owner, operator or qualified colocation tenant must present to the retailer its certificate that is issued pursuant to section 41-1519 and that establishes its qualification for the deduction. For the purposes of this paragraph, "computer data center", "computer data center equipment", "qualification period" and "qualified colocation tenant" have the same meanings prescribed in section 41-1519.

16. The gross proceeds of sales or gross income derived from a contract with the owner of real property or improvements to real property for the maintenance, repair, replacement or alteration of existing property, except as specified in this paragraph. The gross proceeds of sales or gross income derived from a de minimis amount of modification activity does not subject the contract or any part of the contract to tax. For the purposes of this paragraph:

(a) Each contract is independent of another contract, except that any change order that directly relates to the scope of work of the original contract shall be treated the same as the original contract under this ~~chapter~~ PARAGRAPH, regardless of the amount of modification activities included in the change order. If a change order does not directly relate to the scope of work of the original contract, the change order shall be treated as a new contract, with the tax treatment of any subsequent change order to follow the tax treatment of the contract to which the scope of work of the subsequent change order directly relates.

(b) Any term not defined in this paragraph that is defined in section 42-5075 has the same meaning prescribed in section 42-5075.

(c) This paragraph does not apply to a contract that primarily involves surface or subsurface improvements to land and that is subject to title 28, chapter 19, 20 or 22 or title 34, chapter 2 or 6 even if the contract also includes vertical improvements. If a city or town imposes a tax on contracts that are subject to procurement processes under those provisions, the city or town shall include in the request for proposals a notice to bidders when those projects are subject to the tax. This subdivision does not apply to contracts with:

(i) Community facilities districts, fire districts, county television improvement districts, community park maintenance districts, cotton pest control districts, hospital districts, pest abatement districts, health service districts, agricultural improvement districts, county free library districts, county jail districts, county stadium districts, special health care districts, public health services districts, theme park districts, regional attraction districts or revitalization districts.

(ii) Any special taxing district not specified in item (i) of this subdivision if the district does not substantially engage in the modification, maintenance, repair, replacement or alteration of surface or subsurface improvements to land.

17. Monitoring services relating to an alarm system as defined in section 32-101.

18. Tangible personal property, job printing or publications sold to or purchased by, or tangible personal property leased, rented or licensed for use to or by, a qualifying health sciences educational institution as defined in section 42-5001.

19. The transfer of title or possession of coal back and forth between an owner or operator of a power plant and a person who is responsible for refining coal if both of the following apply:

(a) The transfer of title or possession of the coal is for the purpose of refining the coal.

(b) The title or possession of the coal is transferred back to the owner or operator of the power plant after completion of the coal refining process. For the purposes of this subdivision, "coal refining process" means the application of a coal additive system that aids the reduction of power plant emissions during the combustion of coal and the treatment of flue gas.

20. The gross proceeds of sales or gross income from sales of low or reduced cost articles of food or drink to eligible elderly or homeless persons or persons with a disability by a business subject to tax under section 42-5074 that contracts with the department of economic security and that is approved by the food and nutrition service of the United States department of agriculture pursuant to the supplemental nutrition assistance program established by the food and nutrition act of 2008 (P.L. 110-246; 122 Stat. 1651; 7 United States Code sections 2011 through 2036a), if the purchases are made with the benefits issued pursuant to the supplemental nutrition assistance program.

21. Tangible personal property incorporated or fabricated into a project described in paragraph 16 of this subsection, that is located within the exterior boundaries of an Indian reservation for which the owner, as defined in section 42-5075, of the project is an Indian tribe or an affiliated Indian. For the purposes of this paragraph:

(a) "Affiliated Indian" means an individual native American Indian who is duly registered on the tribal rolls of the Indian tribe for whose benefit the Indian reservation was established.

(b) "Indian reservation" means all lands that are within the limits of areas set aside by the United States for the exclusive use and occupancy of an Indian tribe by treaty, law or executive order and that are recognized as Indian reservations by the United States department of the interior.

(c) "Indian tribe" means any organized nation, tribe, band or community that is recognized as an Indian tribe by the United States department of the interior and includes any entity formed under the laws of that Indian tribe.

22. The charges for the leasing or renting of space to make attachments to utility poles as follows:

(a) By a person that is engaged in the business of providing or furnishing electrical services or telecommunication services or that is a cable operator.

(b) To a person that is engaged in the business of providing or furnishing electrical services or telecommunication services or that is a cable operator.

B. A city, town or other taxing jurisdiction shall not levy a transaction privilege, sales, use, franchise or other similar tax or fee, however denominated, on natural gas or liquefied petroleum gas used to propel a motor vehicle.

C. A city, town or other taxing jurisdiction shall not levy a transaction privilege, sales, gross receipts, use, franchise or other similar tax or fee, however denominated, on gross proceeds of sales or gross income derived from any of the following:

1. A motor carrier's use on the public highways in this state if the motor carrier is subject to a fee prescribed in title 28, chapter 16, article 4.

2. Leasing, renting or licensing a motor vehicle subject to and on which the fee has been paid under title 28, chapter 16, article 4.

3. The sale of a motor vehicle and any repair and replacement parts and tangible personal property becoming a part of such motor vehicle to a motor carrier who is subject to a fee prescribed in title 28, chapter 16, article 4 and who is engaged in the business of leasing, renting or licensing such property.

4. Incarcerating or detaining in a privately operated prison, jail or detention facility prisoners who are under the jurisdiction of the United States, this state or any other state or a political subdivision of this state or of any other state.

5. Transporting for hire persons, freight or property by light motor vehicles subject to a fee under title 28, chapter 15, article 4.

6. Any amount attributable to development fees that are incurred in relation to the construction, development or improvement of real property and paid by the taxpayer as defined in the model city tax code or by a contractor providing services to the taxpayer. For the purposes of this paragraph:

(a) The attributable amount shall not exceed the value of the development fees actually imposed.

(b) The attributable amount is equal to the total amount of development fees paid by the taxpayer or by a contractor providing services to the taxpayer and the total development fees credited in exchange for the construction of, contribution to or dedication of real property for providing public infrastructure, public safety or other public services necessary to the development. The real property must be the subject of the development fees.

(c) "Development fees" means fees imposed to offset capital costs of providing public infrastructure, public safety or other public services to a development and authorized pursuant to section 9-463.05, section 11-1102 or title 48 regardless of the jurisdiction to which the fees are paid.

7. ANY AMOUNT ATTRIBUTABLE TO FEES COLLECTED BY TRANSPORTATION NETWORK COMPANIES ISSUED A PERMIT PURSUANT TO SECTION 28-9552.

8. TRANSPORTING FOR HIRE PERSONS BY TRANSPORTATION NETWORK COMPANY DRIVERS ON TRANSACTIONS INVOLVING TRANSPORTATION NETWORK SERVICES AS DEFINED IN SECTION 28-9551.

9. TRANSPORTING FOR HIRE PERSONS BY VEHICLE FOR HIRE COMPANIES THAT ARE ISSUED PERMITS PURSUANT TO SECTION 28-9503.

10. TRANSPORTING FOR HIRE PERSONS BY VEHICLE FOR HIRE DRIVERS ON TRANSACTIONS INVOLVING VEHICLE FOR HIRE SERVICES AS DEFINED IN SECTION 28-9501.

D. A city, town or other taxing jurisdiction shall not levy a transaction privilege, sales, use, franchise or other similar tax or fee, however denominated, in excess of one-tenth of one percent of the value of the entire product mined, smelted, extracted, refined, produced or prepared for sale, profit or commercial use, on persons engaged in the business of

mineral processing, except to the extent that the tax is computed on the gross proceeds or gross income from sales at retail.

E. In computing the tax base, any city, town or other taxing jurisdiction shall not include in the gross proceeds of sales or gross income:

1. A manufacturer's cash rebate on the sales price of a motor vehicle if the buyer assigns the buyer's right in the rebate to the retailer.

2. The waste tire disposal fee imposed pursuant to section 44-1302.

F. A city or town shall not levy a use tax on the storage, use or consumption of tangible personal property in the city or town by a school district or charter school.

G. For the purposes of this section:

1. "Cable operator" has the same meaning prescribed by section 9-505.

2. "Electrical services" means transmitting or distributing electricity, electric lights, current or power over lines, wires or cables.

3. "Telecommunication services" means transmitting or relaying sound, visual image, data, information, images or material over lines, wires or cables by radio signal, light beam, telephone, telegraph or any other electromagnetic means.

4. "Utility pole" means any wooden, metal or other pole used for utility purposes and the pole's appurtenances that are attached or authorized for attachment by the person controlling the pole.

Sec. 57. Laws 2014, chapter 132, section 11 is amended to read:

Sec. 11. Delayed repeal

Section ~~41-2135~~ 3-3515, Arizona Revised Statutes, ~~as added by this act,~~ is repealed from and after September 30, 2018.

Sec. 58. Exemption from rulemaking

For the purposes of this act and Laws 2015, chapter 244, the Arizona department of agriculture and the department of transportation are exempt from the rulemaking requirements of title 41, chapter 6, Arizona Revised Statutes, for one year after the effective date of this act.

Sec. 59. Effective date

A. Sections 3-105, 3-615, 3-3401, 3-3412, 3-3414, 3-3415, 3-3416, 3-3417, 3-3431, 3-3433, 3-3434, 3-3436, 3-3437, 3-3451, 3-3452, 3-3453, 3-3454, 3-3473, 3-3475, 3-3476, 3-3512, 3-3514, 28-101, 28-141, 28-2401, 28-4038, 28-9501, 28-9502, 28-9503, 28-9506, 28-9507, 28-9521, 28-9522, 28-9523, 28-9524, 28-9525, 28-9526, 28-9551, 28-9552, 28-9556 and 41-1092.02, Arizona Revised Statutes, as amended by this act, are effective from and after June 30, 2016.

B. Section 3-102, Arizona Revised Statutes, as amended by Laws 2015, chapter 244, section 3 and this act, is effective from and after June 30, 2016.

C. Section 9-499.18, Arizona Revised Statutes, as amended by Laws 2015, chapter 244, section 26 and this act, is effective from and after June 30, 2016.

D. Sections 3-3491, 3-3492, 3-3493, 3-3494 and 3-3498, Arizona Revised Statutes, as renumbered and amended by this act, are effective from and after June 30, 2016.

E. Sections 3-3419 and 28-9527, Arizona Revised Statutes, as added by this act, are effective from and after June 30, 2016.

F. Section 3-3491, Arizona Revised Statutes, as amended by Laws 2015, chapter 244, section 2 and as repealed by this act, is effective from and after June 30, 2016.

G. Sections 28-5493 and 28-5860, Arizona Revised Statutes, as repealed by this act, are effective from and after June 30, 2016.

H. Sections 42-5062 and 42-6004, Arizona Revised Statutes, as amended by this act, are effective for taxable periods beginning from and after the last day of the month of the general effective date of the fifty-second legislature, second regular session.

I. Laws 2014, chapter 132, section 11, as amended by this act, is effective from and after June 30, 2016.

APPROVED BY THE GOVERNOR MAY 12, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 12, 2016.

State of Arizona
House of Representatives
Fifty-third Legislature
First Regular Session
2017

CHAPTER 295

HOUSE BILL 2368

AN ACT

AMENDING SECTIONS 3-3491 AND 3-3493, ARIZONA REVISED STATUTES; RELATING TO MOTOR FUEL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 3-3491, Arizona Revised Statutes, is amended to read:

3-3491. Standards for oxygenated fuel; volatility; exceptions

A. From and after September 30 through March 31 of each year, in a county with a population of one million two hundred thousand or more persons and in any portion of a county contained in area A, blends of gasoline with ethanol shall not exceed the volatility requirements prescribed by section 3-3433 and rules adopted by the associate director under that section. From and after September 30 through March 31 of each year, in area B, blends of gasoline with ethanol may exceed the volatility requirements prescribed by section 3-3433 and rules adopted by the associate director under that section by up to one pound per square inch if the base fuel meets the requirements of ASTM D4814 and the final gasoline-ethanol blend contains at least six percent ethanol by volume but does not exceed United States environmental protection agency waivers. For any other locations and period of time, blends of gasoline with ethanol shall meet the volatility requirements as determined by division rule.

B. Notwithstanding subsection D of this section, the associate director of the division in consultation with the director of the department of environmental quality shall approve alternate fuel control measures that are submitted by gasoline providers and that the director and the associate director determine will result in motor vehicle carbon monoxide emission reductions that will equal or exceed the reductions that result under subsection D of this section. In making those determinations, the director of the department of environmental quality and the associate director shall compare the alternative measure against the emission reduction that would be obtained from a fuel with the maximum vapor pressure standard prescribed by subsection D of this section and the minimum oxygen standard prescribed by section 3-3492 or 3-3495. Alternative fuel control measures approved by the associate director of the division in consultation with the director of the department of environmental quality may be used by any gasoline provider unless the approval is rescinded by the associate director of the division at least one hundred eighty days before the beginning of any oxygenate period in the future. Gasoline providers that choose to use an approved alternate fuel control measure shall annually submit a compliance plan to the associate director not later than sixty days before the start of the oxygenate period.

C. From and after September 30 through March 31 of each year, all blends of gasoline with alcohol other than ethanol shall satisfy all of the requirements prescribed by section 3-3433 and rules adopted by the associate director under that section and the provisions of a waiver issued by the United States environmental protection agency pursuant to 42 United States Code section 7545(f).

D. Notwithstanding subsection A of this section, if the director of the department of environmental quality has previously raised the minimum oxygen content to the maximum percentage of oxygen allowed for each oxygenate as provided by section 3-3495, the designated air quality planning agency for area B has considered, analyzed and reviewed the costs and benefits of all other reasonable and available control measures in lieu of reducing volatility requirements to nine pounds per square inch and the director of the department of environmental quality finds that area B has failed to maintain the carbon monoxide national ambient air quality standards by violating the standard, beginning with the oxygenate period beginning on the following September 30 and for each oxygenate period thereafter in area B, the volatility requirements described by section 3-3433, subsection G may be reduced to nine pounds per square inch. If a violation of the carbon monoxide national ambient air quality standards is recorded after the volatility requirements have been reduced to nine pounds per square inch, the director of the department of environmental quality shall remove the one pound per square inch waiver for gasoline-ethanol blends.

E. Gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles within this state shall not contain the following:

1. Methyl tertiary butyl ether that exceeds 0.3 percent by volume.

2. A total of more than 0.10 percent oxygen by weight collectively from all of the following oxygenates:

(a) Diisopropylether (DIPE).

(b) Ethyl tert-butylether (ETBE).

~~(c) Iso-butanol.~~

~~(d)~~ (c) Isopropanol.

~~(e)~~ (d) Methanol.

~~(f)~~ (e) N-butanol.

~~(g)~~ (f) N-propanol.

~~(h)~~ (g) Sec-butanol.

~~(i)~~ (h) Tert-amylmethylether (TAME).

~~(j)~~ (i) Tert-butanol.

~~(k)~~ (j) Tert-pentanol (tert-amylalcohol).

F. Subsection E of this section does not prohibit the transshipment through this state, including storage incident to that transshipment, of gasoline that contains the oxygenates prescribed by subsection E of this section if both of the following apply:

1. The gasoline is used or disposed outside this state.

2. The gasoline is segregated from gasoline that is intended for use inside this state.

Sec. 2. Section 3-3493, Arizona Revised Statutes, is amended to read:

3-3493. Area A; fuel reformulation; rules

A. All gasoline produced and shipped to or within this state and sold or offered for sale for use in motor vehicles in a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A, subject to an appropriate waiver granted by the administrator of the United States environmental protection agency pursuant to section 211(c)(4) of the clean air act as defined in section 49-401.01, shall comply with either of the following fuel reformulation options:

1. A gasoline that meets standards for federal phase II reformulated gasoline, as provided in 40 Code of Federal Regulations section 80.41, paragraphs (e) through (h), in effect on January 1, 1999, except that the minimum oxygen content standard does not apply. The gasoline shall also meet the maximum vapor pressure requirements in section 3-3433, subsections D and F.

2. California phase 2 reformulated gasoline, including alternative formulations allowed by the predictive model, as adopted by the California air resources board pursuant to California Code of Regulations title 13, sections 2261 through 2262.7 and 2265, in effect on January 1, 1997, except that the minimum oxygen content standard does not apply. The gasoline shall also meet the maximum vapor pressure requirements in section 3-3433, subsections D and F.

B. For the period beginning November 1 through March 31 of each year, all gasoline produced and shipped to or within this state and sold or offered for sale for use in motor vehicles in a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A, subject to an appropriate waiver granted by the administrator of the United States environmental protection agency pursuant to section 211(c)(4) of the clean air act as defined in section 49-401.01, shall comply with standards for California phase 2 reformulated gasoline, including alternative formulations allowed by the predictive model, as adopted by the California air resources board pursuant to California Code of Regulations title 13, sections 2261 through 2262.7 and 2265, in effect on January 1, 1997 and shall meet the maximum vapor pressure requirements in section 3-3433, subsections D and F. The fuel described in this subsection shall meet the requirements of section 3-3492, subsection A, paragraph 1 OR 2.

C. Any registered supplier or oxygenate blender, as defined in division rules, may petition the associate director to request that all registered suppliers or oxygenate blenders be allowed to comply with standards other than the standards prescribed by section 3-3492, subsection A if the petitioner can demonstrate that ethanol supply shortages are imminent.

D. The petition shall:

1. Identify specific supply conditions that will result in a shortage of ethanol.

2. Identify which oxygenate or oxygenates and the concentration that will be blended into gasoline for sale or use in area A.

3. Demonstrate that the alternative oxygenate blend comes closest to meeting a three and one-half percent by weight oxygen content at reasonable cost, unless the registered supplier or oxygenate blender is petitioning to use a gasoline-ethanol blend containing less than ten percent by volume of ethanol.

4. Specify a time period for compliance with any provision of section 3-3492, subsection A, not to exceed sixty days.

E. The associate director shall either grant or deny the petition in writing within seven days of its receipt. Any decision by the associate director to grant the petition shall be equally applicable to all registered suppliers or oxygenate blenders and shall not be selectively applied to any single registered supplier or oxygenate blender. The petition may be granted only if the associate director verifies that the basis for requesting the petition is factual.

F. The associate director may reauthorize a petition if the petitioner can demonstrate that the conditions have continued. The reauthorization of a petition shall not exceed thirty days.

G. The associate director of the division shall consult with the director of the department of environmental quality before granting, reauthorizing or denying any such petition.

H. The director of environmental quality in consultation with the associate director of the division shall adopt by rule:

1. Requirements to implement subsections A, B, C and D of this section.

2. Requirements for recordkeeping, reporting and analytical methods for fuel providers to demonstrate compliance with subsections A, B, C and D of this section.

I. This section does not apply to fuel sold for use at a motor vehicle manufacturer proving ground or at a motor vehicle racing event.

Sec. 3. Conditional enactment; notice

A. Section 3-3493, Arizona Revised Statutes, as amended by this act, does not become effective unless on or before July 1, 2022 the United States environmental protection agency approves the proposed modifications

to the gasoline fuel formulation requirements as part of the state implementation plan for air quality.

B. The director of the department of environmental quality shall notify in writing the director of the Arizona legislative council on or before October 1, 2022 either:

1. Of the date on which the condition was met.

2. That the condition was not met.

APPROVED BY THE GOVERNOR MAY 10, 2017.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 10, 2017.

State of Arizona
Senate
Fifty-third Legislature
Second Regular Session
2018

CHAPTER 260

SENATE BILL 1200

AN ACT

AMENDING SECTIONS 28-305 AND 28-363, ARIZONA REVISED STATUTES; REPEALING TITLE 28, CHAPTER 2, ARTICLE 6, ARIZONA REVISED STATUTES; AMENDING SECTIONS 28-755, 28-871, 28-960, 28-961 AND 28-1385, ARIZONA REVISED STATUTES; REPEALING TITLE 28, CHAPTER 6, ARTICLE 2, ARIZONA REVISED STATUTES; AMENDING SECTIONS 28-2059, 28-2261 AND 28-2293, ARIZONA REVISED STATUTES; AMENDING SECTION 28-2294, ARIZONA REVISED STATUTES, AS ADDED BY LAWS 1996, CHAPTER 76, SECTION 93; AMENDING SECTION 28-2294, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 1996, CHAPTER 76, SECTION 94; AMENDING SECTIONS 28-2295, 28-2356 AND 28-2513, ARIZONA REVISED STATUTES; REPEALING SECTIONS 28-3051 AND 28-3052, ARIZONA REVISED STATUTES; AMENDING SECTIONS 28-3153, 28-3158, 28-3166 AND 28-3171, ARIZONA REVISED STATUTES; REPEALING SECTIONS 28-3172 AND 28-3477, ARIZONA REVISED STATUTES; AMENDING SECTION 28-4145, ARIZONA REVISED STATUTES; REPEALING SECTION 28-4543, ARIZONA REVISED STATUTES; AMENDING SECTIONS 28-5615, 28-5639, 28-5648, 28-5703, 28-5721, 28-5724, 28-5952, 28-6922, 28-7058 AND 28-7059, ARIZONA REVISED STATUTES; AMENDING TITLE 28, CHAPTER 21, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 28-7618; AMENDING TITLE 28, CHAPTER 22, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 28-7711; AMENDING SECTION 28-8242, ARIZONA REVISED STATUTES; REPEALING TITLE 41, CHAPTER 3, ARTICLE 1.3, ARIZONA REVISED STATUTES; AMENDING SECTIONS 41-835.01 AND 41-835.03, ARIZONA REVISED STATUTES; RELATING TO TRANSPORTATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 28-305, Arizona Revised Statutes, is amended to read:

28-305. Powers and duties of the board; rules

The board may prescribe rules for the effective administration of its powers, duties and responsibilities, including rules relating to:

1. Priority programs.
2. Establishing, altering or vacating highways.
3. Construction contracts.
4. Revenue bonds.
5. Local government airport grants.
~~6. Designating or establishing scenic or historic highways.~~
~~7.~~ 6. Prohibiting bid rigging.

Sec. 2. Section 28-363, Arizona Revised Statutes, is amended to read:

28-363. Duties of the director; administration

A. The director shall:

1. Supervise and administer the overall activities of the department and its divisions and employees.
2. Appoint assistant directors for each of the divisions.
3. Provide for the assembly and distribution of information to the public concerning department activities.
4. Delegate functions, duties or powers as the director deems necessary to carry out the efficient operation of the department.
5. Exercise complete and exclusive operational control and jurisdiction over the use of state highways and routes.
6. Coordinate the design, right-of-way purchase and construction of controlled access highways that are either state routes or state highways and related grade separations of controlled access highways.
7. Coordinate the design, right-of-way purchase, construction, standard and reduced clearance grade separation, extension and widening of arterial streets and highways under chapters 17 and 18 of this title.
8. Assist regional transportation planning agencies, councils of government, tribal governments, counties, cities and towns in the development of their regional and local transportation plans to ensure that the streets, highways and other regionally significant modes of transportation within each county form an integrated and efficient regional system.
~~9. On or before December 1, present an annual report to the speaker of the house of representatives and the president of the senate documenting the expenditures of monies under chapters 17 and 18 of this title during the previous fiscal year relating to the design, right-of-way purchase or construction of controlled access highways that are accepted in the state highway system as state routes or state highways or related~~

~~grade separations of controlled access highways that are included in the regional transportation plans of the counties.~~

~~10.~~ 9. Designate the necessary agencies for enforcing the provisions of the laws the director administers or enforces.

~~11.~~ 10. Exercise other duties or powers as the director deems necessary to carry out the efficient operation of the department.

~~12.~~ 11. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

~~13.~~ 12. Develop a plan to increase use of bypass routes by vehicles on days of poor visibility in the Phoenix metropolitan area.

B. The assistant directors appointed pursuant to subsection A of this section are subject to title 41, chapter 4, article 4.

C. The director shall not spend any monies, adopt any rules or implement any policies or programs to convert signs to the metric system or to require the use of the metric system with respect to designing or preparing plans, specifications, estimates or other documents for any highway project before the conversion or use is required by federal law, except that the director may:

1. Spend monies and require the use of the metric system with respect to designing or preparing plans, specifications, estimates or other documents for a highway project that is awarded before October 1, 1997 and that is exclusively metric from its inception.

2. Prepare for conversion to and use of the metric system not more than six months before the conversion or use is required by federal law.

Sec. 3. Repeal

Title 28, chapter 2, article 6, Arizona Revised Statutes, is repealed.

Sec. 4. Section 28-755, Arizona Revised Statutes, is amended to read:

28-755. Hand or arm signals or mechanical signal

A person shall give a stop or turn signal if required by this article by means of the hand and arm or by a signal lamp or lamps or mechanical signal ~~device of a type approved by the department~~. If a vehicle is constructed or loaded so that a hand and arm signal would not be visible both to the front and rear of the vehicle, the signals must be given by a lamp or lamps or signal device.

Sec. 5. Section 28-871, Arizona Revised Statutes, is amended to read:

28-871. Stopping, standing or parking outside business or residence district

A. On a highway outside of a business or residence district, a person shall not stop, park or leave standing a vehicle, whether attended or unattended, on the paved or main traveled part of the highway if it is practicable to stop, park or leave the vehicle off that part of the highway. If a person stops, parks or leaves standing a vehicle, the person shall leave an unobstructed width of the highway opposite the standing vehicle for the free passage of other vehicles and a clear view of the standing vehicle shall be available from a distance of two hundred feet in each direction on the highway.

B. This section does not apply to:

1. The driver of a vehicle that is disabled while on the paved or main traveled portion of a highway in a manner and to an extent that it is impossible to avoid stopping and temporarily leaving the disabled vehicle in that position.

2. A vehicle or the driver of a vehicle engaged in the official delivery of the United States mail that stops on the right-hand side of the highway for the purpose of picking up or delivering mail if the following conditions are met:

(a) A clear view of the vehicle is available from a distance of three hundred feet in each direction on the highway or a flashing amber light at least four inches in diameter with the letters "stop" printed on the light is attached to the rear of the vehicle.

(b) The vehicle has a uniform sign that:

(i) Is at least fourteen inches in diameter.

~~(ii) Is approved by the department.~~

~~(iii)~~ (ii) Has the words "U.S. mail" printed on the sign.

~~(iv)~~ (iii) Is attached to the rear of the vehicle.

Sec. 6. Section 28-960, Arizona Revised Statutes, is amended to read:

28-960. Flares; warning devices; requirements

A. Except as provided in subsection B OF THIS SECTION, a person shall not operate a motor truck, passenger bus or truck tractor on a highway outside the corporate limits of a city or town from a half hour after sunset to a half hour before sunrise unless the following equipment is carried in the vehicle:

1. At least three flares or three red electric lanterns that comply with the following:

(a) Each flare or lantern is capable of being seen and distinguished at a distance of five hundred feet under normal atmospheric conditions at nighttime.

(b) Each flare or liquid-burning pot torch is capable of burning for at least twelve hours in five miles per hour wind velocity and capable of burning in any air velocity from zero to forty miles per hour.

(c) Each flare is substantially constructed to withstand reasonable shocks without leaking.

(d) Each flare is carried in the vehicle in a metal rack or box.

(e) Each red electric lantern is capable of operating continuously for at least twelve hours and is substantially constructed to withstand reasonable shock without breakage.

2. At least three red-burning fusees, unless red electric lanterns are carried, that are:

(a) Made in accordance with specifications of the bureau of explosives, 30 Vesey Street, New York City and so marked.

(b) Capable of burning at least fifteen minutes.

3. At least two red cloth flags that are at least twelve inches square and have standards to support the flags.

B. At the time and under the conditions stated in subsection A OF THIS SECTION a person shall not operate a motor vehicle used in transporting flammable liquids in bulk or transporting compressed flammable gases, unless three red electric lanterns meeting the requirements stated in subsection A OF THIS SECTION are carried in the vehicle. A flare, fusee or signal produced by a flame shall not be carried in a vehicle described in this subsection.

C. A person is in compliance with this section if the person operates a motor vehicle described in this section and carries in the vehicle three portable reflector units ~~on standards and of a type approved by the department. The department shall not approve a portable reflector unit unless it is~~ THAT ARE designed and constructed to meet the requirements of 49 Code of Federal Regulations section 571.125.

Sec. 7. Section 28-961, Arizona Revised Statutes, is amended to read:

28-961. Display of warning devices; disabled vehicle

A. Except as provided in subsection B of this section, if a motor truck, passenger bus, truck tractor, trailer, semitrailer or pole trailer is disabled on the traveled portion of a highway or the shoulder of a highway outside of a city or town at a time when lighted lamps are required on vehicles, the driver of the vehicle shall display the following warning devices on the highway during the time the vehicle is disabled on the highway:

1. A lighted fusee immediately placed on the roadway at the traffic side of the motor vehicle unless electric lanterns are displayed.

2. Within the burning period of the fusee and as promptly as possible, three lighted flares or pot torches or three electric lanterns placed on the roadway as follows:

(a) One at a distance of approximately one hundred feet in advance of the vehicle and one at a distance of approximately one hundred feet to the rear of the vehicle, each in the center of the lane of traffic occupied by the disabled vehicle.

(b) One at the traffic side of the vehicle approximately ten feet rearward or forward of the vehicle.

B. If a vehicle that is used in transporting flammable liquids in bulk or compressed flammable gases is disabled on a highway at a time or place provided in subsection A of this section, the driver of the vehicle shall display on the roadway the following lighted warning devices:

1. One red electric lantern immediately placed on the roadway at the traffic side of the vehicle.

2. Two other red electric lanterns placed to the front and rear of the vehicle in the same manner prescribed for flares in subsection A of this section.

C. If a vehicle of a type provided in subsection B of this section is disabled, the use of flares, fusees or any signal produced by flame as warning signals is prohibited.

D. If a vehicle referred to in this section is disabled on the traveled portion of a highway or the shoulder of a highway outside of a city or town at a time when the display of fusees, flares or electric lanterns is not required, the driver of the vehicle shall display two red flags on the roadway in the lane of traffic occupied by the disabled vehicle, one at a distance of approximately one hundred feet in advance of the vehicle and one at a distance of approximately one hundred feet to the rear of the vehicle.

E. A person is in compliance with this section if three portable reflector units ~~on standards and approved by the department~~ are both:

1. Displayed at the times and under the conditions provided in this section either during the daytime or at nighttime.

2. Placed on the roadway in the locations prescribed by this section for the placing of electric lanterns and lighted flares.

F. The flares, fusees, lanterns and flags required in this section shall conform with the requirements of section 28-960 applicable to the flares, fusees, lanterns and flags.

Sec. 8. Section 28-1385, Arizona Revised Statutes, is amended to read:

28-1385. Administrative license suspension for driving under the influence or for homicide or assault involving a motor vehicle; report; hearing; summary review; ignition interlock device requirement

A. A law enforcement officer shall forward to the department a certified report as prescribed in subsection B of this section, subject to the penalty for perjury prescribed by section 28-1561, if both of the following occur:

1. The officer arrests a person for a violation of section 4-244, paragraph 34, section 28-1381, section 28-1382 or section 28-1383 or for a violation of title 13, chapter 11 or section 13-1201 or 13-1204 involving a motor vehicle.

2. The person submits to a blood or breath alcohol test permitted by section 28-1321 or any other law or a sample of blood is obtained pursuant to section 28-1388 and the results are either not available or the results indicate any of the following:

(a) 0.08 or more alcohol concentration in the person's blood or breath.

(b) 0.04 or more alcohol concentration in the person's blood or breath if the person was driving or in actual physical control of a commercial motor vehicle.

(c) Any drug defined in section 13-3401 or its metabolite is in the person's body except if the person possesses a valid prescription for the drug.

B. The officer shall make the certified report required by subsection A of this section on forms supplied or approved by the department. The report shall state information that is relevant to the enforcement action, including:

1. Information that adequately identifies the arrested person.

2. A statement of the officer's grounds for belief that the person was driving or in actual physical control of a motor vehicle in violation of section 4-244, paragraph 34, section 28-1381, section 28-1382 or section 28-1383 or committed a violation of title 13, chapter 11 or section 13-1201 or 13-1204 involving a motor vehicle.

3. A statement that the person was arrested for a violation of section 4-244, paragraph 34, section 28-1381, section 28-1382 or section 28-1383 or for a violation of title 13, chapter 11 or section 13-1201 or 13-1204 involving a motor vehicle.

4. A report of the results of the blood or breath alcohol test that was administered, if the results are available.

C. The officer shall also serve an order of suspension on the person on behalf of the department. The order of suspension:

1. Is effective fifteen days after the date it is served.

2. Shall require the immediate surrender of any license or permit to drive that is issued by this state and that is in the possession or control of the person.

3. Shall contain information concerning the right to a summary review and hearing, including information concerning the hearing as required by section 28-1321, subsections G and H.

4. Shall be accompanied by printed forms that are ready to mail to the department, that the person may fill out and sign to indicate the person's desire for a hearing and that advise the person that the person may alternatively submit an online request for a hearing.

5. Shall be entered on the department's records on receipt of the report by the officer and a copy of the order of suspension.

6. Shall inform the person that the person's driving privilege, license, permit, right to apply for a license or permit or nonresident operating privilege may be issued or reinstated following the period of suspension only if the person completes alcohol or other drug screening.

7. Shall contain information on alcohol or other drug education and treatment programs that are provided by a facility approved by the department of health services.

D. If the blood test result is unavailable at the time the test is administered, the result shall be forwarded to the department before the hearing held pursuant to this section in a form prescribed by the director.

E. If the license or permit is not surrendered pursuant to subsection C of this section, the officer shall state the reason for the nonsurrender. If a valid license or permit is surrendered, the officer shall issue a temporary driving permit that is valid for fifteen days. The officer shall forward a copy of the completed order of suspension, a copy of any completed temporary permit and any driver license or permit taken into possession under this section to the department within five days after the issuance of the order of suspension along with the report.

F. The department shall suspend the affected person's license or permit to drive or right to apply for a license or permit or any nonresident operating privilege for not less than ninety consecutive days from that date. If the person is otherwise qualified, the department may reinstate the person's driving privilege, license, permit, right to apply for a license or permit or nonresident operating privilege following the period of suspension only if the violator completes alcohol or other drug screening.

G. Notwithstanding subsections A through F of this section, the department shall suspend the driving privileges of the person described in subsection A of this section for not less than thirty consecutive days and shall restrict the driving privileges of the person for not less than sixty consecutive additional days to travel between the person's place of employment and residence and during specified periods of time while at employment, to travel between the person's place of residence and the person's secondary or postsecondary school, according to the person's employment or educational schedule, to travel between the person's place of residence and the office of the person's probation officer for scheduled appointments or to travel between the person's place of residence and a screening, education or treatment facility for scheduled appointments if the person:

1. Did not cause death or serious physical injury as defined in section 13-105 to another person during the course of conduct out of which the current action arose.

2. Has not been convicted of a violation of section 4-244, paragraph 34, section 28-1381, section 28-1382 or section 28-1383 within eighty-four months of the date of commission of the acts out of which the current action arose. The dates of commission of the acts are the determining factor in applying the eighty-four month provision.

3. Has not had the person's privilege to drive suspended pursuant to this section or section 28-1321 within eighty-four months of the date of commission of the acts out of which the current action arose.

4. Provides satisfactory evidence to the department of the person's completion of alcohol or other drug screening that is ordered by the department. If the person does not complete alcohol or other drug screening, the department may impose a ninety day suspension pursuant to this section.

H. If the officer does not serve an order of suspension pursuant to subsection C of this section and if the department does not receive the report of the results of the blood or breath alcohol test pursuant to subsection B, paragraph 4 of this section, but subsequently receives the results and the results indicate 0.08 or more alcohol concentration in the person's blood or breath, a blood or breath alcohol concentration of 0.04 or more and the person was driving or in actual physical control of a commercial motor vehicle or any drug defined in section 13-3401 or its metabolite in the person's body and the person does not possess a valid prescription for the drug, the department shall notify the person named in the report in writing sent by mail that fifteen days after the date of issuance of the notice the department will suspend the person's license or permit, driving privilege or nonresident driving privilege. The notice shall also state that the department will provide an opportunity for a hearing and administrative review if the person requests a hearing or review in writing and the request is received by the department within fifteen days after the notice is sent.

I. A timely request for a hearing stays the suspension until a hearing is held, except that the department shall not return any surrendered license or permit to the person but may issue temporary permits to drive that expire no later than when the department has made its final decision. If the person is a resident without a license or permit or has an expired license or permit, the department may allow the person to apply for a restricted license or permit. If the department determines the person is otherwise entitled to the restricted license or permit, the department shall issue, but retain, the license or permit, subject to this section. All hearings requested under this section shall be conducted in the same manner and under the same conditions as provided in section 28-3306.

J. For the purposes of this section, the scope of the hearing shall include only the following issues:

1. Whether the officer had reasonable grounds to believe the person was driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor or drugs.

2. Whether the person was placed under arrest for a violation of section 4-244, paragraph 34, section 28-1381, section 28-1382 or section 28-1383 or for a violation of title 13, chapter 11 or section 13-1201 or 13-1204 involving a motor vehicle.

3. Whether a test was taken, the results of which indicated any of the following:

(a) An alcohol concentration in the person's blood or breath at the time the test was administered of either:

(i) 0.08 or more.

(ii) 0.04 or more if the person was driving or in actual physical control of a commercial motor vehicle.

(b) Any drug defined in section 13-3401 or its metabolite in the person's body except if the person possesses a valid prescription for the drug.

4. Whether the testing method used was valid and reliable.

5. Whether the test results were accurately evaluated.

K. The results of the blood or breath alcohol test shall be admitted on establishing the requirements in section 28-1323 or 28-1326.

L. If the department determines at the hearing to suspend the affected person's privilege to operate a motor vehicle, the suspension provided in this section is effective fifteen days after giving written notice of the suspension, except that the department may issue or extend a temporary license that expires on the effective date of the suspension. If the person is a resident without a license or permit or has an expired license or permit to operate a motor vehicle in this state, the department shall deny the issuance of a license or permit to the person for not less than ninety consecutive days. The department may reinstate the person's driving privilege, license, permit, right to apply for a license or permit or nonresident operating privilege following the period of suspension only if the violator completes alcohol or other drug screening.

M. A person may apply for a summary review of an order issued pursuant to this section instead of a hearing at any time before the effective date of the order. A TIMELY REQUEST FOR SUMMARY REVIEW STAYS THE SUSPENSION UNTIL A DECISION IS ISSUED. The person shall submit the application in writing to any department driver license examining office together with any written explanation as to why the department should not suspend the driving privilege. ~~The agent of the department receiving the notice shall issue to the person an additional driving permit that expires twenty days from the date the request is received.~~ The department shall review all reports submitted by the officer and any written explanation

submitted by the person and shall determine if the order of suspension should be sustained or cancelled. The department shall not hold a hearing, and the review is not subject to title 41, chapter 6. The department shall notify the person of its decision ~~before the temporary driving permit expires~~.

N. If the suspension or determination that there should be a denial of issuance is not sustained after a hearing or review, the ruling is not admissible in and does not have any effect on any civil or criminal court proceeding.

O. If it has been determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this state has been suspended, the department shall give information either in writing or by electronic means of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which the person has a license.

Sec. 9. Repeal

Title 28, chapter 6, article 2, Arizona Revised Statutes, is repealed.

Sec. 10. Section 28-2059, Arizona Revised Statutes, is amended to read:

28-2059. Obtaining a certificate of title; refusal; revocation

A. If satisfactory proof of ownership is furnished to the director, the director may issue a certificate of title for a motor vehicle, trailer or semitrailer whether or not a certificate of title has ever been issued for that motor vehicle, trailer or semitrailer.

B. If the director determines that an applicant for a certificate of title to a motor vehicle, trailer or semitrailer is not entitled to a certificate of title, the director may refuse to issue a certificate of title or to register the vehicle. ~~After notice and a hearing,~~ The director may revoke a registration already acquired or an outstanding certificate of title. The director shall serve ~~the~~ A notice OF REFUSAL TO ISSUE A CERTIFICATE OF TITLE OR VEHICLE REGISTRATION OR A NOTICE OF REVOCATION OF A CERTIFICATE OF TITLE OR REGISTRATION in person or by first class mail. Within fifteen days after the date the notice is ~~delivered or~~ mailed OR SERVED, ~~the applicant~~ A PERSON WHO IS AGGRIEVED BY THE REFUSAL OR REVOCATION may request a hearing.

Sec. 11. Section 28-2261, Arizona Revised Statutes, is amended to read:

28-2261. Alternative proportional registration agreements; authority

A. In lieu of the registration required by section 28-2153, in lieu of international proportional registration pursuant to article 7 of this chapter and notwithstanding section 28-2321, the director may provide for the apportionment of registration and other fees for resident or nonresident fleets of apportionable commercial vehicles that are engaged

in interstate and intrastate commerce between this state and another state or states in which fleets operate in accordance with a proportional registration agreement pursuant to this article.

B. The director may enter into proportional registration agreements with another state or states providing that residents of the other state or states who operate a commercial vehicle may allocate and apportion the registration and other fees and taxes for the commercial vehicle prescribed in sections 28-2003, 28-5433, 28-5471 and 28-5801 pursuant to a formula agreed on by the director and the other state or states.

C. The director may enter into an agreement pursuant to this article if residents of this state are granted the same allocation and apportionment privileges for commercial motor vehicles registered in the other state or states. An agreement, arrangement, declaration or amendment entered into pursuant to this article shall be in writing and is not effective until filed with the department.

~~D. The director shall adopt rules necessary to administer and enforce this article.~~

Sec. 12. Section 28-2293, Arizona Revised Statutes, is amended to read:

28-2293. Application

A. A nonresident daily commuter may apply for ~~external vehicle identification indicia and~~ an identification card by filing an application with the department.

B. The department shall prescribe a form to be completed by the applicant that includes all of the following information:

1. The vehicle license plate number and the vehicle identification number of the motor vehicle ~~that will display the nonresident daily commuter indicia~~.

2. The name of the registered owner of the motor vehicle ~~that will display the indicia~~.

3. A statement that the applicant is a nonresident daily commuter.

4. A statement that the ~~indicia will be displayed on a qualified~~ NONRESIDENT DAILY COMMUTER WILL ALWAYS CARRY THE NONRESIDENT IDENTIFICATION CARD IN THE motor vehicle FOR WHICH THE CARD IS ASSIGNED AND WILL PRESENT THE CARD TO ANY PEACE OFFICER OF THIS STATE ON DEMAND as prescribed by section 28-2295.

5. A statement that the place of employment of the nonresident daily commuter is within the corridor prescribed by section 28-2294.

Sec. 13. Section 28-2294, Arizona Revised Statutes, as added by Laws 1996, chapter 76, section 93, is amended to read:

28-2294. Nonresident daily commuter; identification card; fee

A. On application and completion of the form prescribed by section 28-2293, the department shall provide a nonresident daily commuter with ~~external vehicle identification indicia and a corresponding~~ AN identification card that ~~are~~ IS valid for two years.

B. A motor vehicle is exempt from registration by this state if the following conditions are met:

1. The motor vehicle is operated ~~with the indicia provided~~ pursuant to subsection A of this section and otherwise in accordance with this article.

2. The motor vehicle is a passenger vehicle or an unladen truck.

3. The motor vehicle is licensed in a contiguous state and is used to commute into this state to a destination within a corridor in this state that parallels the border between this state and the contiguous state and that extends not more than thirty-five air miles into this state from the border at any point.

C. The privilege accorded by subsection A of this section is revoked if the motor vehicle is operated for commuter purposes beyond the thirty-five mile corridor.

D. The department may charge a fee of not more than eight dollars for each motor vehicle exempt from registration pursuant to this section, as necessary, to recover the costs of administering this article.

Sec. 14. Section 28-2294, Arizona Revised Statutes, as amended by Laws 1996, chapter 76, section 94, is amended to read:

28-2294. Nonresident daily commuter; identification card; fee

A. On application and completion of the form prescribed by section 28-2293, the department shall provide a nonresident daily commuter with ~~external vehicle identification indicia and a corresponding~~ AN identification card that ~~are~~ IS valid for two years.

B. A motor vehicle is exempt from registration by this state if the following conditions are met:

1. The motor vehicle is operated ~~with the indicia provided~~ pursuant to subsection A of this section and otherwise in accordance with this article.

2. The motor vehicle is a passenger vehicle or an unladen truck.

3. The motor vehicle is licensed in a contiguous state and is used to commute into this state to a destination within a corridor in this state that parallels the border between this state and the contiguous state and that extends not more than seventy air miles into this state from the border at any point.

C. The privilege accorded by subsection A of this section is revoked if the motor vehicle is operated for commuter purposes beyond the air mileage limitation provided in subsection B of this section.

D. The department may charge a fee of not more than eight dollars for each motor vehicle exempt from registration pursuant to this section, as necessary, to recover the costs of administering this article.

Sec. 15. Section 28-2295, Arizona Revised Statutes, is amended to read:

28-2295. Identification card

~~A. A nonresident daily commuter shall display nonresident daily commuter indicia in a location on the motor vehicle that is clearly visible and adjacent to the rear license plate.~~

~~B.~~ A nonresident daily commuter shall carry the ~~corresponding~~ nonresident daily commuter identification card at all times in the motor vehicle for which the card is assigned and shall present the card to any peace officer of this state on demand.

Sec. 16. Section 28-2356, Arizona Revised Statutes, is amended to read:

28-2356. Transfer of license plates to another vehicle; credit; refund

A. Except as otherwise provided in this chapter, the owner of a vehicle for which the department provided license plates pursuant to section 28-2351 shall retain those license plates when the owner transfers the vehicle to another person.

B. The owner may apply for a refund or a credit of the unexpired portion of the fees and taxes as prescribed in this section if both of the following apply:

1. The owner makes proper application to the director or to an authorized third party ~~pursuant to chapter 13 of this title~~.

2. The owner agrees to allow the department to deduct a twelve dollar processing fee from the amount of the refund or credit.

C. If the owner applies for a credit as prescribed in this section, the department may assign the license plates retained pursuant to subsection A of this section to another vehicle that belongs to the owner if all of the following apply:

1. The other vehicle is of the same vehicle type.

2. The owner is applying the available credit for the fees and taxes to one other vehicle the owner owns or acquires.

3. If the available credit exceeds the amount required to pay the fees and taxes, the department ~~shall issue~~ ISSUES a refund for the remaining amount of credit as prescribed in this section. The department shall not charge an additional twelve dollar fee pursuant to subsection B of this section for issuing a refund under this paragraph.

4. If the vehicle license tax, gross weight fees, commercial registration fees, special plate fees and motor carrier fees are more than the similar fees and taxes required to register the vehicle to which the license plates were previously assigned, the owner pays any additional fees and taxes required after subtracting any credit allowed under this section.

D. If the other vehicle is not of the same vehicle type as the vehicle for which the license plates were provided by the department pursuant to section 28-2351, the owner shall either surrender the license plates to the department or an authorized third party or submit an affidavit of license plate destruction as prescribed by the director. On surrender of the license plates or submission of an affidavit of license plate destruction, the department shall provide new license plates of the proper vehicle type to the owner and credit the owner with an amount equal to the unexpended portion of the fees and taxes originally paid by the owner for registration and license plates toward fees and taxes charged for the registration and license plates of the appropriate new vehicle type.

E. The owner of a registered vehicle who transfers license plates to another vehicle or who claims a refund pursuant to this section is entitled to a credit or a refund for the unexpired portion of the fees and taxes paid as required by law in accordance with the following conditions:

1. The fees and taxes are prorated on a monthly basis beginning on the first day of the registration month following the date of acquisition of the vehicle.

2. The credit or refund shall be an amount computed as follows:

(a) If the vehicle is registered on an annual basis, one-twelfth for each full month of the registration period not yet expired.

(b) If the vehicle is registered on a biennial basis pursuant to section 28-2159, one-twenty-fourth for each full month of the registration period not yet expired.

(c) If the vehicle is permanently registered, one-twenty-fourth for each full month after acquisition of the vehicle to the twenty-fourth month after the date of initial permanent registration of the vehicle.

F. If the owner of a registered vehicle transfers the vehicle to another person but does not transfer the license plates to another vehicle, surrender the license plates to the department or an authorized third party or submit an affidavit of license plate destruction within thirty days of the transfer as required by section 28-2058, the unexpired portion of the fees and taxes shall ~~decrement~~ DECREASE pursuant to subsection ~~D~~ E of this section until the owner either surrenders the license plates to the department or an authorized third party or submits an affidavit of license plate destruction.

G. Except as provided in subsection C of this section, an owner of a registered vehicle who transfers the vehicle to another person and either surrenders the license plates to the department or an authorized third party or submits an affidavit of license plate destruction may apply to the department for a refund of the unexpired portion of the fees and taxes paid if the owner does not claim a credit pursuant to this section and the refundable amount calculated pursuant to subsection D of this section exceeds the twelve dollar fee prescribed in subsection B of this

section. If the department determines that the owner is entitled to a refund, the department shall send the refund by first class mail to the address provided by the owner claiming the refund or, if no address is provided, to the latest address listed on the department's records for the owner claiming the refund.

H. An owner who transfers license plates to another vehicle pursuant to this section is subject to the same penalties for the use of the license plates on another vehicle or for improper use of the license plates as the owner would have been subject to for use of the license plates on the vehicle to which the plates were previously assigned.

I. The owner of a vehicle registered in this state is not entitled to a credit or a refund pursuant to this section if the vehicle is registered in another state unless the owner is applying the credit pursuant to this section to another vehicle the owner owns or acquires for registration in this state.

~~J. The director shall adopt rules necessary to administer this section.~~

Sec. 17. Section 28-2513, Arizona Revised Statutes, is amended to read:

28-2513. Mopeds

Notwithstanding any other provision of this title:

1. A certificate of title is not required for a moped that is registered pursuant to this chapter.

2. A number permanently affixed to the frame of the moped identifies the moped for registration purposes.

~~3. The director shall adopt necessary rules to provide for any tag, decal, plate or other device in lieu of a license plate otherwise required pursuant to this chapter to be attached to a moped to indicate that the moped is properly registered.~~

~~4.~~ 3. The license tax imposed by article IX, section 11, Constitution of Arizona, is four dollars fifty cents for each moped registered each year.

~~5.~~ 4. A moped is exempt from the provisions of section 28-964 relating to required equipment on motorcycles and ~~motor-driven~~ MOTOR DRIVEN cycles and from the provisions of title 49, chapter 3, article 5 relating to vehicle emissions inspections.

~~6.~~ 5. The motor vehicle fee for registration or reregistration of a moped is five dollars. All other fees applicable to motor vehicles also apply to a moped.

~~7.~~ 6. Any class of driver license is valid for operating a moped.

~~8.~~ 7. A moped is restricted from rights-of-way designated for exclusive use by bicycles.

Sec. 18. Repeal

Sections 28-3051 and 28-3052, Arizona Revised Statutes, are repealed.

Sec. 19. Section 28-3153, Arizona Revised Statutes, is amended to read:

28-3153. Driver license issuance; prohibitions

A. The department shall not issue the following:

1. A driver license to a person who is under eighteen years of age, except that the department may issue:

(a) A restricted instruction permit for a class D or G license to a person who is at least fifteen years of age.

(b) An instruction permit for a class D, G or M license as provided by this chapter to a person who is at least fifteen years and six months of age.

(c) A class G or M license as provided by this chapter to a person who is at least sixteen years of age.

2. A class D, G or M license or instruction permit to a person who is under eighteen years of age and who has been tried in adult court and convicted of a second or subsequent violation of criminal damage to property pursuant to section 13-1602, subsection A, paragraph 1 or convicted of a felony offense in the commission of which a motor vehicle is used, including theft of a motor vehicle pursuant to section 13-1802, unlawful use of means of transportation pursuant to section 13-1803 or theft of means of transportation pursuant to section 13-1814, or who has been adjudicated delinquent for a second or subsequent act that would constitute criminal damage to property pursuant to section 13-1602, subsection A, paragraph 1 or adjudicated delinquent for an act that would constitute a felony offense in the commission of which a motor vehicle is used, including theft of a motor vehicle pursuant to section 13-1802, unlawful use of means of transportation pursuant to section 13-1803 or theft of means of transportation pursuant to section 13-1814, if committed by an adult.

3. A class A, B or C license to a person who is under twenty-one years of age, except that the department may issue a class A, B or C license that is restricted to only intrastate driving to a person who is at least eighteen years of age.

4. A license to a person whose license or driving privilege has been suspended, during the suspension period.

5. Except as provided in section 28-3315, a license to a person whose license or driving privilege has been revoked.

6. A class A, B or C license to a person who has been disqualified from obtaining a commercial driver license.

7. A license to a person who on application notifies the department that the person is an alcoholic as defined in section 36-2021 or a drug dependent person as defined in section 36-2501, unless the person

~~successfully completes the medical screening process pursuant to section 28-3052 or~~ submits a medical examination report that includes a current evaluation from a substance abuse counselor indicating that, in the opinion of the counselor, the condition does not affect or impair the person's ability to safely operate a motor vehicle.

8. A license to a person who has been adjudged to be incapacitated pursuant to section 14-5304 and who at the time of application has not obtained either a court order that allows the person to drive or a termination of incapacity as provided by law.

9. A license to a person who is required by this chapter to take an examination unless the person successfully passes the examination.

10. A license to a person who is required under the motor vehicle financial responsibility laws of this state to deposit proof of financial responsibility and who has not deposited the proof.

11. A license to a person if the department has good cause to believe that the operation of a motor vehicle on the highways by the person would threaten the public safety or welfare.

12. A license to a person whose driver license has been ordered to be suspended for failure to pay child support, except that a noncommercial restricted license may be issued pursuant to section 25-518.

13. A class A, B or C license to a person whose license or driving privilege has been canceled until the cause for the cancellation has been removed.

14. A class A, B or C license or instruction permit to a person whose state of domicile is not this state.

15. A class A, B or C license to a person who fails to demonstrate proficiency in the English language as determined by the department.

B. The department shall not issue a driver license to or renew the driver license of the following persons:

1. A person about whom the court notifies the department that the person violated the person's written promise to appear in court when charged with a violation of the motor vehicle laws of this state until the department receives notification in a manner approved by the department that the person appeared either voluntarily or involuntarily or that the case has been adjudicated, that the case is being appealed or that the case has otherwise been disposed of as provided by law.

2. If notified pursuant to section 28-1601, a person who fails to pay a civil penalty as provided in section 28-1601, except for a parking violation, until the department receives notification in a manner approved by the department that the person paid the civil penalty, that the case is being appealed or that the case has otherwise been disposed of as provided by law.

C. The magistrate or the clerk of the court shall provide the notification to the department prescribed by subsection B of this section.

D. Notwithstanding any other law, the department shall not issue to or renew a driver license or nonoperating identification license for a person who does not submit proof satisfactory to the department that the applicant's presence in the United States is authorized under federal law. For an application for a driver license or a nonoperating identification license, the department shall not accept as a primary source of identification a driver license issued by a state if the state does not require that a driver licensed in that state be lawfully present in the United States under federal law. The director shall adopt rules necessary to carry out the purposes of this subsection. The rules shall include procedures for:

1. Verification that the applicant's presence in the United States is authorized under federal law.

2. Issuance of a temporary driver permit pursuant to section 28-3157 pending verification of the applicant's status in the United States.

Sec. 20. Section 28-3158, Arizona Revised Statutes, is amended to read:

28-3158. Driver license or instruction permit application

A. A person who applies for an instruction permit or for a driver license shall use a form furnished by the department.

B. An applicant shall pay the fee prescribed by section 28-3002 for a driver license or for an instruction permit issued under section 28-3154, 28-3155, 28-3156 or 28-3225. FOR A CLASS A, B OR C LICENSE APPLICATION, payment of the fee required by this section entitles the applicant to not more than three attempts to pass the written examination or road test within twelve months from the date of the application. The department shall refund an application fee pursuant to section 28-373.

C. An applicant for an instruction permit or a driver license shall give the department satisfactory proof of the applicant's full legal name, date of birth, sex and DOMICILE residence address IN THIS STATE and that the applicant's presence in the United States is authorized under federal law.

D. The application for an instruction permit or a driver license shall state the following:

1. A brief description of the applicant and any other identifying information required by the department.

2. Whether the applicant has been licensed, and if so, the type of license issued, when the license was issued and what state or country issued the license.

~~3. Whether the license was suspended or revoked or whether an application was ever refused, and if so, the date of and reason for the suspension, revocation or refusal.~~

~~4.~~ 3. If the applicant was never licensed, the applicant's last previous state or country of residence.

~~5.~~ 4. The social security number of the applicant.

E. The department shall:

1. Verify that a social security number provided by an applicant is a valid number assigned to that applicant.

2. Retain the social security number in its records.

F. The social security number provided to the department pursuant to subsection D of this section for an applicant's driver license or instruction permit shall not appear on an applicant's driver license or instruction permit unless the applicant requests that the social security number appear on the applicant's driver license or instruction permit as the driver license or instruction permit number. Except as provided in sections 28-455 and 41-1954, the department shall not release the social security number to any person unless the applicant requests that the social security number appear on the applicant's driver license or instruction permit as the driver license or instruction permit number. The provisions of this subsection shall be included in each application.

G. The department may adopt and implement procedures to deny a driver license or instruction permit to a person who has been deported. The department may adopt and implement procedures to reinstate a person's privilege to apply for a driver license or permit if the person's legal presence status is restored.

H. On request of an applicant, the department shall allow the applicant to provide on the license or permit a post office box address that is regularly used by the applicant.

I. The department may request an applicant who appears in person for a license, a duplicate license or reinstatement of a driving privilege to complete satisfactorily the vision screening prescribed by the department.

J. If a driver license applicant submits satisfactory proof to the department that the applicant is a veteran, on request of the applicant, the department shall allow a distinguishing mark to appear on the license that identifies the person as a veteran.

Sec. 21. Section 28-3166, Arizona Revised Statutes, is amended to read:

28-3166. Driver license content and application; marked licenses; emancipated minors

A. The department shall issue a driver license to a qualified applicant. The driver license shall contain a distinguishing number assigned to the licensee, the license class, any endorsements, the licensee's full name, date of birth and residence address, a brief description of the licensee and either a facsimile of the signature of the licensee or a space on which the licensee is required to write the licensee's usual signature with pen and ink. A driver license is not valid until it is signed by the licensee. On request of an applicant:

1. The department shall allow the applicant to provide on the driver license a post office box address that is regularly used by the applicant and that is located in the county in which the applicant resides.

2. If the applicant submits satisfactory proof to the department that the applicant is a veteran, the department shall allow a distinguishing mark to appear on the license that identifies the person as a veteran.

B. An application for a driver license and the driver license issued shall contain the photo image of the applicant or licensee. The department shall use a process in the issuance of driver licenses that prohibits as nearly as possible the ability to alter or reproduce the license or that prohibits the ability to superimpose a photo image on the license without ready detection. The department shall process driver licenses and photo images in color. ~~This subsection does not apply to a driver license that is renewed by mail pursuant to section 28-3172.~~

C. An applicant who is AT LEAST sixteen ~~or older~~ but under twenty-four years of age shall provide the department with satisfactory proof of the applicant's legal name and date of birth.

D. If a person is qualified for a driver license and is under the legal drinking age, the department shall issue a license that is marked by color, code or design to immediately distinguish it from a license issued to a person of legal drinking age. The department shall indicate on the driver license issued pursuant to this subsection the year in which the person will attain the legal drinking age.

E. The department shall mark a special ignition interlock restricted driver license issued pursuant to chapter 4, article 3.1 of this title by color, code or design to immediately distinguish it from other licenses issued by the department.

F. If a person is qualified for a driver license but is subject to the certified ignition interlock device limitations prescribed in section 28-1381, 28-1382, 28-1383 or 28-3319, the department shall issue a license that is marked by color, code or design to immediately distinguish it from other licenses issued by the department.

G. The department shall not include information in the magnetic stripe and bar code of a driver license other than information that the department is authorized to obtain and place on a driver license pursuant to this article.

H. If a minor has been emancipated pursuant to title 12, chapter 15, on application and proof of emancipation, the department shall issue a driver license that contains the words "emancipated minor".

Sec. 22. Section 28-3171, Arizona Revised Statutes, is amended to read:

28-3171. Driver license expiration and renewal; exception; extension

A. Except as provided in subsection B, D or E of this section and unless medical restrictions require a shorter expiration period, a driver license:

1. Is valid until the applicant's sixty-fifth birthday.

2. Is renewable for successive periods of five years after the applicant's sixty-fifth birthday.

3. Expires on the applicant's birthday if the license was issued pursuant to subsection B of this section.

B. Notwithstanding subsection A of this section:

1. The department shall issue to an applicant a driver license that is valid for not more than five years and six months if the applicant applies within six months of the applicant's next birthday and if the applicant is sixty-four years of age or older, unless medical restrictions require a shorter expiration period.

2. On presentation of satisfactory proof of qualification, the director may issue a class D, G or M license or permit for a period of up to five years to:

(a) A person who is an out-of-state student or who is the spouse of an out-of-state student. For the purposes of this subdivision, "out-of-state student" has the same meaning prescribed in section 28-2001.

(b) An immediate family member of any active duty military personnel temporarily stationed in this state.

(c) Any other person for whom the director determines other circumstances justify the issuance.

C. An applicant shall apply for renewal of a driver license before the expiration of a current license. The department may require an examination of a renewal applicant for a class D, G or M license as required of an original applicant.

D. A veteran, as defined in section 41-601, whose driver license expires is not required to renew the veteran's driver license for six months from the date of the veteran's discharge from military service.

E. The department may extend the expiration date of a class D or M license ~~by mail~~ for a resident if the applicant is not in this state at the time the license expires and will not be in this state for at least thirty consecutive days after the expiration of the driver license. On payment by the applicant of the fee prescribed in section 28-3002, the department shall issue a certificate of extension that is valid only if accompanied by the applicant's previous license. An applicant for extension of a license ~~by mail~~ shall comply with the following:

1. The application requirements of section 28-3158.

2. The licensing requirements of section 28-3153.

3. Medical requirements applicable to all license applicants, except that the applicant is not required to obtain an eyesight examination.

Sec. 23. Repeal

Sections 28-3172 and 28-3477, Arizona Revised Statutes, are repealed.

Sec. 24. Section 28-4145, Arizona Revised Statutes, is amended to read:

28-4145. Restricted license and registration

A. A person whose driver license, registration and license plate have been suspended pursuant to section 28-4143 or 28-4144 may apply to the department for a restricted license and registration. The license and registration are restricted to travel during the course of employment or between the person's place of employment and residence and their use is limited to specified periods of the day or night according to the person's employment schedule. ~~The director shall prescribe by rule the criteria necessary for issuing a restricted license and registration.~~ The department shall not grant an application for a restricted license and registration until the person meets the requirements of section 28-4144, subsection C.

B. Notwithstanding section 28-4141, a person whose driver license, vehicle registration and license plate have been suspended on imposition of a civil penalty for a violation of this article or have been suspended by the department may apply to the department for a restricted license and registration. The license and registration are restricted to travel during the course of employment, between the person's place of employment and residence or between the person's place of residence and school, and are limited in use to specified periods of the day or night according to the requirements of the person's employment or school schedule. The department shall not grant the application for a restricted license and registration until the applicant files and maintains proof of financial responsibility with the department.

Sec. 25. Repeal

Section 28-4543, Arizona Revised Statutes, is repealed.

Sec. 26. Section 28-5615, Arizona Revised Statutes, is amended to read:

28-5615. Presumption of use

A. For the proper administration of this article and to prevent evasion of the use fuel tax, it is presumed, until the contrary is established by competent proof under rules and procedures the director adopts, that all use fuel received into any receptacle on a motor vehicle from which fuel is supplied to propel the vehicle is consumed in propelling the vehicle on the highways in this state.

B. If a vendor's dealings in use fuel primarily involve delivery of use fuel into the fuel tanks of motor vehicles it is presumed, until the contrary is established by competent proof under ~~rules and~~ procedures the director adopts, that the vendor's total use fuel acquisitions have been delivered into the fuel tanks of motor vehicles for the propulsion of the vehicles on the public highways.

Sec. 27. Section 28-5639, Arizona Revised Statutes, is amended to read:

28-5639. Uncollectible tax credit

A. In computing the amount of motor fuel tax due, the supplier is entitled to a credit against the tax payable in the amount of tax paid by the supplier that has become uncollectible from an eligible purchaser.

B. The supplier shall provide notice to the department of a failure to collect the tax within thirty days after the earliest date on which the supplier was entitled to collect the tax from the eligible purchaser under section 28-5637.

~~C. The department shall adopt rules establishing the evidence a supplier must provide to receive the credit.~~

~~D.~~ C. The credit shall be claimed on the first return after the expiration of the thirty day period if the payment remains unpaid as of the filing date of that return or the credit is disallowed.

~~E.~~ D. The claim for credit shall identify the defaulting eligible purchaser and any tax liability that remains unpaid.

~~F.~~ E. If an eligible purchaser fails to make a timely payment of the amount of tax due, the credit of the supplier is limited to the amount due from the purchaser, plus any tax that accrues from that purchaser for a period of thirty days after the date of failure to pay.

~~G.~~ F. An additional credit shall not be allowed to a supplier under this section until the department authorizes the purchaser under section 28-5638 to make a new election.

Sec. 28. Section 28-5648, Arizona Revised Statutes, is amended to read:

28-5648. Inspection of fuel and shipping papers

A. The department, or its appointees, including federal government employees or persons operating under contract with this state, on presenting appropriate credentials may conduct inspections and remove samples of fuel to determine coloration of diesel fuel, or to identify shipping paper violations at any place where taxable fuel is or may be produced, stored or loaded into transport vehicles. Inspections shall be performed in a reasonable manner consistent with the circumstances, but in no event is prior notice required. Inspectors may physically inspect, examine or otherwise search any tank, reservoir or other container that can or might be used for the production, storage or transportation of fuel. Inspection may be made of any equipment used for, or in connection with, the production, storage or transportation of fuel. Inspectors may

demand that shipping papers, documents and records required to be kept by a person transporting fuel be produced for immediate inspection. The places that may be inspected pursuant to this section include:

1. A terminal.

2. A fuel storage facility that is not a terminal.

3. A retail fuel facility.

4. Highway rest stops.

5. A designated inspection site. For THE purposes of this paragraph, "designated inspection site" means any state highway or waterway inspection station, weigh station, agricultural inspection station, mobile station or other location designated by the department that is either fixed or mobile.

B. Inspectors may reasonably detain any person or equipment transporting fuel in or through this state for the purpose of determining whether the person is operating in compliance with this article ~~and any rules adopted pursuant to this article~~. Inspectors may detain a person or equipment only for such time as is necessary to determine whether the person is in compliance.

Sec. 29. Section 28-5703, Arizona Revised Statutes, is amended to read:

28-5703. Cooperative agreements; definitions

A. To comply with the intermodal surface transportation efficiency act of 1991, the director may enter into a cooperative agreement with other jurisdictions for the administration of motor fuel taxes imposed by article 1 of this chapter or section 28-8344. An agreement is not effective until signed by the director and filed with the department.

B. The agreement shall include:

1. The base jurisdiction concept. This concept allows a licensee to report and pay motor fuel use taxes to a base jurisdiction for distribution to other member jurisdictions in which the licensee traveled and incurred motor fuel use tax liability.

2. Retention of each jurisdiction's sovereign authority to determine tax rates and exemptions and exercise other substantive tax authority.

3. A uniform definition of the vehicles to which the agreement applies.

C. The agreement may provide for:

1. Determining the base jurisdiction for users.

2. Users records requirements.

3. Audit procedures.

4. Exchange of information.

5. Persons eligible for tax licensing.

6. Defining qualified motor vehicles.

7. Determining if bonding is required.

8. Specifying reporting requirements and periods, including defining uniform penalty and interest rates for late reporting.

9. Determining methods for collecting and forwarding motor fuel taxes and penalties to another jurisdiction.

10. Other provisions to facilitate the administration of the agreement.

11. Each jurisdiction to audit the records of persons based in the jurisdiction to determine if the motor fuel taxes due each jurisdiction are properly reported and paid.

D. Each jurisdiction shall forward the findings of the audits performed on persons based in the jurisdiction to each jurisdiction in which the person has taxable use of motor fuels. As required by the agreement, the director may forward to officers of another member jurisdiction any information in the director's possession relative to the manufacture, receipt, sale, use, transportation or shipment of motor fuels by any person. The director may disclose to officers of another member jurisdiction the location of offices, motor vehicles and other real and personal property of users of motor fuels.

E. Member jurisdictions may enforce this chapter against persons who are not based in this state and who have taxable use of motor fuel in this state.

F. An agreement entered into under this section does not preclude the director or the director's appointed representatives from auditing the records of a person covered by this article and article 1 of this chapter.

G. The legal remedies for a person served with an order or assessment under this section are as prescribed in article 5 of this chapter.

~~H. If the director enters into an agreement under this section, the director may adopt rules the director deems necessary to implement the agreement.~~

~~I.~~ H. For the purposes of this section:

1. "Jurisdiction" means a state of the United States, the District of Columbia or a province or territory of the Dominion of Canada.

2. "Motor fuels" includes motor vehicle fuel, aviation fuel and use fuel.

3. "Qualified motor vehicle" means a use class motor vehicle.

Sec. 30. Section 28-5721, Arizona Revised Statutes, is amended to read:

28-5721. Additional assessment

A. If the director is not satisfied with a report filed or the amount of use fuel tax paid by a licensee, the director may make an additional assessment of use fuel taxes due from the licensee based on any information available to the director.

~~B. A penalty of twenty-five per cent of the additional use fuel tax assessed shall be added to the tax with interest at the rate of one per cent per month or portion of a month on the unpaid tax from the twenty-seventh day after the end of the month for which the additional assessment is made until paid.~~

~~C.~~ B. The director shall give written notice to the licensee of the additional assessment served personally or by mail addressed to the licensee at the licensee's address of record in the office of the director.

Sec. 31. Section 28-5724, Arizona Revised Statutes, is amended to read:

28-5724. Failure to file report; assessment; license revocation or suspension

A. If a person fails, neglects or refuses to make a report required by this article, the director shall~~:~~

~~1.~~ make an estimate for the month for which the licensee failed to make the report based on any information available to the director.

~~2. On the basis of the estimate, assess the use fuel tax due from the person and add to the amount determined a penalty equal to twenty-five per cent of the use fuel tax due.~~

~~B. The assessment bears interest at the rate of one per cent per month or portion of a month from the twenty-seventh day after the end of the month for which the assessment is made until paid.~~

~~C.~~ B. The director shall give the person written notice of the assessment served personally or by mail addressed to the person at the person's address of record in the office of the director.

~~D.~~ C. If a person fails, neglects or refuses to make a report required by this article with full payment of the tax due, the director may revoke or suspend the person's license.

Sec. 32. Section 28-5952, Arizona Revised Statutes, is amended to read:

28-5952. Levy release; property return

A. ~~Pursuant to rules,~~ The director may release the levy on all or part of the property or rights to property levied on if the director determines the release will facilitate the collection of the liability. The release does not prevent a subsequent levy.

B. If the director determines that property has been wrongfully levied on, the director may return:

1. The specific property levied on.

2. An amount of money equal to the amount of money levied on.

3. An amount of money equal to the amount of money received by this state from a sale of the property.

C. Property may be returned at any time. An amount equal to the amount of money levied on or received from the sale may be returned at any time before the expiration of nine months from the date of the levy.

Sec. 33. Section 28-6922, Arizona Revised Statutes, is amended to read:

28-6922. Director; powers and duties

A. The director of the department of transportation or the director's authorized and bonded agent shall administer all highway and maintenance work and has the following powers and duties:

1. Direct the preparation of all plans and specifications for work on state highways or state routes.

2. Advertise for competitive bids for work on state highways or state routes and, on authorization of the transportation board, award and enter into contracts for the work.

3. Direct the supervision of all construction work on state highways and state routes and is in charge of maintenance and upkeep of these highways and routes.

4. Approve payment for work done by the state on or in connection with state highways or state routes, except that the director of the department of administration shall not allow a claim for work without the approval of the director of the department of transportation or the director's authorized and bonded agent.

5. Negotiate and award contracts to private consulting engineers or consulting engineering firms if deemed in the public interest by the director and the transportation board for the performance of engineering work that is required to formulate and complete highway construction contracts.

B. The director shall:

1. Direct the organization of the division.

2. Appoint, suspend, discharge and fix the duties of employees.

~~3. Adopt rules for the conduct of employees.~~

~~4.~~ 3. Make monthly reports to the transportation board of all expenditures of the division, of the work accomplished and other applicable information.

~~5.~~ 4. On request of the transportation board, assign clerks or other employees to the board.

~~6.~~ 5. Prescribe procedures for the use of division personnel, facilities, equipment, supplies and other resources in assisting search or rescue operations.

~~7.~~ 6. Exercise other powers necessary to carry out the work of the division and perform other duties prescribed by law for the division.

Sec. 34. Section 28-7058, Arizona Revised Statutes, is amended to read:

28-7058. Privatization of rest areas; state certified rest area program; program termination; definitions

A. The department may:

1. Privatize any rest area constructed on or adjacent to state highways in this state on or after September 26, 2008. Any agreement

between the department and a person for privatization under this section shall include a provision that:

(a) Prohibits the person from charging any fees for the use of a lavatory.

(b) Requires the person to provide an adequate outdoor picnic area to be available to the public at no charge.

2. Establish a state certified rest area program that meets the requirements established by the federal highway administration pursuant to Public Law 109-59, section 1310.

3. Contract with a third party or other government entity to certify and recertify rest areas for the state certified rest area program.

~~B. The department shall adopt rules to implement and operate the state certified rest area program.~~

~~C.~~ B. The state certified rest area program established pursuant to this section ends on July 1, 2019 pursuant to section 41-3102.

~~D.~~ C. For the purposes of this section:

1. "Population" means the population determined in the most recent United States decennial census or in the most recent special census as provided in section 28-6532.

2. "State certified rest area" means a privately owned facility that is both of the following:

(a) Certified by this state or a third party to meet the requirements established by the federal highway administration pursuant to Public Law 109-59, section 1310 and at a minimum offers all of the following:

(i) Fuel and food to the public.

(ii) Twenty-four hour access to restrooms.

(iii) Parking for automobiles and heavy trucks.

(b) Located outside of the public right-of-way and outside of an urbanized area with a population of one hundred thousand or more persons.

3. "Urbanized area" means an urbanized area as defined in the decennial census by the United States bureau of the census.

Sec. 35. Section 28-7059, Arizona Revised Statutes, is amended to read:

28-7059. Rest area sponsorship sign program; revenue sharing agreement; program termination

A. The department may establish a rest area sponsorship sign program. Notwithstanding sections 28-648, 28-7048 and 28-7053, the department may contract with a third party to install, maintain and replace rest area sponsorship signs at rest areas located in the public right-of-way of the interstate or state highway system. The third party shall agree in the contract to lease sponsor recognition space and to furnish, install, maintain and replace signs for the benefit of business or organizational sponsors.

B. ~~The department shall adopt rules to implement and operate the rest area sponsorship sign program.~~ Costs incurred under the program shall be paid under agreements negotiated between the third party and the business or organizational sponsors.

C. The department may enter into a revenue sharing agreement with the third party. The department shall deposit, pursuant to sections 35-146 and 35-147, all monies received from the revenue sharing agreement in a subaccount of the state highway fund for the purpose of rest area maintenance, operations and repairs.

D. The rest area sponsorship sign program established pursuant to this section ends on July 1, 2019 pursuant to section 41-3102.

Sec. 36. Title 28, chapter 21, article 3, Arizona Revised Statutes, is amended by adding section 28-7618, to read:

28-7618. Attorney general note certification

A. THE BOARD MAY SUBMIT TO THE ATTORNEY GENERAL ANY NOTES TO BE ISSUED UNDER THIS ARTICLE AFTER ALL PROCEEDINGS FOR THE AUTHORIZATION OF THE NOTES HAVE BEEN TAKEN. ON THE SUBMISSION OF THE PROCEEDINGS TO THE ATTORNEY GENERAL, THE ATTORNEY GENERAL SHALL INVESTIGATE AND DETERMINE THE VALIDITY OF THE NOTES AND THE REGULARITY OF ALL PROCEEDINGS IN CONNECTION WITH THE ISSUANCE.

B. IF THE PROCEEDINGS COMPLY WITH THIS ARTICLE AND THE ATTORNEY GENERAL DETERMINES THAT THE NOTES WHEN DELIVERED AND PAID FOR WILL CONSTITUTE BINDING AND LEGAL OBLIGATIONS OF THE BOARD THAT ARE ENFORCEABLE ACCORDING TO THE TERMS OF THE NOTES, THE ATTORNEY GENERAL SHALL CERTIFY IN SUBSTANCE ON THE BACK OF EACH OF THE NOTES THAT EACH NOTE IS ISSUED IN ACCORDANCE WITH THE CONSTITUTION AND LAWS OF THIS STATE.

Sec. 37. Title 28, chapter 22, article 1, Arizona Revised Statutes, is amended by adding section 28-7711, to read:

28-7711. Attorney general public-private partnership agreement certification

A. THE DEPARTMENT MAY SUBMIT TO THE ATTORNEY GENERAL ANY AGREEMENT ENTERED INTO UNDER THIS ARTICLE. ON THE SUBMISSION OF THE AGREEMENT TO THE ATTORNEY GENERAL, THE ATTORNEY GENERAL SHALL INVESTIGATE AND DETERMINE THE VALIDITY OF THE AGREEMENT.

B. IF THE AGREEMENT COMPLIES WITH THIS ARTICLE AND THE ATTORNEY GENERAL DETERMINES THAT THE AGREEMENT WILL CONSTITUTE A BINDING AND LEGAL OBLIGATION OF THE DEPARTMENT THAT IS ENFORCEABLE ACCORDING TO THE TERMS OF THE AGREEMENT, THE ATTORNEY GENERAL SHALL CERTIFY IN SUBSTANCE THAT THE AGREEMENT HAS BEEN ENTERED INTO IN ACCORDANCE WITH THE CONSTITUTION AND LAWS OF THIS STATE.

Sec. 38. Section 28-8242, Arizona Revised Statutes, is amended to read:

28-8242. Powers and duties

A. The department:

1. Shall cooperate with all state, local and federal organizations to encourage and advance the safe and orderly development of aviation in this state.

2. May:

(a) Assemble and distribute to the public information relating to aviation, landing fields, navigational aids and other matters pertaining to aviation.

(b) Accept, in the name of this state, federal monies made available for the advancement of aviation.

(c) Represent this state on issues of routing structures and rate schedules concerning commercial airline traffic.

(d) Accept and receive federal and other public or private monies for the acquisition, construction, enlargement, improvement, maintenance, equipment or operation of airports and other air navigation facilities and sites for air navigation facilities or for any other purpose authorized by this section. The department shall deposit, pursuant to sections 35-146 and 35-147, these monies in the state aviation fund.

(e) Facilitate the development of a regional airport.

(f) Loan monies from the state aviation fund to an airport authority that enters into an agreement with the United States for an airport development project if the airport authority designates in its agreement with the United States that payment of federal participating monies shall be made to the department acting as the agent of the airport authority and enters into an agreement with the department appointing the department as agent of the airport authority to receive all federal participating monies. The department shall deposit, pursuant to sections 35-146 and 35-147, all monies received pursuant to this subdivision in the state aviation fund. For the purposes of this subdivision, "airport authority" means the governing body of a public airport operating pursuant to sections 28-8423 and 28-8424 or a joint powers airport authority.

B. Notwithstanding section 38-623, the director may authorize personnel of the department to use rental aircraft in the performance of their duties at the prevailing hourly rate. The rental fee is a charge against monies appropriated for in-state and out-of-state travel.

~~C. The director shall adopt rules as necessary to administer this article and articles 1, 3, 4 and 5 of this chapter and to promote public safety and the best interests of aviation in this state. The rules shall not supersede or conflict with rules of the United States government agencies having jurisdiction over aviation activities in this state.~~

~~D.~~ C. The director shall:

1. Contract for the operation of state owned airports.

2. In conjunction with local authorities, plan, build and develop airports, airport terminals and other related navigational facilities.

3. Operate and maintain the Grand Canyon national park airport located in the Kaibab national forest, Coconino county.

4. Provide on the department's website information on resources for operating a model aircraft, including safety guidelines established by a nationwide aeronautics community-based organization.

5. Provide on the department's website pictures that show examples of critical facilities, as defined in section 13-3729, to provide unmanned aircraft operators with information on what is considered a critical facility. A picture or any written description on the website may not identify the owner or operator of the critical facility or the location of the critical facility.

Sec. 39. Delayed repeal

Title 41, chapter 3, article 1.3, Arizona Revised Statutes, is repealed from and after June 30, 2019.

Sec. 40. Section 41-835.01, Arizona Revised Statutes, is amended to read:

41-835.01. Definitions

In this article, unless the context otherwise requires:

1. "Board" means the state board on geographic and historic names.

2. "Geographic features" means mountains, canyons, gulches, streams, streambeds or channels whether flowing or dry, natural bridges, natural lakes, natural monuments, mesas, deserts, forests, springs, water holes, cliffs, chasms and other similar natural objects, places or things.

3. "HISTORIC ROAD" MEANS A HIGHWAY, STREET, ROAD OR ROUTE THAT IS OF HISTORICAL OR CULTURAL SIGNIFICANCE IN THE SETTLEMENT AND DEVELOPMENT OF THIS STATE AND THAT IS ESTABLISHED OR DESIGNATED AS A HISTORIC ROAD BY THE BOARD.

4. "PARKWAY" MEANS AN AREA ALONG EITHER OR BOTH SIDES OF A HIGHWAY, STREET, ROAD OR ROUTE THAT IS ACQUIRED IN FEE OR BY EASEMENT BY THE GOVERNMENTAL BODY HAVING JURISDICTION OVER THE HIGHWAY, STREET, ROAD OR ROUTE FOR THE PROTECTION OF GEOGRAPHIC, NATURAL FLORA OR SCENIC VALUES AND THAT IS ESTABLISHED OR DESIGNATED AS A PARKWAY BY THE BOARD.

~~3.~~ 5. "Places of historical significance" or "historic place" means objects, places or things that are associated with or named after people, places or events of historical significance, including HISTORIC ROADS, SCENIC ROADS, PARKWAYS, artificial bridges, dams, artificial lakes, parks, mining districts, artificial monuments, roads, trails or other similar artificial objects, places or things.

6. "SCENIC ROAD" MEANS A HIGHWAY, STREET, ROAD OR ROUTE THROUGH A SCENIC AREA THAT IS ESTABLISHED OR DESIGNATED AS A SCENIC ROAD BY THE BOARD.

Sec. 41. Section 41-835.03, Arizona Revised Statutes, is amended to read:

41-835.03. Powers and duties

A. The board shall:

1. Receive and evaluate all proposals for changes in or additions to names of geographic features and places of historical significance in

this state and after this evaluation designate the most appropriate and acceptable names and spelling of these names for use in maps and other official governmental documents.

2. Receive and evaluate all proposals for naming geographic features in this state for which no generally accepted name is or has been in use and after this evaluation designate a name for use in maps and other official governmental documents.

3. Cooperate with political subdivisions of this state to eliminate the duplication of the names of geographic features that are not of historical significance.

4. Assist and cooperate with the United States board of geographic names in matters relating to names of geographic features and places in this state.

5. Maintain a list of advisers who have expertise in this state's history, geography or culture and consult with those advisers in evaluating proposals.

6. Designate one or more members to act as the state representative to the western states geographic names council.

7. RECEIVE AND EVALUATE ALL PROPOSALS TO ESTABLISH OR DESIGNATE A HIGHWAY OR AREA AS A PARKWAY, HISTORIC ROAD OR SCENIC ROAD THAT IS OF GEOGRAPHIC OR HISTORICAL SIGNIFICANCE IN THIS STATE AND AFTER THIS EVALUATION DESIGNATE THE MOST APPROPRIATE AND ACCEPTABLE NAMES AND SPELLING OF THESE NAMES FOR USE IN MAPS AND OTHER OFFICIAL GOVERNMENTAL DOCUMENTS. IF THE PARKWAY, HISTORIC ROAD OR SCENIC ROAD TO BE ESTABLISHED OR DESIGNATED IS NOT A STATE HIGHWAY OR ROUTE, THE ESTABLISHMENT OR DESIGNATION IS NOT EFFECTIVE UNLESS THE STATE BOARD ON GEOGRAPHIC AND HISTORIC NAMES OR GOVERNMENTAL BODY HAVING JURISDICTION OVER THE PARKWAY, HISTORIC ROAD OR SCENIC ROAD AGREES TO THE ESTABLISHMENT OR DESIGNATION. THE STATE BOARD ON GEOGRAPHIC AND HISTORIC NAMES SHALL NOTIFY THE DIRECTOR OF THE DEPARTMENT OF TRANSPORTATION AND THE STATE TRANSPORTATION BOARD WHEN A PARKWAY, HISTORIC ROAD OR SCENIC ROAD IS GIVEN A HISTORIC DESIGNATION PURSUANT TO THIS SECTION.

B. The board may:

1. Adopt rules for the orderly conduct of business.

2. Initiate proposals for changes in or additions to geographic or historic names in this state. Any proposal initiated by the board shall be evaluated in accordance with the procedures prescribed under section 41-835.04.

C. Notwithstanding any other law, the board shall not:

1. Change street and road names for the purpose of uniformity.

~~2. Name scenic or historical highways.~~

~~3.~~ 2. Designate a name for a geographic feature that commemorates any person until that person has been deceased at least five years.

Sec. 42. Effective date

Sections 41-835.01 and 41-835.03, Arizona Revised Statutes, as amended by this act, are effective from and after June 30, 2019.

Sec. 43. Conditional enactment

Section 28-2294, Arizona Revised Statutes, as amended by Laws 1996, chapter 76, section 94 and this act, becomes effective on the date prescribed by Laws 1996, chapter 76, section 310 but only on the occurrence of the condition prescribed by Laws 1996, chapter 76, section 310.

APPROVED BY THE GOVERNOR APRIL 23, 2018.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 23, 2018.

Exhibit B-II: Rules
(Notice of Final Rulemaking)

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Volume 10, Issue 18 **April 30, 2004**

Contents of this Issue

General Information **1656**
Public Participation in the Rulemaking Process **1657**
Notices of Proposed Rulemaking **1658**
4 A.A.C. 7. . . . . Board of Chiropractic Examiners 1658
4 A.A.C. 23. . . . Board of Pharmacy 1660
9 A.A.C. 10. . . . Department of Health Services, Health Care Institutions: Licensing 1665
20 A.A.C. 5. . . . Industrial Commission of Arizona 1681
Notices of Termination of Rulemaking **1686**
9 A.A.C. 10. . . . Department of Health Services, Health Care Institutions: Licensing 1686
Notices of Final Rulemaking **1687**
9 A.A.C. 14. . . . Department of Health Services – Laboratories 1687
20 A.A.C. 2. . . . Department of Weights and Measures 1690
Notices of Rulemaking Docket Opening **1716**
9 A.A.C. 10. . . . Department of Health Services, Health Care Institutions: Licensing 1716
Index **1717**
Effective Date Schedule and *Register* and *Code* Deadlines **1727**
Governor's Regulatory Review Council Deadlines **1730**

SCOTT CANCELOSI
Acting Director
Public Services Division

JAN BREWER
Secretary of State

RHONDA PASCHAL
Editor
Arizona Administrative Register

of the method or method alteration.

3. Before approving a new alternate method or method alteration that is not required or authorized by ~~an~~ the EPA ~~or~~ , ADEQ ~~statute or rule~~, the U.S. Food and Drug Administration, or 9 A.A.C. 8, the Department may require that the method or method alteration be performed by a laboratory designated by the Department to verify that, using the parameter for which its use is intended, the method or method alteration produces data that comply with subsection (B)(2)(d)(iv).
4. The Department may approve a new alternate method or method alteration that is not required or authorized by ~~an~~ the EPA ~~or~~ , ADEQ ~~statute or rule~~, the U.S. Food and Drug Administration, or 9 A.A.C. 8 if the Department determines that use of the method or method alteration is justified as described in subsection (B)(2)(d).

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 2. DEPARTMENT OF WEIGHTS AND MEASURES

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R20-2-101	Amend
R20-2-102	Amend
R20-2-103	Amend
R20-2-104	Amend
R20-2-105	Repeal
R20-2-106	Repeal
R20-2-107	Repeal
R20-2-110	Amend
R20-2-201	Amend
R20-2-202	Repeal
R20-2-203	Amend
R20-2-205	New Section
R20-2-301	Repeal
R20-2-302	Amend
Article 4	New Article
R20-2-402	New Section
R20-2-501	Amend
R20-2-502	Amend
R20-2-505	Amend
R20-2-601	Amend
R20-2-602	Amend
R20-2-604	Amend
R20-2-605	New Section
R20-2-702	Amend
R20-2-704	Amend
R20-2-705	Amend
R20-2-714	Amend
R20-2-715	Amend
R20-2-717	New Section
R20-2-901	Amend
R20-2-902	Amend
R20-2-903	Amend
R20-2-904	Amend
R20-2-905	Amend
R20-2-906	Amend
R20-2-910	Amend
R20-2-911	Amend
R20-2-912	Amend

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. § 41-2065(A)(4)

Implementing statutes: A.R.S. §§ 41-2051, 41-2064, 41-2065(A)(4), (14), (16), (25), 41-2065(D), 41-2066, 41-2067, 41-2083(C), 41-2122(A), (B), and (D), 41-2091, 41-2092, 41-2093, 41-2094, 41-2111, 41-2112, 41-2113, 41-2132, and 41-2134.

3. The effective date of the rules:

The rules will be effective 60 days after they are date-stamped by the Secretary of State.

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

Notice of Rulemaking Docket Opening: 8 A.A.R. 5020, December 6, 2002

Notice of Rulemaking Docket Opening: 9 A.A.R. 2283, July 3, 2003

Notice of Proposed Rulemaking: 9 A.A.R. 3017, July 11, 2003

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

Name: Dennis Ehrhart, Assistant Director for Compliance

Address: 4425 W. Olive Ave, Suite 134
Glendale, AZ 85302-3844

Telephone: (602) 255-5211

Fax: (602) 255-1950

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

The Department's five-year rule review was approved by the Governor's Regulatory Review Council on June 4, 2002. The rule amendments stated in the five-year review are incorporated in this rule package. The Department has worked with all of its regulated industries and their representatives since May 2000 on this rule package. After many reviews, comments, and meetings, the Department has arrived at the current rule language.

In Article 1, the Certification Fees language is repealed because it duplicates statutory language, and language regarding the effective dates of license and licensing fees is added. In response to substantial input from the regulated industries about the current enforcement action rules being too broad and vague, the administrative enforcement action rules are being repealed and the Department's progressive enforcement action is being described in more detail.

In Article 2, a rule is added requiring taxicab licensees to display their licenses. Some rules are clarified, such as the requirements for packaging and weighing packaged goods and commodities in Article 3. In Article 4, a rule is added for inspection procedures for price posting. These rules mirror current Department practice.

Some rules in Articles 6 and 9 are amended to reflect the trend toward an industry-driven self-regulating process for inspections and testing. A rule is being added to Article 7 to clarify that if a gasoline station owner equips a gas dispenser with a hold open latch, it must operate according to manufacturer's specifications. Many existing rules are amended to update or add materials incorporated by reference and to conform to legislative changes.

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

None

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

Not applicable

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

For all rule amendments, there is minimal or no impact because the rules clarify or incorporate procedures already in place. Many changes codify national standards. This provides for uniformity across state lines, which is a benefit to the regulated industry and consumers. The rules spell out civil penalty criteria.

An impact pertains to the price and grade posting of gasoline products by service stations. Because of the potential cost to station owners to comply with these rules, the Department is delaying implementation of the requirement until June 5, 2004; however, the requirement is currently in rule and the amendment to the rule conforms to national standards and reduces the impact to some service station owners. This change is necessary to aid consumers in comparing prices for equivalent products. Any impact is outweighed by the reduction in consumer confusion and the reduction in misleading advertising.

In summary, there should be only minimal overall impact. Economic impact is far outweighed by the consumer protection provided by regulatory standards. Many of the rules provide a favorable impact to the regulated industry.

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

R20-2-401 has been removed and will be re-noticed. Effective date will change to June 5, 2004. R20-2-704 effective date also changes to June 5, 2004. In response to a stakeholder comment (see item 11) in regard to major modification, R20-2-904(A)(1) and (2) have been amended to strike "Repairing" and insert "Adding." Clarification in R20-2-601 that Registered Service Agencies and Registered Service Representatives shall have knowledge of NIST Handbook 112 and equipment shall be operated in accordance with NIST Handbook 112. Table 1 regarding civil penalties was removed and replaced with a narrative explanation of violations and corresponding enforcement actions. Authority to Construct "Permit" changed to "Plan Approval." R20-2-904(B) "Written Amendment" changed to "Change Order." Edition dates of a NIST Handbook incorporated by reference is a later version due to the length of time elapsed to complete rulemaking.

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

A letter from Conoco-Phillips dated August 11, 2003, RE: R20-2-904(A)(1) and (2). The recommendation is an attempt to align R20-2-101(18) to the requirement within R20-2-904(A) relating to when an Authority to Construct is to be submitted. The Department has made changes requested.

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

As required by A.R.S. 41-2083(C), the director of the Department of Environmental Quality was involved in the stakeholder process.

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

R20-2-101(12) incorporates the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 44, *Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices*, Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington, D.C. 20402-0001 (2003 edition).

R20-2-101(13) incorporates the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 112, *Examination Procedure Outlines for Commercial Weighing and Measuring Devices*, Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington, D.C. 20402-0001 (2002 edition).

R20-2-101(14) incorporates the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 130, *Uniform Laws and Regulations*, Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington, D.C. 20402-0001 (2003 edition).

R20-2-101(15) incorporates the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 133, *Checking The Net Contents of Packaged Goods*, Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington, D.C. 20402-0001 (January 2003 edition).

R20-2-605 incorporates the following CARB Executive Orders:

- California Air Resources Board Executive Order G-70-17-AD, *Modification of Certification of the Emco Wheaton Balance Phase II Vapor Recovery System*, May 6, 1993, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.

- California Air Resources Board Executive Order G-70-36-AD, *Modification of Certification of the OPW Balance Phase II Vapor Recovery System*, September 18, 1992, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.

- California Air Resources Board Executive Order G-70-52-AM, *Certification of Components for Red Jacket, Hirt, and Balance Phase II Vapor Recovery Systems*, October 4, 1991, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.

- California Air Resources Board Executive Order G-70-70-AC, *Modification of Certification of the Healy Phase II Vapor Recovery System for Gasoline Dispensing Facilities,* June 23, 1992, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.

- California Air Resources Board Executive Order G-70-150-AE, *Modification to the Certification of the Marconi Commerce Systems Inc. (MCS) "Formerly Gibarco" VaporVac Phase II Vapor Recovery System*, July 12, 2000, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.

- California Air Resources Board Executive Order G-70-153-AD, *Modification to the Certification of the Dresser/ Wayne WayneVac Phase II Vapor Recovery System*, April 3, 2000, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.

- California Air Resources Board Executive Order G-70-154-AA, *Modification to the Certification of the Tokheim MaxVac Phase II Vapor Recovery System*, June 10, 1997, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.

- California Air Resources Board Executive Order G-70-163-AA, *Modification to the Certification of the OPW VaporEZ Phase II Vapor Recovery System*, September 4, 1996, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.

- California Air Resources Board Executive Order G-70-164-AA, *Modification to Certification of the Hasstech VCP-3A Vacuum Assist Phase II Vapor Recovery System*, December 10, 1996, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.

- California Air Resources Board Executive Order G-70-165, *Certification of the Healy Vacuum Assist Phase II Vapor Recovery System with the Model 600 Nozzle*, April 20, 1995, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.

- California Air Resources Board Executive Order G-70-169-AA, *Modification to the Certification of the Franklin Electric INTELLIVAC Phase II Vapor Recovery System*, August 11, 1997, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.

- California Air Resources Board Executive Order G-70-177-AA, *Modification to the Certification of the Hirt VCS400-7 Vacuum Assist Phase II Vapor Recovery System*, December 9, 1999, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.

- California Air Resources Board Executive Order G-70-180, *Order Revoking Certification of Healy Phase II Vapor Recovery Systems for Gasoline Dispensing Facilities*, April 17, 1997, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.

- California Air Resources Board Executive Order G-70-183-AA, *Relating to Language Correction in Existing Executive Order G-70-183 (Healy Systems, Inc.)*, June 29, 2001, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.

- California Air Resources Board Executive Order G-70-186, *Certification of the Healy Model 400 ORVR Vapor Recovery System*, October 26, 1998, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.

- California Air Resources Board Executive Order G-70-188, *Certification of the Catlow ICVN Vapor Recovery Nozzle System for use with the Gilbarco VaporVac Vapor Recovery System*, May 18, 1999, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.

- California Air Resources Board Executive Order G-70-191-AA, *Relating to Language Correction in Existing Executive Order G-70-191 (Healy Systems, Inc.)*, July 30, 2001, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.

- California Air Resources Board Executive Order G-70-196, *Certification of the Saber Technologies, LLC SaberVac VR Phase II Vapor Recovery System*, December 30, 2000, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.

R20-2-702 incorporates the following materials:

ASTM D 975-98b: *Standard Specification for Diesel Fuel Oils,* published in ASTM Annual Book of Standards, Petroleum Products, Lubricants, and Fossil Fuels, Volume 05.01, 2001, American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959.

ASTM D 4814-00: *Standard Specification for Automotive Spark-Ignition Engine Fuel*, published in ASTM Annual Book of Standards, Petroleum Products, Lubricants, and Fossil Fuels, Volume 05.02, 2001, American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959.

R20-2-901 incorporates the following materials:

San Diego County Air Pollution Control District Test Procedure TP-96-1, March 1996, Third Revision, Air Pollution Central District, 9150 Chesapeake Drive, San Diego, CA 92123-1096.

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

No

15. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 2. DEPARTMENT OF WEIGHTS AND MEASURES

ARTICLE 1. ADMINISTRATION AND PROCEDURES

Section
R20-2-101. Definitions
R20-2-102. Metrology Laboratory Testing and Calibration Fees

R20-2-103. ~~Certification Fees~~ Licensing and Fees
R20-2-104. Administrative Enforcement Action ~~Regarding Commercial Devices~~
R20-2-105. ~~Administrative Enforcement Action Regarding Short Quantity Commodities~~ Repealed
R20-2-106. ~~Administrative Enforcement Action Regarding Liquid Fuels~~ Repealed
R20-2-107. ~~Administrative Enforcement Action Regarding Vapor Recovery Systems~~ Repealed
R20-2-110. Motion for Rehearing or Review

ARTICLE 2. COMMERCIAL DEVICES

Section
R20-2-201. Licensing Process
R20-2-202. ~~Handbook 44~~ Repealed
R20-2-203. Approval, Installation, and Sale of Devices
R20-2-205. Taxi Cab License Display

ARTICLE 3. PACKAGING, LABELING, AND METHOD OF SALE

Section
R20-2-301. ~~Application~~ Repealed
R20-2-302. Handbook 130 and Handbook 133

ARTICLE 4. ~~REPEALED~~ PRICE VERIFICATION AND PRICE POSTING

Section
R20-2-402. Price-posting Inspection Procedure and Violation Exceptions

ARTICLE 5. PUBLIC WEIGHMASTERS

Section
R20-2-501. Qualifications; License and Renewal Application Process
R20-2-502. Duties
R20-2-505. Weight Certificates

ARTICLE 6. REGISTERED SERVICE AGENCIES AND REPRESENTATIVES

Section
R20-2-601. Qualifications; License and Renewal Application Process~~; and Reciprocal Agreements~~
R20-2-602. Duties
R20-2-604. Prohibited Acts
R20-2-605. Material Incorporated by Reference

ARTICLE 7. MOTOR FUELS AND PETROLEUM PRODUCTS

Section
R20-2-702. Material Incorporated by Reference
R20-2-704. Price and Grade Posting on External Signs
R20-2-705. Price, Octane, and Lead Substitute Notification on Dispensers
R20-2-714. Requirements for Gasoline Products Outside the ~~CBG Covered~~ CBG-covered Area
R20-2-715. Motor Fuel Quality Testing Methods and Requirements
R20-2-717. ~~Renumbered~~ Hold Open Latch Exception

ARTICLE 9. GASOLINE VAPOR CONTROL

Section
R20-2-901. Material Incorporated by Reference
R20-2-902. Exemptions
R20-2-903. Equipment and Installation
R20-2-904. Application Requirements and Process for Authority to Construct Plan Approval
R20-2-905. Initial Inspection and Testing
R20-2-906. Fees
R20-2-910. Annual ~~Tests~~ Inspection and Testing
R20-2-911. Compliance Inspections
R20-2-912. Enforcement

ARTICLE 1. ADMINISTRATION AND PROCEDURES

R20-2-101. Definitions

The definitions in A.R.S. §§ 41-2051, 41-2065, 41-2085, 41-2121, and 41-2131 and the following definitions apply to this Chapter:

1. No change
2. "Administrative order" means ~~a DWM-53~~ a corrective action notice that the Department issues for a violation of A.R.S. Title 41, Chapter 15, or this Chapter, that orders a person to:
   a. Remove from use or sale, or dispose of, a commercial device, commodity, or liquid fuel;
   b. Stop selling a commodity or liquid fuel until the person provides documentation to the Department that the weight, measure, fuel quality, or price posting complies with the requirements of A.R.S. Title 41, Chapter 15, and this Chapter;
   c. Stop using a commercial device, commodity, liquid fuel, vapor recovery system, or vapor recovery system component, until the person provides documentation to the Department that the weight, measure, fuel, vapor recovery system, or component complies with the requirements of A.R.S. Title 41, Chapter 15, and this Chapter;
   d. Stop performing weighmaster, deputy weighmaster, registered service agency, or registered service representative licensed duties until the person provides documentation to the Department that the person is complying with the requirements of A.R.S. Title 41, Chapter 15, and this Chapter;
   e. Maintain labeling, policies, and cash register indicator displays according to A.R.S. Title 41, Chapter 15, and this Chapter;
   f. Stop constructing or modifying a vapor recovery system until the person complies with A.R.S. Title 41, Chapter 15, and this Chapter;
   g. Excavate a vapor recovery site according to R20-2-104(L);
   h. Comply with scheduling a test according to R20-2-104(L); or
   i. Retake a competency examination under A.R.S. § 41-2094.
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
9. No change
10. ~~"DWM-53" means a Department form that orders the stop- sale, stop-use, hold, or removal of commodities, devices, vapor recovery systems and components, and liquid fuels~~.

10.~~11.~~No change

11. ~~12.~~No change

12.~~13.~~"Handbook 44" means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 44, *Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices*, Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington, D.C. 20402-~~9328~~ 0001 (~~1999~~ 2003 edition), incorporated by reference and on file with the Department ~~and the Secretary of State~~. ~~The~~ This incorporation by reference contains no future editions or amendments.

13. "Handbook 112" means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 112, *Examination Procedure Outlines for Commercial Weighing and Measuring Devices*, Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington, D.C. 20402-0001 (2002 edition), incorporated by reference and on file with the Department. This incorporation by reference contains no future editions or amendments.

14. "Handbook 130" means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 130, *Uniform Laws and Regulations*, Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington, D.C. 20402-~~9328~~ 0001 (~~1999~~ 2003 edition), incorporated by reference and on file with the Department ~~and the Secretary of State~~. This incorporation by reference contains no future editions or amendments.

15. "Handbook 133" means the United States Department of Commerce, Technology Administration~~:~~,
   a. ~~National Bureau of Standards (NBS) Handbook 133, 3rd edition, entitled Checking the Net Contents of Packaged Goods, including supplements 1, 2, and 3 issued September 1988; and~~
   b. ~~National Institute of Standards and Technology (NIST) Handbook 133, 3rd edition, entitled Checking The Net Contents of Packaged Goods, including supplement 4 issued October 1994.~~
   c. ~~These publications are incorporated by reference, are on file with the Secretary of State, and are published by the Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington, D.C. 20402-9328.~~ National Institute of Standards and Technology (NIST) Handbook 133, *Checking The Net Contents of Packaged Goods*, Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington, D.C. 20402-

0001 (January 2003 edition), incorporated by reference and on file with the Department. This incorporation by reference contains no future editions and amendments.

16. ~~"Hold order" means a Department administrative order requiring an owner, operator, distributor, manufacturer, licensee, or consignee to keep any commercial device, commodity, or liquid fuel, under its control and stored at its expense, pending further Department action, because it does not meet the requirements of A.R.S. Title 41, Chapter 15, or these rules.~~ "NCWM" means the National Conference on Weights and Measures.
17. No change
18. No change
19. No change
20. No change
21. "NIST" means the National Institute of Standards and ~~technology~~ Technology.
22. ~~"Off sale" means that a commodity has been removed from commercial sale.~~
23. ~~22.~~ No change
24. ~~23.~~ "Out-of-service tag" means a red rejection tag that signifies that a commercial device does not meet the requirements of A.R.S. Title 41, Chapter 15, ~~or these rules, and that the owner or operator shall not use the device commercially until repaired~~ Handbook 44, or this Chapter.
24. "Person" as defined in A.R.S. § 41-2051, means an owner or operator of a commercial device or vapor recovery system, retail seller, wholesaler, registered supplier, pipeline distributor, packer, manufacturer, licensee, transporter, or consignee.
25. No change
26. No change
27. No change
28. ~~"Removal order" means a Department administrative order requiring the owner, operator, distributor, manufacturer, licensee, or consignee to remove from use or sale, and dispose of a commercial device, commodity, liquid fuel, or vapor recovery component because it does not meet the requirements of A.R.S. Title 41, Chapter 15, or these rules.~~
29. ~~28.~~ No change
30. ~~29.~~ No change
31. ~~30.~~ No change
32. ~~"Stop-sale order" means a Department administrative order requiring the owner, operator, distributor, manufacturer, licensee, or consignee to stop selling a commodity or liquid fuel, because it does not meet the requirements of A.R.S. Title 41, Chapter 15, or these rules.~~
33. ~~31.~~ "Stop-sale, stop-use tag" means a blue tag or blue tape that signifies that ~~an owner or operator shall not sell or use~~ a commercial device, including a vapor recovery system or vapor recovery component, or a commodity~~,~~ or liquid fuel, ~~because it~~ does not meet the requirements of A.R.S. Title 41, Chapter 15, Handbook 44, Handbook 130, Handbook 133, CARB Executive Orders, or this Chapter ~~these rules~~.
34. ~~"Stop-use order" means a Department administrative order requiring the owner, operator, distributor, manufacturer, licensee, or consignee to prohibit the use of any commercial device, commodity, liquid fuel, or vapor recovery system, including any of its components, until the weight, measure, fuel, or vapor recovery system complies with the requirements of A.R.S. Title 41, Chapter 15, and these rules.~~
35. ~~32.~~ No change
36. ~~33.~~ No change
37. ~~"Unlicensed device tag" means an orange tag that signifies that an owner or operator shall not use the commercial device until all licensing requirements of A.R.S. Title 41, Chapter 15, and these rules are met.~~
38. ~~34.~~ "Warning tag" means a yellow tag that signifies a commercial device, vapor recovery system, or vapor recovery component does not comply with ~~the requirements of~~ A.R.S. Title 41, Chapter 15, Handbook 44, CARB Executive Orders, or ~~these rules~~ this Chapter~~, and the device may only be used within the period specified on the tag for repair, but not thereafter unless the device is in compliance with A.R.S. Title 41, Chapter 15, and these rules~~.
39. ~~35.~~ No change

R20-2-102. Metrology Laboratory Testing and Calibration Fees

A. ~~The Department shall charge $40.00 an hour, with a minimum charge of $24.00, for work performed by the Department's Metrology Laboratory.~~ The Department's Metrology Laboratory charges the following fees for services:
1. $24.00 for the first hour, or fraction of an hour; and
2. $40.00 an hour, or fraction of an hour, after the first hour.

B. No change

R20-2-103. ~~Certification Fees~~ Licensing and Fees

~~The fee for testing and certification of noncommercial devices and portable batch plant devices shall be the same as the fee for licensing commercial devices listed in A.R.S. § 41-2092.~~

A. A license is effective on the first day of the month following the date that the license application is filed with the Depart-

ment. If an application is filed on the first of a month and is complete and accurate, the license is effective on the first day of that month.

B. A payment is delinquent if the Department does not receive the payment by the due date. The Department shall not process a license or renewal application for which payment is delinquent.

C. The Department shall prorate a license renewal fee if the licensee's first renewal is fewer than 12 months from the date that license is issued.

D. The Department shall issue a full refund to a licensee for a license renewal fee only if the licensee provides written notice to the Department before the renewal fee due date that the renewal is not needed.

R20-2-104. Administrative Enforcement Action ~~Regarding Commercial Devices~~

~~**A.** Warning tag.~~

~~1. The Department shall attach a warning tag to a commercial device if the device:~~

~~a. Does not comply with the requirements of A.R.S. Title 41, Chapter 15, Handbook 44, or these rules; and~~

~~b. Use of the device may harm the public.~~

~~2. The tag shall be affixed to the device in public view.~~

~~3. The tag shall contain the following information:~~

~~a. A notice that the device has been examined by the Department and has failed to comply with A.R.S. Title 41, Chapter 15, Handbook 44, or these rules;~~

~~b. The name of the business, location, and fee code;~~

~~c. A notice that it is unlawful to remove the tag;~~

~~d. The date;~~

~~e. A notice of the time allowed for repair; and~~

~~f. A notice that if the device is not repaired within the time allowed, it shall be placed out of service by the Department.~~

~~4. A person shall not remove a warning tag without authorization from the Department.~~

~~**B.** Out-of-service tag.~~

~~1. The Department shall attach an out-of-service tag to a commercial device if the device:~~

~~a. Does not comply with A.R.S. Title 41, Chapter 15, Handbook 44, or these rules;~~

~~b. Use of the device may harm the public; or~~

~~c. The device has not been repaired as required in subsection (A).~~

~~2. The tag shall be affixed to the device in public view.~~

~~3. The tag shall contain the following information:~~

~~a. A notice that the device has been examined by the Department and has failed to comply with A.R.S. Title 41, Chapter 15, Handbook 44, or these rules;~~

~~b. A notice that a person shall not use the device until repaired;~~

~~c. The name of the business, location, and fee code;~~

~~d. A notice that it is unlawful to remove the tag;~~

~~e. The date; and~~

~~f. A notice that failure to repair the device may subject it to seizure.~~

~~4. A person shall not remove an out-of-service tag without authorization from the Department.~~

~~**C.** Unlicensed-device tag.~~

~~1. The Department shall attach an unlicensed-device tag to a commercial device if a valid license has not been procured for the device.~~

~~2. The tag shall be affixed to the device in public view.~~

~~3. The tag shall contain the following information:~~

~~a. A notice that the device is unlicensed, and~~

~~b. A notice that a person shall not use the device for commercial purposes.~~

~~4. A person shall not remove an unlicensed-device tag without authorization from the Department.~~

A. The Department shall take progressive enforcement action for a violation of A.R.S. Title 41, Chapter 15, CARB Executive Orders, Handbook 44, Handbook 130, Handbook 133, or this Chapter.

B. The Department shall provide a copy of its inspection report to the person who owns or operates a location that the Department inspects. The report shall include the inspection results, violations, and enforcement action.

C. The person who owns or operates a location inspected by the Department may request a hearing under R20-2-109 to dispute the inspection results, violation, or enforcement action.

D. The Department shall suspend, revoke, or refuse to renew any license if the licensee does not comply with an enforcement action imposed under this Section.

E. A maximum civil penalty may be doubled as stated in A.R.S. § 41-2115 (B).

F. Commercial device.

1. The Department shall place out of service an unlicensed commercial device that it determines has been in use for more than 30 days.

2. The Department shall confiscate a commercial device when a person violates an administrative order related to that commercial device, or removes a warning tag, out-of-service tag, or stop-sale, stop-use tag issued to that commercial device without Department authority.
3. The Department shall issue an out-of-service tag or a stop-sale, stop-use tag if a commercial device is not in compliance with the requirements in Handbook 44 and the lack of compliance creates a situation favorable to the person who owns or operates the commercial device.
   a. A person shall not use a commercial device that has an out-of-service tag until the person repairs the commercial device.
   b. A person shall not sell or use a commercial device that has a stop-sale, stop-use tag until the commercial device meets the requirements of A.R.S. Title 41, Chapter 15, Handbook 44, and this Chapter.
4. The Department shall issue a warning tag when a commercial device is not in compliance with the requirements in Handbook 44 and the lack of compliance creates a situation favorable to the public. The Department shall issue an out-of-service tag if the commercial device is not repaired by the deadline on the warning tag. A person shall not use a commercial device after the period specified on the warning tag for repair unless the commercial device complies with A.R.S. Title 41, Chapter 15, Handbook 44, and this Chapter.
5. The Department shall issue an out-of-service tag if a commercial device does not have a non-tampering seal affixed.
6. The Department shall issue an out-of-service tag if a Department inspector cannot conduct an inspection of a commercial device because of a potential safety risk that the person who owns or operates the commercial device does not correct within 30 minutes of the attempted inspection.
7. The Department shall issue an out-of-service tag if a commercial device cannot begin weighing, measuring, metering, or counting at zero.
8. The Department shall issue a warning tag if the manufacturer's plate on a commercial device does not contain the information required by Handbook 44, is missing, or is unreadable. The Department shall issue an out-of-service tag if the person who owns or operates a commercial device does not obtain a compliant manufacturer's plate by the 30-day deadline imposed on the warning tag.
9. The Department shall issue a warning tag to a person who did not construct a large-scale approach according to Handbook 44. The Department shall issue a stop-sale, stop-use tag if the large-scale approach is not made compliant by the deadline imposed on the warning tag.
10. In addition to any enforcement action under subsections (F)(1) through (F)(9):
    a. If the Department finds during an inspection that a commercial device does not comply with the requirements of A.R.S. Title 41, Chapter 15, or this Chapter and the lack of compliance favors the owner or operator of the commercial device:
       i. The Department shall impose a $300 civil penalty on the person who owns or operates the commercial device; and
       ii. The Department shall impose a $500 civil penalty on the person who owns or operates the commercial device for each reinspection until the commercial device is in compliance.
    b. If the Department finds during an inspection that a person who weighs a product on a commercial device violates Handbook 44 or does not post rates according to Handbook 44 or this Chapter:
       i. The Department shall issue an administrative order to the person at the conclusion of the inspection and impose a $300 civil penalty; and
       ii. The Department shall issue an administrative order to the person and impose a $500 civil penalty at each reinspection until the person complies with Handbook 44 and this Chapter.

G. Public and deputy weighmaster.

1. The Department shall issue an administrative order if a public weighmaster's:
   a. Weigh tickets are not in numbered sequence or are missing,
   b. Seal or press is not readable, or
   c. Records are not maintained according to R20-2-505.
2. The Department shall issue an administrative order and impose a $500 civil penalty on a public weighmaster if:
   a. The public weighmaster's weigh tickets contain inaccurate information,
   b. The public weighmaster violates an administrative order, or
   c. The public weighmaster misuses a seal or press or has an unauthorized seal or press.
3. The Department shall confiscate a seal or press if a public weighmaster violates an administrative order issued to the public weighmaster.
4. The Department shall suspend, revoke, or refuse to renew a license if a public weighmaster does not comply with an enforcement action under this Section.
5. The Department shall issue an administrative order to a person who performs public weighmaster duties without a license.
6. If a public weighmaster permits an unlicensed person to perform deputy weighmaster duties, the Department shall:
   a. Impose a $300 civil penalty on the public weighmaster for the first time the public weighmaster permits an unli-

censed person to perform deputy weighmaster duties;
b. Impose a $500 civil penalty on a public weighmaster for the second time the public weighmaster permits an unlicensed person to perform deputy weighmaster duties; and
c. Confiscate the public weighmaster's records, equipment, and devices if the public weighmaster permits an unlicensed person to perform deputy weighmaster duties more than twice.

H. Package.
1. The Department shall issue an administrative order to an owner or an employee of the owner where a package inspection is held if a package is not in compliance with a requirement in Handbook 130 or Handbook 133. The person to whom the administrative order is issued shall correct the package violation by:
   a. Returning the package to the packer or manufacturer,
   b. Labeling the package to reflect its correct quantity,
   c. Placing a notice on the package that states the violation and pricing the package to reflect its correct quantity, or
   d. Repackaging the commodity so the package contains the quantity represented.
2. In addition to an administrative order, the Department shall impose a $500 civil penalty per lot on a person who violates a requirement in Handbook 130 or Handbook 133.

I. Price verification.
1. The initial inspection of a retail location for price verification is for educational purposes and an enforcement action will not be imposed for a violation identified during the initial inspection.
2. The Department shall issue a stop-sale, stop-use tag to a person who fails a price verification reinspection if the violation cannot be corrected within 30 minutes of the Department completing the reinspection.
   a. The Department shall impose a $100 civil penalty per violation on a person who fails a reinspection if the Department finds more than one item at more than its posted price.
   b. The Department shall impose a $200 civil penalty per violation on a person who fails a second reinspection. The Department shall increase the per violation civil penalty imposed by $100 for each subsequent reinspection until the violation is corrected.
3. If the Department receives and substantiates a complaint about a person against whom the Department took an administrative enforcement action under subsection (I)(2) within the 60 days before the date of the complaint, the Department shall issue a stop-sale, stop-use tag and impose a civil penalty that is $100 more than the civil penalty that the Department previously imposed against this person.
4. The Department shall issue a warning to a person who does not have a written price-error policy. The Department shall impose a $500 civil penalty if the person does not have a written price-error policy upon reinspection.
5. The Department shall issue a warning to a person who does not have a price display visible to the public at a check-out location. The Department shall issue an out-of-service tag if the person does not have a price display visible to the public at a check-out location upon reinspection.

J. Price posting.
1. The initial inspection of a retail location for price posting is for educational purposes and an enforcement action will not be imposed for a violation identified during the initial inspection.
2. The Department shall issue a stop-sale, stop-use tag to a person who fails a price posting reinspection if the violation cannot be corrected within 30 minutes of the Department completing the reinspection.
3. The Department shall impose a $50 civil penalty for each inspected lot not priced if a person fails a reinspection with a score of less than 96 percent.
4. The Department shall impose a $100 civil penalty for each inspected lot not priced if a person fails a second reinspection.
5. If the Department receives and substantiates a complaint about a person against whom the Department took an administrative enforcement action under subsection (J)(2) within the 60 days before the date of the complaint, the Department shall issue a stop-sale, stop-use tag and impose a civil penalty that is $100 more than the civil penalty that the Department previously imposed against this person.

K. Fuel quality and labeling.
1. The Department shall issue a warning tag to a person whose fuel dispenser labeling violates A.R.S. Title 41, Chapter 15, or this Chapter. The Department shall issue an out-of-service tag to the person if the person does not correct the fuel dispenser labeling violation within the time specified on the warning tag.
2. The Department shall issue an administrative order to a person whose fuel storage tank labeling or external street signage violates A.R.S. Title 41, Chapter 15, or this Chapter. The Department shall impose a $300 civil penalty if the person does not correct the labeling or signage violation within the time specified in the administrative order.
3. The Department shall issue an administrative order and impose a $500 per octane level civil penalty to a person who violates a fuel-quality requirement under A.R.S. Title 41, Chapter 15, or this Chapter. The person shall correct the violation by:
   a. Removing non-compliant motor fuel from the storage tank and replacing it with compliant motor fuel,
   b. Selling the motor fuel at the correct octane level,

c. Adding sufficient compliant motor fuel to the storage tank to bring the motor fuel in the storage tank into compliance,
d. Removing all water from the storage tank, or
e. Removing the non-compliant motor fuel to another area within the state if the motor fuel complies with specifications of that area.

4. The Department shall issue an administrative order to a person who does not provide requested product transfer documentation within 24 hours of the Department's request. The Department shall impose a $300 civil penalty on a person who provides the requested documentation between 24 and 72 hours. The Department shall impose a $500 civil penalty on a person who does not provide the requested documentation within 72 hours.

L. Vapor recovery.

1. The Department shall issue an administrative order to stop construction at a vapor recovery site and impose a $500 civil penalty on a person who:
   a. Begins construction or makes a major modification without an authority to construct plan approval,
   b. Does not comply with the authority to construct plan approval, or
   c. Does not obtain an approved change order for construction or major modification of the vapor recovery site unless:
      i. The vapor recovery system and its components comply with A.R.S. Title 41, Chapter 15, and this Chapter; and
      ii. The vapor recovery system passes the required vapor recovery tests according to A.R.S. Title 41, Chapter 15, and this Chapter.
2. The Department shall issue an administrative order requiring a person to excavate a vapor recovery site if the person covers a vapor recovery component before a Department pre-burial inspection and shall impose a $500 civil penalty if the excavated system does not pass required vapor recovery tests according to A.R.S. Title 41, Chapter 15, and this Chapter.
3. The Department shall issue an administrative order if a person fails to schedule an initial test date within 90 days of opening a vapor recovery site or an annual test date within the person's designated test month for that year. The Department shall issue a stop-sale, stop-use tag if the person does not comply with the administrative order.
4. The Department shall impose a $100 civil penalty on a person who does not have an authority to construct plan approval available for inspection at the constructionsite during normal business hours.
5. The Department shall issue a warning tag to a person whose vapor recovery system labeling does not comply with the authority to construct plan approval. The Department shall issue a stop-sale, stop-use tag and impose a $500 civil penalty on a person who does not correct a labeling violation within the time specified on a warning tag.
6. The Department shall issue a stop-sale, stop-use tag to a person whose vapor recovery system fails a test under R20-2-905 or R20-2-910. If the test failure is isolated to a system component, the Department's stop-sale, stop-use tag shall pertain to that component so the rest of the system may operate.
7. The Department shall impose a $500 civil penalty and issue another stop-sale, stop-use tag to a person who violates a stop-sale, stop-use tag. The Department shall impose a $500 civil penalty and revoke, suspend, or refuse to renew a commercial device license if a person removes a stop-sale, stop-use tag without approval.

M. Registered service agency and registered service representative.

1. If a registered service agency submits to the Department an inaccurate or incomplete placed-in-service or test report, the Department shall:
   a. Return the inaccurate or incomplete placed-in-service or test report to the agency for correction, and
   b. Impose a $50 civil penalty on the agency each time the agency resubmits a placed-in-service or test report without making all needed corrections.
2. The Department shall impose a $300 civil penalty on a registered service representative who incorrectly:
   a. Installs a commercial device,
   b. Repairs a commercial device,
   c. Tests a vapor recovery system, or
   d. Repairs a vapor recovery system.
3. If an unlicensed person represents itself as a registered service agency, the Department shall:
   a. Issue an administrative order,
   b. Impose a $500 civil penalty and confiscate the unlicensed person's calibration standards if the unlicensed person violates the administrative order, and
   c. Deny a registered service agency license to the unlicensed person if the unlicensed person fails to comply with the enforcement action under this subsection.
4. The Department shall issue an administrative order to an unlicensed person who performs the duties of a registered service representative. The Department shall impose a $300 civil penalty on the registered service agency for which the unlicensed individual works.
5. The Department shall issue an administrative order if a registered service representative places a commercial device

into service without Department authorization. The Department shall impose a $500 civil penalty on the registered service agency whose representative places a commercial device into service without Department authorization.

6. The Department shall impose a $500 civil penalty on a registered service agency whose registered service representative uses a metrology standard or vapor recovery air-to-liquid (A/L) ratio testing equipment that is not certified according to this Chapter. The Department shall confiscate a metrology standard or A/L ratio testing equipment if a registered service representative uses the uncertified standard or equipment after the registered service agency is penalized. The Department shall return the standard or equipment when it is properly certified.
7. The Department shall issue an administrative order to a vapor recovery registered service agency or person who owns a vapor recovery system that does not, according to A.R.S. Title 41, Chapter 15, and this Chapter:
   a. Notify the Department of a test date and time,
   b. Begin a test at the approved time,
   c. Appear for a witnessed test,
   d. Close a vapor recovery system for repairs if the system fails, or
   e. Perform a test.
8. The Department shall impose a $300 civil penalty on a vapor recovery registered service agency that violates subsection (M)(7) twice in 12 months.
9. If a registered service agency's registered service representative does not attach a non-tampering seal on a commercial device that is equipped for a seal, the Department shall:
   a. Impose a $300.00 civil penalty on the registered service agency for the first violation, and
   b. Impose a $500 civil penalty on the registered service agency for each subsequent violation by the registered service representative.
10. If a registered service representative determines that a vapor recovery system or component is not in compliance with A.R.S. Title 41, Chapter 15, or this Chapter, the registered service representative shall:
    a. Secure the non-compliant vapor recovery system or component from use before the registered service representative leaves the vapor recovery site or until the system or component passes the tests required by R20-2-910;
    b. Notify the Department of the secured, non-compliant vapor recovery system or component before leaving the vapor recovery site; and
    c. Notify the Department of the time of the test required by R20-2-910 by 6:00 a.m. of the day after the non-compliant vapor recovery system or component is secured or one hour before the test, whichever is sooner.
11. If a registered service representative fails to comply with subsection (M)(10)(b) or (M)(10)(c), the Department shall:
    a. Impose a $300 civil penalty on the registered service representative;
    b. Issue an administrative order, if the registered service representative is penalized under this subsection three times in 12 months, requiring the registered service representative to take and pass the licensing competency examination; and
    c. Suspend or revoke the license of the registered service agency employing the registered service representative if the registered service representative does not comply with an order issued under subsection (M)(11)(b).

R20-2-105. ~~Administrative Enforcement Action Regarding Short-Quantity Commodities~~ Repealed

~~**A.** The Department shall order the hold, stop-sale, stop-use, or removal of any commodity that is short of the quantity stated or improperly labeled by issuing a DWM-53 to the seller.~~

~~**B.** A stop-sale or stop-use tag shall be issued by the Department to those commodities for which the Department has issued a DWM-53.~~

~~1. The tag shall be displayed in public view.~~
~~2. The tag shall contain the following information:~~
~~a. A notice of the order;~~
~~b. A notice that a person shall not remove the tag or dispose of the commodity without authorization from the Department;~~
~~c. The location and identification of the commodity;~~
~~d. A description of the violation;~~
~~e. The name of the Department employee who affixed the tag; and~~
~~f. The date.~~

~~**C.** Any, wholesaler, or retailer shall not sell any commodity for which a DWM-53 has been issued without the Department's written authorization to:~~

~~1. Separate the goods that are at or more than their represented quantity from the tagged lot and return those goods for sale.~~
~~2. Sell the commodity provided it can be brought up to the represented quantity.~~
~~3. Relabel the commodity at its actual quantity.~~
~~4. Place a notice on the commodity of the violation and adjust the price accordingly.~~

~~**D.** The Department may provide written authorization of the disposition of a tagged commodity provided it does not conflict with A.R.S. Title 41, Chapter 15, or these rules.~~

~~**E.** Any disposition authorized by the Department shall be recorded on the DWM-53.~~

R20-2-106. ~~Administrative Enforcement Action Regarding Liquid Fuels~~ Repealed

~~**A.** If the Department finds that a liquid fuel fails to meet the requirements of A.R.S. Title 41, Chapter 15, or these rules, the Department shall order the hold, stop-sale, or stop-use of the liquid fuel by issuing a DWM-53.~~

~~**B.** A stop-sale, stop-use tag may be affixed by the Department to a storage vessel containing the liquid fuel.~~

~~1. The Department shall attach the tag to the storage tank fill cap and dispenser where the liquid fuel is stored and dispensed.~~

~~2. The tag shall contain the following information:~~

~~a. A notice that the liquid fuel has been prohibited from sale or use;~~

~~b. A notice that the liquid fuel is not to be disposed of without written authorization from the Department;~~

~~c. The location and identification of the liquid fuel;~~

~~d. The brand name of the fuel;~~

~~e. The number of containers;~~

~~f. A description of the violation;~~

~~g. The name of the Department employee who affixed the tag; and~~

~~h. The date.~~

~~**C.** A person shall not sell or use liquid fuel that has been issued a DWM-53 except under the following circumstances:~~

~~1. The Department may authorize the , wholesaler, or retailer to sell the liquid fuel provided it can be brought up to:~~

~~a. Represented quality and~~

~~b. Specifications in A.R.S. Title 41, Chapter 15, and these rules.~~

~~2. The Department may provide written authorization of the disposition of liquid fuel issued a DWM-53 provided the disposition does not conflict with A.R.S. Title 41, Chapter 15, or these rules.~~

~~**D.** The Department shall record the disposition of a non-compliant commodity on the DWM-53. The Department may authorize liquid fuel for which a DWM-53 has been issued to be removed:~~

~~1. To a facility capable of reblending or refining,~~

~~2. To another area within the state if specifications of that area can be met, or~~

~~3. Outside the state.~~

R20-2-107. ~~Administrative Enforcement Action Regarding Vapor Recovery Systems~~ Repealed

~~**A.** Stop-Sale, Stop-Use Tag~~

~~1. If the Department finds that a vapor recovery system or any component fails to meet the requirements set forth in A.R.S. Title 41, Chapter 15, or these rules, the Department shall order the stop-sale, stop-use of the vapor recovery system by issuing a DWM-53.~~

~~2. A stop-sale, stop-use tag may be affixed by the Department to a vapor recovery system.~~

~~a. The Department shall attach the tag to the noncompliant component in public view.~~

~~b. The tag shall contain the following information:~~

~~i. A notice that the vapor recovery system has been prohibited from use.~~

~~ii. The location and identification of the vapor recovery system.~~

~~iii. A notice that it is unlawful to remove the tag without Department authorization.~~

~~iv. A description of the violation.~~

~~v. The name of the Department employee who affixed the tag.~~

~~vi. The date.~~

~~3. A person shall not use a vapor recovery system issued a DWM-53 to dispense liquid fuel for commercial purposes.~~

~~**B.** Warning Tag.~~

~~1. The Department shall attach a warning tag to a vapor recovery system or any of its components if the system or components:~~

~~a. Do not comply with the requirements of A.R.S. Title 41, Chapter 15, CARB certifications that apply to the system, or these rules; and~~

~~b. The use of the vapor recovery system will not harm the public.~~

~~2. The Department shall affix the tag to the noncompliant component in public view.~~

~~3. The tag shall contain the following information:~~

~~a. Notice that the Department has examined the system and the system fails to comply with Title 41, Chapter 15, CARB certifications that apply to the system, or these rules;~~

~~b. The name of the business and location;~~

~~c. A notice that it is unlawful to remove the tag without Department authorization;~~

~~d. The date;~~

~~e. A notice of the time allowed for the repair; and~~

~~f. A notice that if the system is not repaired within the required time, the Department shall issue a stop-sale, stop-use tag.~~

R20-2-110. Motion for Rehearing or Review

A. No change

B. A motion for rehearing or review may be amended at any time before it is ruled upon by the Department. A response may be filed within ~~10~~ 15 days after service of the motion or amended motion by any other party. The Department may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.

C. No change

D. No change

E. No change

F. When a motion for rehearing or review is based upon affidavits, ~~they~~ the moving party shall ~~be served~~ serve the affidavits with the motion. An opposing party ~~shall have~~ has ~~10~~ 15 days from the date of service to serve opposing affidavits. The Department may extend the period to respond up to 20 days for good cause ~~shown up to 20 days~~, or by written stipulation of the parties. If the Department permits reply affidavits, ~~they shall be served within 5~~ the replying party has five days in which to serve them.

ARTICLE 2. COMMERCIAL DEVICES

R20-2-201. Licensing Process

~~An owner of a device may~~ Before using a commercial device, a person or a contracted registered service representative shall apply for a license for the commercial device. The commercial device may be used without a license for up to 30 days after an application is filed with the Department. The application shall be on a form supplied by the Department~~. The application form~~ that includes: ~~may require~~:

1. The applicant's name, address, and telephone number;
2. The name, address, and telephone number of the location where the commercial device will be operated;
3. ~~The device~~ A description of the commercial device; and
4. The applicant's signature.

R20-2-202. ~~Handbook 44~~ Repealed

~~As required by A.R.S. § 41-2064, all commercial devices shall comply with the specifications, tolerances, and other technical requirements set forth in Handbook 44, except as otherwise stated in these rules.~~

R20-2-203. Approval, Installation, and Sale of Devices

A. ~~All~~ A commercial ~~devices~~ device installed or placed in use after January 1, 1975, shall be prototype-approved by ~~NIST~~ NCWM or have a certificate of approval from the California Type Evaluation Program.

1. If a commercial device has been continuously licensed since January 1, 1975, the commercial device is exempt from NCWM or California Type Evaluation Program prototype approval. ~~All devices installed before January 1, 1975, are exempt from NIST prototype approval.~~
2. If a commercial device exempt under subsection (A)(1) fails the specifications, tolerances, or other technical requirements of Handbook 44 during a Department inspection, the Department shall revoke the commercial device license and a person shall not use the device commercially.

~~**B.** The owner of a device installed for commercial purposes shall report its use to the Department within 7 days of its use.~~

~~**C.**~~**B.** The seller of ~~any~~ a commercial device that ~~has been~~ is remanufactured for the purpose of commercial sale shall ~~not sell the device unless it is marked as having been~~ mark the commercial device as remanufactured.

R20-2-205. Taxi Cab License Display

A taxicab device licensee shall post the device license on the outside of the rear window of the taxicab.

ARTICLE 3. PACKAGING, LABELING, AND METHOD OF SALE

R20-2-301. ~~Application~~ Repealed

~~**A.** This Article shall apply to consumer and nonconsumer packages that are produced, kept, offered, or exposed for sale.~~

~~**B.** This Article shall not apply to:~~

1. ~~Shipping containers or wrapping used solely for the transportation of any commodities in bulk or in quantity, but in no event shall this exclusion apply to packages of consumer or nonconsumer commodities, as defined in Handbook 130;~~
2. ~~Auxiliary containers or outer wrappings used to deliver packages of commodities to retail customers if the containers or wrappings bear no printed matter pertaining to any particular commodity;~~
3. ~~Containers used for retail displays if the container itself is not intended to be sold;~~
4. ~~Commodities offered for sale in variable weights and sizes, weighed or measured at the time of sale, if the method of sale is posted near the commodity being sold;~~
5. ~~Open carriers and transparent wrappers used for containers if the wrappers or carriers do not bear any written, printed, or graphic matter obscuring the label information required by Handbook 130; or~~
6. ~~Inner wrappings not intended for sale to customers.~~

R20-2-302. Handbook 130 and Handbook 133

A. A person shall comply with ~~All~~ all packaging, labeling, and method of sale requirements ~~shall follow~~ in Handbook 130, except as otherwise stated in ~~these rules~~ this Chapter. A person shall ensure that ~~Packaged~~ packaged commodities kept, offered, exposed for sale, sold, or in the process of delivery ~~shall be~~ are weighed, measured, and inspected using sampling and testing procedures designated in Handbook 133, except as otherwise stated in ~~these rules~~ this Chapter.

B. A retail seller shall ensure that a package that is offered for sale in a variable weight, measurement, or count, and that is weighed, measured, or counted at the time of sale, includes a label on the package identifying the net weight, measurement, or count, item description, and packer's name if the packer is not the retailer. Pre-packaged produce does not require a label on each package if the retailer:

1. Clearly labels the price-per-pound where the packaged produce is displayed, and
2. Deducts a tare for the packaging from the gross weight at the time of sale.

C. A retail seller shall price a commodity at the date and time that it is ordered by a customer.

D. A retail seller who offers, exposes, or advertises a commodity for sale or rent shall post a definite, plain, and conspicuous price on the commodity or adjacent to where the commodity is displayed. If the price of the commodity is by weight, measure, or count, the retailer shall place the price per weight, measure, or count on the commodity or adjacent to where the commodity is displayed. If a retailer offers a commodity for sale or rent at a price reduced by a percentage or a fixed amount from a previously offered price, the retailer shall place the reduction or reduced price on the commodity or adjacent to where the commodity is displayed.

E. A person who owns or operates a plant nursery shall label each commodity with its identity, container size, and price, or post a sign with this information adjacent to the point of display.

F. A retail seller shall ensure that the price of each item purchased is displayed visibly to the public at each check-out location.

ARTICLE 4. ~~REPEALED~~ PRICE VERIFICATION AND PRICE POSTING

R20-2-402. ~~Repealed~~ Price-posting Inspection Procedure and Violation Exceptions

A. The Department shall choose one item that was used and four adjacent items that were not used for a price-verification inspection as the samples for a price-posting inspection.

B. If the Department finds an alleged price-posting violation involving an item used during its price-verification inspection, the Department shall record the price-posting violation on the inspection report.

C. The following are price-posting violations:

1. No price is posted or displayed for an inspected item, or
2. Less than 98 percent of the prices of inspected items are posted accurately.

D. The following are not price-posting violations:

1. A price is posted on a shelf where an item is displayed rather than marked on the item individually;
2. A price is posted on the shelf at the farthest left side of all items with the same price for up to 3 feet of shelf space. The price for commodities with the same uniform price code may be more than three feet from the price posted if they are all displayed in the same location;
3. A price posted above the highest item in a vertical location is the price of all items in that location;
4. A storage area that is posted as a storage area for which a customer should ask for assistance;
5. A restocking area that is posted as a restocking area for which a customer should ask for assistance;
6. A price is posted on a hook in front of or behind a row of items but the price is clearly visible or a notice is clearly visible stating that the price is posted behind the row of items;
7. An item is located in an advertising display without a posted price but a notice is posted informing a customer to ask for price information assistance about an item in the display. A service counter is not an advertising display;
8. A menu-type sign at a point of display that lists the name and price of every item at the point of display in text at least 3/8" high;
9. A point of display contains more than one item posted with the manufacturer's name or logo and the price and name of each item in the point of display is posted;
10. A price is posted only at each entrance to a store but that price is the price of each item in the store, or at each entrance to a department within a store but that price is the price of each item in the department; and
11. A notice states that there is an additional charge based on an item's size and each size and the additional charge for each size is posted.

ARTICLE 5. PUBLIC WEIGHMASTERS

R20-2-501. Qualifications; License and Renewal Application Process

A. In addition to the requirements of A.R.S. 41-2093, to be ~~A~~ a public weighmaster or a deputy public weighmaster, a person shall ~~have the following minimum qualifications~~:

1. Be ~~a person~~ at least 18 years old~~;~~ ,
2. Be able to operate a scale accurately~~;~~ , and

3. Be able to execute weight certificates properly.

B. ~~A deputy public weighmaster shall have the same minimum qualifications as a public weighmaster. A public weighmaster who designates a deputy public weighmaster shall notify the Department in writing within 5 days of designating a deputy.~~ A ~~deputy~~ person shall not perform the duties of a public weighmaster or deputy public weighmaster until the ~~deputy has passed~~ person passes the written weighmaster ~~exam~~ examination administered by the Department. A person may not take the examination more than two times in six months.

C. ~~An individual~~ A person that ~~meeting~~ meets the qualifications for public weighmaster or deputy public weighmaster~~, as set forth in this Section,~~ may apply for a license on a form supplied by the Department.

1. The application form ~~may require~~ includes:
   a. The applicant's name, address, and telephone number;
   b. A ~~representation~~ statement by the applicant that the applicant knows and understands ~~all applicable weights and measures~~ weighmaster laws and rules;
   ~~c. The name, address, and telephone number for each location of the applicant's business;~~
   ~~d.~~c. The name, address, and telephone number of each of the applicant's public weighmaster locations; and
   d. The applicant's signature.
2. The public weighmaster's application form also includes:
   ~~e.~~a. The name of each deputy public weighmaster;
   ~~f.~~b. The name and address of the scale ~~owner~~; and
   ~~g.~~c. The scale description~~;~~.
   ~~h. The applicant's signature.~~

~~2.~~3. ~~Applicants~~ An applicant may be required to submit evidence of ~~their~~ qualifications and shall be examined regarding ~~their~~ competence or qualifications.

D. Before the Department issues or renews ~~any license or renewal of~~ a public weighmaster or deputy public weighmaster license, the applicant shall pay ~~any~~ the required fees and provide ~~any~~ information required ~~by the Department in A.R.S. § Title 41, Chapter 15, or this Article~~ in A.R.S. § Title 41, Chapter 15, and this Chapter

E. The Department does not charge a fee to process a change in name or address.

R20-2-502. Duties

A public weighmaster shall:

1. Be ~~available at the scale location and~~ responsible for ~~its~~ the daily operation and maintenance of the licensed scale used when performing weighmaster duties~~, unless specifically exempted in writing by the Department~~;
2. Use scales according to applicable laws and rules; and
3. Be responsible for all acts performed by any deputy public weighmaster designated by the weighmaster.

R20-2-505. Weight Certificates

A. No change
B. No change
C. No change
D. No change
E. No change
F. A weight certificate shall state:

1. The date of issuance;
2. ~~The kind of property, produce, commodity, or article weighed;~~
3. ~~2.~~ The name of the declared owner, agent, or consignee of the material weighed;
4. ~~3.~~ The accurate weight of the material weighed or counted;
5. ~~4.~~ The means by which the material is being transported at the time it is weighed or counted;
6. ~~5.~~ An identification number of the transporting unit, including a license number; and
7. ~~6.~~ The following statement: "PUBLIC WEIGHMASTER'S CERTIFICATE OF WEIGHT AND MEASURE. This is to certify that the ~~following~~ described merchandise was weighed, counted, or measured by a public or deputy weighmaster, and when properly signed and sealed, ~~shall be~~ is prima facie evidence of the accuracy of the weight, count, or measure shown as prescribed by law."

G. No change

ARTICLE 6. REGISTERED SERVICE AGENCIES AND REPRESENTATIVES

R20-2-601. Qualifications; License and Renewal Application Process~~; and Reciprocal Agreements~~

A. Registered ~~Service Agency~~ service agency

1. ~~The Department shall accept applications for licensure of an agency that provides~~ To obtain a license as a registered service agency, an applicant shall provide evidence that:
   a. The applicant's registered service ~~representatives have~~ representative has a thorough knowledge of all appropri-

ate laws within A.R.S. Title 41, Chapter 15, Handbook 44, Handbook 112, CARB Executive Orders, and this Chapter;

b. The applicant provided its representative with a copy of the portions of A.R.S. Title 41, Chapter 15, Handbook 44, Handbook 112, CARB Executive Orders, and this Chapter relating to registered service representative duties;

~~b.~~ c. The applicant;

i. ~~possesses~~ Possesses the necessary certified standards and testing equipment to service commercial devices; and

ii. Possesses the necessary test equipment calibrated annually by the equipment manufacturer to perform an air to liquid (A/L) test of a vapor recovery system or vapor recovery component properly; or

iii. ~~that the applicant has~~ Has access to the necessary standards and testing equipment belonging to another registered service agency and has written approval from that agency to use its standards and testing equipment; and

d. ~~It~~ The applicant shall ensure that its registered service representative ~~will operate~~ operates the equipment ~~in accordance with appropriate laws~~ according to A.R.S. Title 41, Chapter 15, Handbook 44, Handbook 112, CARB Executive Orders, and this Chapter.

2. The Department ~~may require an applicant to:~~ shall not issue a registered service agency license until at least one of the applicant's employees passes a registered service representative competency exam.

~~a. Submit evidence or references concerning qualifications; and~~

~~b. Have at least 1 of its representatives pass a competency examination, before issuing a license.~~

3. ~~The application forms for registered service agencies may require the following information~~ An applicant for a registered service agency license shall submit an application form, obtained from the Department that provides:

a. Name, address, telephone number, electronic mail address, and facsimile ~~numbers~~ number;

b. ~~Previous and current license~~ License information from other states;

c. Types of devices serviced, repaired, or installed, or vapor recovery systems or components repaired or tested;

d. A list of all of the applicant's devices and testing equipment with corresponding serial or identification numbers;

e. Branch office information;

f. Names of registered service representatives and their experience with other registered service agencies or states;

g. License and disciplinary history; and

h. ~~Signatures of the applicant's agent or its representatives~~ Applicant's signature.

B. Registered ~~Service Representative~~ service representative

1. ~~The Department shall accept an application for licensure of a representative that provides~~ To obtain a license as a registered service representative, an applicant shall provide evidence that:

a. The applicant has a thorough knowledge of all appropriate laws within A.R.S. Title 41, Chapter 15, Handbook 44, Handbook 112, CARB Executive Orders, and this Chapter;

b. The applicant possesses the necessary training or experience regarding appropriate standards and testing equipment to service ~~devices~~ the specific commercial device, vapor recovery system, or vapor recovery system component indicated on the application; ~~and~~

c. The applicant will operate ~~in accordance with~~ according to appropriate laws within A.R.S. Title 41, Chapter 15, Handbook 44, Handbook 112, CARB Executive Orders; and this Chapter; and

~~2.~~ ~~The Department shall may require an applicant to submit evidence or references concerning qualifications.~~

~~3~~d. The applicant ~~shall pass~~ has passed a competency examination ~~before being issued a license~~. An applicant shall bring a copy of Handbook 44 and Handbook 112 to the examination site. An applicant for a vapor recovery registered service representative license shall complete the Department's training class before taking the competency examination.

~~4~~2. ~~The application forms for a registered service representatives may require the following information~~ An applicant for a registered service representative license shall submit an application on a form obtained from the Department that provides:

a. Name, address, telephone number, and facsimile ~~numbers~~ number;

b. ~~Previous and current license~~ License information from other states;

c. Types of devices serviced, repaired, or installed, or vapor recovery systems or components repaired or tested;

d. ~~Experience~~ Work experience with other registered service agencies in Arizona or other states;

e. License and disciplinary history; and

f. ~~Signature~~ Applicant's signature.

~~C. The Department shall accept the certification of standards and testing equipment from any state that has standards traceable to NIST, unless the Department finds that a laboratory's standards or testing equipment are not traceable to NIST.~~

C. To renew a vapor recovery registered service representative license, an applicant shall:

1. Complete the Department's training class, and
2. Take and pass a written vapor recovery examination, administered by the Department.

D. An applicant may not take a registered service representative examination more than two times in six months.
E. An applicant shall complete an examination within the time specified.
F. The Department does not charge a fee to process a change in business name or address.

R20-2-602. Duties

A. Registered ~~Service Agency~~ service agency
1. A registered service agency shall ~~maintain~~:
   a. Maintain all equipment ~~in accordance with~~ used for commercial device certification according to standards traceable to NIST, and
   b. Maintain and use equipment for testing vapor recovery systems and vapor recovery system components according to this Chapter and manufacturer specifications.
2. ~~When using a "placed-in-service report", a~~ When a registered service agency restores or newly places in service a commercial device, the registered service agency shall ~~use~~ complete a placed-in-service report form prescribed by the Department.
   a. ~~A~~ The registered service agency shall ~~fill out a~~ complete the placed-in-service report in triplicate~~.~~;
   b. Within ~~7~~ seven calendar days after ~~a~~ the commercial device is restored to service or newly ~~placed in service~~ placed in service, ~~a~~ the registered service agency shall mail the original of the properly completed and signed placed-in-service report to the Department~~.~~;
   c. ~~A~~ The registered service agency shall give a ~~duplicate~~ copy of the placed-in-service report to the person who owns or ~~operator of~~ operates the commercial device~~.~~;
   d. ~~A~~ The registered service agency shall retain a ~~triplicate~~ copy of the placed-in-service report or any required vapor recovery report for one year~~.~~;
   e. ~~A~~ The registered service agency shall ~~assure~~ ensure that the placed-in-service report contains the assigned license number of the registered service representative who ~~completed~~ completes the report~~.~~;
   f. ~~A~~ The registered service agency shall ensure that the placed-in-service report is completed and signed by the registered service representative noting each rejected commercial device restored to service and each newly installed commercial device ~~placed in service~~ placed in service~~.~~;
   g. ~~A~~ The registered service agency shall ensure that the placed-in-service report includes the serial or identification number of each standard used by the registered service representative to calibrate the commercial device for each rejected device restored to service and for each newly installed device placed in service~~.~~; and
   h. The registered service agency shall ensure that the placed-in-service report includes the license number of the registered service representative who installs or repairs the commercial device.

~~4.~~3. A registered service agency shall have all equipment used for commercial device certification and A/L testing certified annually by the manufacturer.

~~5.~~4. A registered service agency shall not use new equipment for commercial device certification until it is certified by a NIST-traceable laboratory. ~~A registered service agency shall report any newly acquired equipment or changes in certified equipment to the Department within 10 days of the acquisition or change.~~

~~6.~~5. A registered service agency shall ~~assure~~ ensure that ~~no~~ employees do not perform registered service representative duties ~~before being~~ until licensed. A registered service agency may train an employee in registered service representative duties only if the employee is within the direct line of sight and hearing of a supervising licensed registered service representative.

6. A registered service agency shall use a form approved by the Department to record vapor recovery test results and violations. The registered service agency shall submit to the Department the summary test report within 24 hours following the test. All other forms relating to the test shall be mailed within seven days after completion of the test.
7. A registered service agency shall ensure that its registered service representative provides a copy of the Regulatory Bill of Rights, defined in A.R.S. § 41-1001.01, to the owner or operator of a vapor recovery system before beginning a vapor recovery test that is not witnessed by the Department.
8. A registered service agency shall ensure that its registered service representative provides a vapor recovery system owner or operator with written test preparation instructions, approved by the Department, at least 10 business days before an initial or annual test.

B. Registered ~~Service Representative~~ service representative

~~1. A registered service representative shall use standards traceable to NIST.~~
~~2. A registered service representative who calibrates any metering device shall use a certified prover to run a 1-minute, uninterrupted, normal test draft, with the following capacity:~~
   ~~a. Wholesale devices - 50 gallons.~~
   ~~b. Retail motor fuel meters - 5 gallons.~~

1.~~3.~~ A registered service representative shall ~~also~~:
   a. Install only commercial devices that meet the requirements of ~~Article 2~~ this Chapter;
   b. Perform all vapor recovery tests according to this Chapter;
   c. Perform all appropriate tests when repairing a commercial device or repairing or replacing a vapor recovery sys-

tem or component to ensure that the requirements of A.R.S. Title 41, Chapter 15, this Chapter, Handbook 44, Handbook 112, and CARB Executive Orders are met;

~~b.~~d. Report to the user equipment or commercial devices that do not conform to NIST standards ~~to the user~~; and

~~c.~~e. Complete placed-in-service reports accurately.

2. If a vapor recovery registered service representative cannot correct a violation and has to leave the vapor recovery site, the registered service representative shall secure the non-compliant vapor recovery system or component from commercial use. The non-compliant system or component shall not be used for commercial purposes until it is repaired and passes the test required by R20-2-910. The registered service representative shall notify the Department of the stop-sale, stop-use by 6:00 a.m. of the day after the non-compliant vapor recovery system or component is secured or one hour before the test, whichever is sooner, so that the Department can witness the test.

R20-2-604. Prohibited Acts

A. A person shall not:

1. Perform any duty or do any act required to be done by a registered service agency or registered service representative without holding a registered service ~~agent~~ agency or registered service representative license issued by the Department;
2. Use the title of registered service agency or registered service representative, any similar title, or hold oneself out as a registered service agency or representative without a valid license; or
3. Remove an official out-of-service, warning, or ~~unlicensed device~~ stop-sale, stop-use tag except as authorized in this Chapter, or by the Department.

B. A registered service agency or registered service representative shall not:

1. Fraudulently complete or file a placed-in-service ~~Report~~ report;
2. Delegate licensed authority or responsibility to an unlicensed person;
3. Perform ~~any~~ a function without certified equipment;
4. Install or place in service ~~any~~ a commercial device before satisfying all of the statutory and rule requirements; ~~or~~
5. ~~Leave any location where a device was found not in compliance, without 1st tagging the device with an out-of-service, warning, or unlicensed device tag.~~ Fail to report a commercial device to the Department within two business days of finding that device is out of compliance;
6. Install, calibrate, or repair a commercial device without placing a sequentially numbered decal or label on the device as prescribed by the Director;
7. Leave a location where there is a non-compliant commercial device without securing the commercial device from commercial use; or
8. Leave a vapor recovery site where there is a non-compliant system or component without securing the system or component from commercial use.

R20-2-605. Material Incorporated by Reference

The following documents are incorporated by reference and on file with the Department. The documents incorporated by reference contain no future editions or amendments.

1. California Air Resources Board Executive Order G-70-17-AD, *Modification of Certification of the Emco Wheaton Balance Phase II Vapor Recovery System*, May 6, 1993, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
2. California Air Resources Board Executive Order G-70-36-AD, *Modification of Certification of the OPW Balance Phase II Vapor Recovery System*, September 18, 1992, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
3. California Air Resources Board Executive Order G-70-52-AM, *Certification of Components for Red Jacket, Hirt, and Balance Phase II Vapor Recovery Systems*, October 4, 1991, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
4. California Air Resources Board Executive Order G-70-70-AC, *Modification of Certification of the Healy Phase II Vapor Recovery System for Gasoline Dispensing Facilities*, June 23, 1992, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
5. California Air Resources Board Executive Order G-70-150-AE, *Modification to the Certification of the Marconi Commerce Systems Inc. (MCS) "Formerly Gibarco" VaporVac Phase II Vapor Recovery System*, July 12, 2000, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
6. California Air Resources Board Executive Order G-70-153-AD, *Modification to the Certification of the Dresser/ Wayne WayneVac Phase II Vapor Recovery System*, April 3, 2000, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
7. California Air Resources Board Executive Order G-70-154-AA, *Modification to the Certification of the Tokheim MaxVac Phase II Vapor Recovery System*, June 10, 1997, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
8. California Air Resources Board Executive Order G-70-163-AA, *Modification to the Certification of the OPW*

VaporEZ Phase II Vapor Recovery System, September 4, 1996, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.

9. California Air Resources Board Executive Order G-70-164-AA, *Modification to Certification of the Hasstech VCP-3A Vacuum Assist Phase II Vapor Recovery System*, December 10, 1996, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
10. California Air Resources Board Executive Order G-70-165, *Certification of the Healy Vacuum Assist Phase II Vapor Recovery System with the Model 600 Nozzle*, April 20, 1995, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
11. California Air Resources Board Executive Order G-70-169-AA, *Modification to the Certification of the Franklin Electric INTELLIVAC Phase II Vapor Recovery System*, August 11, 1997, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
12. California Air Resources Board Executive Order G-70-177-AA, *Modification to the Certification of the Hirt VCS400-7 Vacuum Assist Phase II Vapor Recovery System*, December 9, 1999, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
13. California Air Resources Board Executive Order G-70-180, *Order Revoking Certification of Healy Phase II Vapor Recovery Systems for Gasoline Dispensing Facilities*, April 17, 1997, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
14. California Air Resources Board Executive Order G-70-183-AA, *Relating to Language Correction in Existing Executive Order G-70-183 (Healy Systems, Inc.)*, June 29, 2001, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
15. California Air Resources Board Executive Order G-70-186, *Certification of the Healy Model 400 ORVR Vapor Recovery System*, October 26, 1998, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
16. California Air Resources Board Executive Order G-70-188, *Certification of the Catlow ICVN Vapor Recovery Nozzle System for use with the Gilbarco VaporVac Vapor Recovery System*, May 18, 1999, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
17. California Air Resources Board Executive Order G-70-191-AA, *Relating to Language Correction in Existing Executive Order G-70-191 (Healy Systems, Inc.)*, July 30, 2001, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
18. California Air Resources Board Executive Order G-70-196, *Certification of the Saber Technologies, LLC SaberVac VR Phase II Vapor Recovery System*, December 30, 2000, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.

ARTICLE 7. MOTOR FUELS AND PETROLEUM PRODUCTS

R20-2-702. Material Incorporated by Reference

The following documents are incorporated by reference and on file with the Department ~~and the Secretary of State~~. ~~These~~ The documents ~~incorporations~~ incorporated by reference contain no future editions or amendments.

1. 16 CFR 306 - ~~Automotive Fuel Ratings, Certification and Posting~~ *Automotive Fuel Ratings, Certification and Posting*, January 1, 1998 Edition ~~edition~~, Superintendent of Documents, U.S. Government Printing Office, Mail Stop SSOP, Washington, D.C. 20402-9328.
2. ASTM D 975-98b ~~D 975-97~~, ~~Specification for Diesel Fuel Oils, Petroleum Products, Lubricants, and Fossil Fuels~~ *Standard Specification for Diesel Fuel Oils*, published in ASTM Annual Book of Standards, ~~Volume 05.01~~, Petroleum Products, ~~and~~ Lubricants, and Fossil Fuels,~~(I): D56-D2596~~, ~~1998 edition,~~ Volume 05.01, 2001, American Society for Testing and Materials, ~~1916 Race Street, Philadelphia, PA 19103-1187.~~ 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959.
3. ASTM D 4814-00 ~~D 4814-97b~~, ~~Specification for Automotive Spark-Ignition Engine Fuel, Petroleum Products, Lubricants, and Fossil Fuels~~ *Standard Specification for Automotive Spark-Ignition Engine Fuel*, published in ASTM Annual Book of Standards, Petroleum Products, Lubricants, and Fossil Fuels, Volume ~~05.03~~ 05.02, 2001, ~~Petroleum Products and Lubricants (III)~~: ~~D 4636 -latest; Catalysts~~, ~~1998 edition~~. American Society for Testing and Materials, ~~1916 Race Street, Philadelphia, PA 19103-1187~~100 Barr Harbor Drive, West Conshohocken, PA 19428-2959.
4. Waiver Requests under Section 211(f) of the Clean Air Act, ~~40 CFR 211, Regulation of Fuels (January 28, 1992~~ (August 22, 1995 edition), United States Environmental Protection Agency, ~~Fuels Section (EN 397F), Field Operations and Support Division, U.S. Environmental Protection Agency, 401 M Street SW,~~ Transportation and Regional Programs Division, Fuels Program Support Group, Mail Code 6406J, Washington, D.C. 20460. ~~Section 211(f) of the Clean Air Act allows a fuel or fuel additive manufacturer to apply to the Environmental Protection Agency's administrator to waive the prohibitions of certain paragraphs of Section 211(f)(4). A list of the administrator's rulings on all waiver requests is available from the Environmental Protection Agency.~~

R20-2-704. Price and Grade Posting on External Signs

A. ~~An owner or operator of~~ A person who owns or operates a service station that has ~~a prominently displayed~~ an external sign

shall ensure that the sign:

1. Identifies whether the ~~type of sale is cash, credit, or debit if the~~ price ~~for payment~~ differs depending on whether the payment is cash, credit, or debit;
2. Identifies the self-service and full-service prices, if different;
3. ~~Identifies the grade of motor fuel as:~~
   a. ~~Unleaded, or UNL, regular or REG for unleaded gasoline with an octane of at least 87;~~
   b. ~~Midgrade, or MID for midgrade, extra, or plus for gasoline with an octane of at least 88;~~
   c. ~~Premium, or PREM, for super, high performance, or premium for gasoline with an octane of at least 90; and~~
   d. ~~No. 1 diesel, #1 diesel, No. 2 diesel, or #2 diesel;~~

~~4.~~3. Discloses the full price of motor fuel ~~price~~ including fractions of a cent and all federal and state taxes, if the sign displays the motor fuel price. A decimal point shall be used in the displayed price when a dollar sign precedes the posted price;

~~5.~~4. ~~Lettering~~ Displays lettering at a height ~~is~~ of at least 1/5 of the letter height of the motor fuel price displayed on the external sign or 2 ½", whichever is larger, and is visible from the road~~.~~;

~~6.~~5. States the terms of any condition if the displayed price is conditional upon the sale of another product or service. The terms of any condition shall comply with the letter height requirement in subsection ~~(5)~~ (A)(4)~~.~~;

6. Describes diesel fuel as No. 1 diesel, #1 diesel, No. 2 diesel, #2 diesel, or biodiesel~~.~~; and
7. Identifies the unit of measure of the price, if it is other than per gallon.

B. Effective June 5, 2004, if a sign uses the following terms to describe a gasoline grade or gasoline-oxygenate blend, the grade or blend shall meet the following minimum antiknock index:

	Term	Minimum Antiknock Index
1.	Regular, Reg, Unleaded, UNL, or UL	87
2.	Midgrade, Mid, or Plus	89
3.	Premium, PREM, Super, Supreme, High, or High Performance	91

R20-2-705. Price, Octane, and Lead ~~Substitute~~ substitute Notification on Dispensers

A. A service station owner or operator shall ensure that information regarding pricing, ~~and~~ motor fuel grade ~~information~~, octane rating, and ~~any~~ lead-substitute addition displayed on a service station motor fuel dispenser:

1. Is clean, legible, and visible at all times;
2. Is displayed electronically or with a sign or label on the upper ~~60%~~ 60 percent of each face of ~~each~~ the dispenser;
3. Lists the full price of the motor fuel including fractions of a cent and all federal and state taxes;
4. Displays the highest price of motor fuel sold from the dispenser if the dispenser is capable of dispensing and computing the price of multiple grades of motor fuel~~.~~;
5. ~~If~~ Displays a discount, ~~is~~ if offered, ~~the discount shall be displayed~~ in letters at least 1/4" in height on each face of ~~each~~ the dispenser and ~~be~~ next to the undiscounted price;
6. Displays both a cash and credit price on a~~n electronic~~ a dispenser that is capable of electronically displaying both cash and credit prices~~.~~;
7. Posts both a cash and credit price on each face of ~~each electronic~~ a dispenser that is preset by the cashier if the dispenser is unable to display electronically and simultaneously both cash and credit prices~~.~~;
8. Posts a price-per-gallon sign next to or on a non-price computing dispenser for a retail-only sale of liquefied petroleum gas used as an alternative motor fuel; and
9. ~~Identifies the motor fuel grade as:~~
   a. ~~Unleaded or UNL regular or REG for unleaded gasoline with an octane of at least 87;~~
   b. ~~Midgrade or MID for midgrade, extra, or plus for gasoline with an octane of at least 88;~~
   c. ~~Premium or PREM for super, high performance, or premium for gasoline with an octane of at least 90; and~~
   d. ~~No. 1 diesel, #1 diesel, No. 2 diesel, or #2 diesel.~~

   Complies with the requirements of R20-2-704(A)(1), (A)(2), (A)(3), (A)(5), (A)(6), and (A)(7).

B. ~~An owner or operator of~~ A person who owns or operates a service station shall ensure that:

1. The octane rating of each grade of gasoline is displayed on the upper 60 percent ~~60%~~ of each face of each dispenser, as prescribed by 16 CFR 306; and
2. The signs required by Handbook 130, for gasoline dispensers that dispense gasoline with lead substitute, ~~is~~ are displayed on the upper ~~60%~~ 60 percent of each face of each dispenser in letters at least 1/4" in height.

R20-2-714. Requirements for Gasoline Products Outside the ~~CBG Covered~~ CBG-covered Area

A. A person who owns or operates a service station ~~owner or operator~~ shall ensure that gasoline and gasoline-oxygenate blends offered for sale at a service ~~stations~~ station outside the ~~CBG-covered~~ CBG-covered area meet all the ASTM D 4814-00 ~~4814-97b~~ requirements except:

1. The minimum vapor pressure shall be 6.4 pounds per square inch;
2. From May 1 through September 30, maximum vapor pressure shall be 9.0 pounds per square inch;
3. For gasoline blends, the vapor pressure may be one ~~1~~ pound per square inch greater than the vapor pressures estab-

lished by ASTM D 4814-00 ~~4814-97b~~ during:

a. May 1 through September 15, if the base fuel meets the requirements of ASTM D 4814-00 ~~4814-97b~~, the volatility requirements of subsection (A)(2), and the final gasoline-ethanol blend contains at least nine percent ~~9%~~ ethanol by volume but does not exceed EPA waivers; and

b. September 16 through April 30, if the base fuel meets the requirements of ASTM D 4814-00 ~~4814-97b~~ and the final gasoline-ethanol blend contains at least 1.5 percent ~~1.5%~~ ethanol by weight and does not exceed EPA waivers.

B. No change

C. No change

R20-2-715. Motor Fuel Quality Testing Methods and Requirements

A. ~~A~~ Unless otherwise required in A.R.S. Title 41, Chapter 15, or this Chapter, a person testing a gasoline ~~blends~~ blend shall use the ~~test methods for gasoline blends established by~~ methodologies and meet the test requirements of ASTM D 4814-00 ~~4814-97b~~.

B. ~~A~~ Unless otherwise required in A.R.S. Title 41, Chapter 15, or this Chapter, a person testing #1 or #2 diesel fuel shall use the ~~test methods established by~~ methodologies and meet the test requirements of ASTM D 975-98b ~~975-97~~.

R20-2-717. Hold-open Latch Exception ~~Renumbered~~

If a service station owner or operator has a motor fuel nozzle equipped with a hold-open latch, the latch shall operate according to the manufacturer's specifications.

ARTICLE 9. GASOLINE VAPOR CONTROL

R20-2-901. Material Incorporated by Reference

The following documents are incorporated by reference~~,~~ and on file with the ~~Secretary of State,~~ Department. ~~and do not include any~~ The documents incorporated by reference contain no later amendments or editions:

1. No change
2. ~~Arizona Department of Weights and Measures Vapor Recovery Test Procedure TP-WM1, Determination of Vapor Piping Connections to Underground Gasoline Storage Tanks Tie-Tank Test), April 1998, Arizona Department of Weights and Measures, 9545 E. Doubletree Ranch Road, Scottsdale, Arizona 85258.~~ *San Diego County Air Pollution Control District Test Procedure TP-96-1*, March 1996, Third Revision, Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123-1096.
3. No change

R20-2-902. Exemptions

A. ~~The owner or operator of a site applying for~~ To obtain an exemption from this Article, a person shall ~~demonstrate to~~ submit a written request to the ~~Department's satisfaction that there has not been a monthly~~ Department and attest that gasoline throughput at the gasoline dispensing site is not in excess of that specified in A.R.S. § 41-2132(C) ~~for any month for the 2-year period before the date of the application for exemption~~. By the 15th of each month, beginning the month after the Department approves the exemption, the person shall submit a written throughput report to the Department. If a person does not timely file a monthly throughput report or if a monthly throughput report reflects that the exemption limit is exceeded, the Department deems the exemption void.

B. ~~A candidate for~~ To obtain an independent small business marketer exemption, a person shall derive at least ~~50%~~ 50 percent of the person's annual income from the sale of gasoline at each gasoline dispensing site ~~that is being considered for this exemption~~ for which an exemption is requested. The person shall submit a written request for exemption to the Department. The Department shall determine the percentage of total annual income represented by the sale of gasoline on the basis of ~~an or operator's~~ the person's state and federal gross income for the preceding year for income tax purposes. The following items are excluded from income computations:

1. Purchase and sale of ~~Diesel~~ diesel fuel, and
2. State lottery sales net commissions and incentives.

C. Motor raceways, motor vehicle proving grounds, and marine and aircraft fueling facilities are exempt from stage II vapor recovery requirements.

R20-2-903. Equipment and Installation

A. The Department shall reject a vapor recovery system or component from future installation if:

1. Federal regulations prohibit its use;
2. The vapor recovery system or component does not meet the manufacturer's specifications as certified by CARB using test methods approved in R20-2-901; or
3. The vapor recovery system or component fails greater than 20% of Department inspections for that system or component or the Department receives equivalent failure results from a vapor recovery registered service agency or from another jurisdiction's vapor recovery program, and the Department provides at least 30 days public notice of its proposed rejection.

B.~~A.~~ The piping of both a stage I and stage II vapor recovery ~~systems~~ system shall be designed and constructed as certified by CARB for that specific vapor recovery system. ~~An owner or operator~~ A person shall not alter a stage I and stage II vapor recovery ~~systems~~ system ~~and associated~~ or ~~components~~ component from ~~their~~ the CARB-certified configuration without obtaining Department approval under ~~the Authority to Construct in~~ R20-2-904.

C.~~B.~~ ~~The fittings, assemblies, and components of both stage I and stage II vapor recovery systems shall be certified by CARB.~~ If Department inspection or test data ~~reveals~~ reveal a deficiency in ~~fittings~~ a fitting, ~~assemblies~~ assembly, or ~~components~~ component that cannot be permanently corrected, the deficient ~~fittings~~ fitting, ~~assemblies~~ assembly, ~~and~~ or ~~components~~ component shall not be used in Arizona.

D.~~C.~~ ~~Stage~~ stage I spill ~~containments~~ containment may have a plugged ~~drains in place of~~ drain rather than a drain ~~valves~~ valve if a hand-operated ~~pumps are~~ pump is kept onsite for draining entrapped liquid. ~~All Stage~~ A stage II vapor recovery ~~systems~~ system shall have pressure/vacuum (P/V) threaded valves ~~values~~ on top of the vent lines for gasoline storage tanks.

R20-2-904. Application Requirements and Process for Authority to Construct Plan Approval

A. A person shall not begin to construct a site requiring a vapor recovery system or to make a major modification of an existing vapor recovery system or component before obtaining approval of an authority to construct plan application. A major modification is:
1. Adding or replacing a gasoline storage tank that is equipped with a Department approved stage II vapor recovery system;
2. Adding or replacing underground piping, vapor piping within a dispenser, or a dispenser at an existing vapor recovery site unless the dispenser replacement is necessary due to unforeseen damage to the existing dispenser; or
3. Replacing a Department-approved stage II vapor recovery system of one certified configuration with an approved stage II vapor recovery system of a different certified configuration.

B. A person shall file with the Department a written change order to an authority to construct plan approval on a form provided by the Department if a modification of the approved vapor recovery system or component is needed after the Department issues an authority to construct plan approval. The person shall not make any modification until the Department approves the change order.

~~A.~~C. ~~Prior to the installation, replacement, modification, or initial operation of a stage I or stage II vapor recovery system, the owner or operator of the gasoline dispensing site~~ To obtain an authority to construct plan approval, a person shall submit to the Department, on a form provided by the Department, ~~a complete application as defined in R20-2-108 for Authority to Construct with~~ the following ~~information~~:
1. The name, address, and phone number of any owner, operator, and proposed contractor, if known;
2. The name of the stage I or stage II vapor recovery system or component to be installed along with the ~~specific~~ CARB certification for that system or component;
3. The street address of the site where construction or ~~operation~~ major modification will take place with an estimated timetable for construction or ~~commencement of the operation~~ modification;
4. A copy of a blueprint or scaled site plan for the vapor recovery system or component including all equipment and piping detail; and
5. ~~For nonattainment area stage II vapor recovery systems, an~~ An application fee.

~~B.~~D. After review and ~~determination that the~~ approval of the authority to construct plan ~~is in compliance~~, the Department shall issue the ~~Authority~~ authority to ~~Construct~~ construct plan approval and mail the plan approval ~~form in duplicate~~ to the address indicated on the application.
1. A copy of the ~~Authority~~ authority to ~~Construct~~ construct plan approval shall be ~~posted~~ maintained at the facility during construction so that it is accessible for Department review.
2. Construction of a stage II vapor recovery ~~equipment~~ system or component at a site not having an approved ~~Authority~~ authority to ~~Construct~~ construct plan, shall be stopped and no further installation work shall be done until an ~~Authority~~ authority to ~~Construct~~ construct plan approval is obtained ~~is approved, unless the Authority to Construct is approved within 7 days~~.
3. An authority to construct plan approval is not transferable.

~~C.~~E. The Department ~~may~~ shall deny an ~~Authority~~ authority to ~~Construct~~ construct plan for any of the following reasons:
1. Providing incomplete, false, or misleading information~~.~~;or
2. ~~Failure~~ Failing to meet the requirements stated in this ~~Article~~ Chapter.

~~D.~~F. If excavation is involved, the Department may visually inspect the stage II underground piping of a gasoline dispensing ~~sites~~ site ~~that have been issued an Authority to Construct,~~ before the pipeline is buried, for compliance with ~~submitted~~ the authority to construct ~~plans~~ plan approval ~~and conditions contained in the Authority to Construct~~. ~~The owner or operator of a gasoline dispensing site~~ A person who owns or operates a vapor recovery system or component shall give the Department notice by facsimile at least ~~2~~ two business days ~~notice by facsimile of the time when~~ before the underground piping ~~will be~~ is complete. The Department ~~may~~ shall require the owner or operator to excavate all piping not inspected before burial if the owner or operator does ~~has~~ not ~~given~~ give the required ~~2~~ two business days' ~~prior~~ notice.

~~E.~~G. After construction is complete, a person who has ~~Upon completion of construction, a gasoline dispensing site with~~ a valid

~~Authority~~ authority to ~~Construct~~ construct plan approval may dispense gasoline for up to 90 days before final approval, if an initial ~~providing a final~~ inspection ~~has been~~ is scheduled ~~in accordance with~~ according to R20-2-905.

~~F.~~**H.** An ~~Authority~~ authority to ~~Construct~~ construct plan approval expires ~~1~~ one year from the date of ~~issuance~~ issue or the completion of construction, whichever is sooner.

R20-2-905. Initial Inspection and Testing

A. Within 10 days after beginning the dispensing of gasoline at a site that requires an authority to construct plan approval, ~~the owner or operator~~ a person shall provide the Department with a written certification of completion by the contractor and ~~arrange scheduling of~~ schedule an inspection that ~~shall include~~ includes tests and acceptance criteria specified in the ~~Authority~~ authority to ~~Construct~~ construct plan approval. The inspection shall be witnessed by the Department at a time approved by the Department and include any of the following ~~as they pertain~~ relevant to the specific vapor recovery system installed:

1. A dynamic pressure performance test from each dispenser for each product grade to its associated underground storage tank;
2. A pressure decay test ~~procedure~~ for each vapor control system including nozzles, underground storage tanks, and tank vents. This test shall be performed with caps removed from stage I fill and vapor risers. If the pressure decay test in R20-2-901(1) is used, the ~~The~~ Department ~~may~~ shall fail the ~~pressure decay test at a gasoline dispensing site~~ vapor recovery system if gasoline storage tanks have less than 10 percent ~~10%~~ or greater than 60 percent ~~60%~~ vapor space. If the pressure decay test in R20-2-901(2) is used, the Department shall fail the vapor recovery system if gasoline storage tanks have less than 15 percent or more than 30,000 gallons vapor space. The Department shall compute combined tank vapor space for manifolded systems;
3. ~~Determination of communication~~ Communication from dispenser to tanks for each product, using the ~~Department's~~ San Diego TP-96-1 and CARB TP-201.4 test ~~procedure~~ procedures;
4. ~~Determination, by volume meter, of air~~ Air to liquid volume ratio by volume meter of a vapor recovery ~~systems~~ system, using CARB TP-201.5 or CARB-endorsed equivalent procedures to determine air to liquid (A/L) ratios;
5. ~~Test procedures, other than static pressure or pressure decay tests, that are part of the CARB certification for each specific system;~~
6.5. ~~Determination of spillage~~ Spillage of ~~Phase~~ a stage II vapor recovery ~~systems~~ system, using the CARB TP-201.2C procedure;
7.6. ~~Determination of liquid~~ Liquid removal of ~~Phase~~ a stage II vapor recovery ~~systems~~ system, using the CARB TP-201.6 procedure;
8.7. ~~Determination of flow vs.~~ Flow versus pressure for ~~equipment~~ components in ~~Phase~~ a stage II vapor recovery ~~systems~~ system, using the CARB TP-201.2B procedure; and
9.8. Procedures specified by a manufacturer for testing ~~its equipment; and~~ the vapor recovery system.

10.**B.** ~~Tests required by the Department using Department-owned testing equipment to verify test results.~~ If there is a difference between a testing contractor's and the Department's test results, the ~~Department~~ Department's test results ~~shall be determinative~~ prevail.

C. If a site fails to pass any of the tests required by subsection (A), the affected vapor recovery system or component shall remain out-of-service until the vapor recovery system and component pass all the appropriate tests in subsection (A).

~~B.~~**D.** A person who cancels an initial inspection shall notify the Department by calling the Department's designated telephone number at least one hour before the scheduled inspection and shall reschedule the inspection within 10 business days after this notification. ~~If an owner or operator cancels an inspection test, the owner or operator shall reschedule the inspection test to a date before the annual inspection date or the Department's scheduled deadline for corrective action, whichever applies.~~ The Department ~~may~~ shall take enforcement action if a person ~~an owner or operator~~ fails to comply with this Section ~~timely reschedule the inspection test~~.

~~C.~~**E.** ~~If the site fails to pass any of the tests required pursuant to this Article, the owner or operator shall make necessary repairs and adjustments in the time specified by the Department. The owner or operator shall also submit to the Department a reinspection fee and shall reschedule with the Department by mail or facsimile a time for repeat tests to be witnessed by the Department.~~ A person shall notify the Department when a vapor recovery system or component is repaired after failing an initial inspection. A registered service representative shall not proceed with a reinspection until the Department approves the reinspection date and time.

~~D.~~**F.** ~~If the deficiencies are not corrected by a deadline set by the Department, the Department may issue a DWM-53.~~ If a registered service representative does not start an initial inspection pressure decay test within 30 minutes of the scheduled start time, the Department shall fail the initial inspection of that site.

G. If a person cancels an initial inspection, the person shall reschedule the inspection within 90 days from the date gasoline was first dispensed.

1. The Department shall take enforcement action if the person fails to timely reschedule the inspection.
2. The registered service agency shall notify the Department in writing at least 10 business days before the inspection of the time, date, and location of the inspection.
3. The Department shall notify the registered service agency within five business days, by facsimile or electronic mail,

whether it approves the inspection date and time.

R20-2-906. Fees

A. The Authority to Construct plan ~~review and~~ approval fee is $500~~.00~~.

B. The reinspection fee is $300~~.00~~, and shall be ~~charged~~ paid each time an initial or preburial reinspection is required, or when the Department is not timely notified that an inspection is canceled.

~~1. The site fails to pass any of the required tests;~~

~~2. Testing personnel do not show up at the facility within 30 minutes after the scheduled time;~~

~~3. Within 30 minutes of arrival at the scheduled facility, the Department determines that the facility is not ready to test or cannot complete the test because of inadequate, or improperly installed or maintained equipment or inadequate vapor space in storage tanks; or~~

~~4. The owner or operator's testing contractor has not begun the stage II pressure decay test within 30 minutes of the beginning of the scheduled time and the Department defers testing to another time.~~

R20-2-910. Annual ~~Tests~~ Inspection and Testing

A. ~~The stage I and stage II tests annual inspection are described in this Article. The owner or operator~~ A person shall ensure that an annual inspection, as required by A.R.S. § 41-2065(A)(15), is conducted by a registered service representative on or before ~~arrange these tests annually, with Department approval, to be completed by~~ the annual ~~test~~ inspection date. The annual ~~test~~ inspection date is ~~established on the date of the last annual test or a later date approved by the Department~~ the last day of the month in which the last scheduled annual inspection was performed. A registered service agency shall notify the Department in writing at least 10 business days before an annual inspection of the time, date, and location of the inspection. The Department shall notify the registered service agency within five business days, by facsimile or electronic mail, whether it approves the annual inspection date and time. The registered service agency shall not perform the annual inspection unless the Department approves the inspection date and time. ~~The annual test shall be performed in the presence of a witness from the Department.~~

B. The annual inspection shall include the tests defined in R20-2-905(A)(1 through 8) that pertain to the specific vapor recovery system installed.

C. If there is a difference between a testing contractor's and the Department's test results, the ~~Department~~ Department's test results ~~shall be determinative~~ prevail.

~~**B.**~~**D.** If ~~the~~ a site fails to pass any of the tests required by subsection ~~(A) the owner or operator shall make any necessary repairs or adjustments~~ (B), the affected vapor recovery system or component shall remain out-of-service until the vapor recovery system and component pass all appropriate tests in subsection (B). ~~The owner or operator shall submit the appropriate reinspection fee and reschedule with the Department by phone or facsimile a time for repeat tests to be conducted so that they may again be witnessed by the Department.~~

~~**C.** If an owner or operator's testing contractor has not begun the annual stage II pressure decay test within 30 minutes of the scheduled start time, the Department may defer testing to another time.~~

E. After an annual inspection begins, a person shall not make a repair to the vapor recovery system or component until the results of the inspection are recorded.

F. A registered service representative shall perform all tests according to Article 9 and any other vapor recovery procedure that the Department issues to registered service agencies.

G. A person who cancels a witnessed inspection shall notify the Department by calling the Department's designated telephone number at least one hour before the scheduled inspection and shall reschedule the test to be completed by the annual inspection date. A registered service agency shall notify the Department in writing at least 10 business days before an annual inspection of the time, date, and location of the inspection. The Department shall notify the registered service agency within five business days, by facsimile or electronic mail, of its approval of the inspection date and time. The Department shall take enforcement action if a person does not comply with this subsection.

R20-2-911. Compliance Inspections

~~In addition to the annual test, the~~ The Department shall not announce when it plans to conduct a compliance inspection of a ~~Stage~~ stage I ~~and~~ or ~~Stage~~ stage II vapor recovery ~~installations~~ system or component ~~at least annually~~. ~~Compliance inspections shall be unannounced.~~ If results of ~~the~~ a compliance inspection reveal ~~violations~~ a violation of A.R.S. Title 41, Chapter 15, or this Article, the Department ~~may~~ shall require the ~~owner or operator~~ vapor recovery system or component to ~~schedule~~ undergo an appropriate ~~a specific~~ test as ~~required~~ specified in R20-2-910.

R20-2-912. Enforcement

~~**A.**~~ If the Department finds that a stage II vapor recovery ~~equipment~~ system or component ~~at a gasoline dispensing site~~ is defective or ~~otherwise in violation of 1~~ non-compliant with one or more of the provisions of this Chapter ~~Article~~ or A.R.S. Title 41, Chapter 15, the Department shall issue to the owner or operator an administrative order and place a stop-sale, stop-use tag on the non-compliant vapor recovery system or component. ~~DWM 53. The order shall extend to all equipment at the site that has reduced vapor recovery performance due to a violation is defective or non-complaint. A order shall require that a tag that is the subject of the order shall then be affixed to the equipment in public view.~~ The owner or

operator may be required to schedule an inspection for ~~demonstrate that~~ a ~~Stage~~ stage II vapor recovery system or component to ensure that it meets all requirements of A.R.S. Title 41, Chapter 15 and ~~meets the 95% effective level by conducting 1 or more of the tests specified in~~ this Chapter ~~Article~~ before the ~~equipment~~ vapor recovery system or component is ~~may be placed in service~~ placed in service.

~~**B.** The owner or operator of a gasoline dispensing site that has been issued a DWM-53 pursuant to subsection (A) may request an informal review of the order by making a request in writing to the Department within 10 days of the order. Notice of the time and place of the informal review shall be mailed to the owner or operator at least 5 days prior to the informal review. Disposition of the informal review shall be mailed to the owner or operator within 5 days after conclusion of the informal review. Unless the order is vacated by the Department, or the equipment is reauthorized for use by the Department, the DWM-53 shall remain in effect during these proceedings.~~

~~**C.** The Department may impose civil penalties for stage I and stage II violations pursuant to A.R.S. § 41-2115.~~

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Volume 12, Issue 40 **October 6, 2006**

Contents of this Issue

General Information **3614**
Public Participation in the Rulemaking Process **3615**
Notices of Proposed Rulemaking **3616**
4 A.A.C. 29 . . . . Structural Pest Control Commission 3616
4 A.A.C. 29 . . . . Structural Pest Control Commission 3639
9 A.A.C. 22 . . . . Arizona Health Care Cost Containment System – Administration 3675
9 A.A.C. 28 . . . . Arizona Health Care Cost Containment System – Arizona Long-term Care System 3685
9 A.A.C. 31 . . . . Arizona Health Care Cost Containment System – Children's Health Insurance Program . . . 3689
Notices of Final Rulemaking **3699**
9 A.A.C. 1 . . . . . Department of Health Services – Administration 3699
9 A.A.C. 4 . . . . . Department of Health Services – Noncommunicable Diseases 3708
9 A.A.C. 18 . . . . Department of Health Services – Local Health Department Services 3715
20 A.A.C. 2 . . . . Department of Weights and Measures 3722
Notices of Rulemaking Docket Opening **3755**
4 A.A.C. 8 . . . . . Acupuncture Board of Examiners 3755
9 A.A.C. 25 . . . . Department of Health Services – Emergency Medical Services 3755
9 A.A.C. 25 . . . . Department of Health Services – Emergency Medical Services 3756
Index **3758**
Effective Date Schedule and *Register* and *Code* Deadlines **3772**
Governor's Regulatory Review Council Deadlines **3775**

SCOTT CANCELOSI
Director
Public Services Division

JAN BREWER
Secretary of State

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Editor
Arizona Administrative Register

D. The Department may require a refund of any funds paid to a local health department under a Per Capita Matching Grant that are expended for purposes not set forth in the narrative plan described in R9-18-102 (A)(1).

~~**R9-18-106. Visitation, inspection and audit**~~

~~**A.** The Department may at any time inquire into the operations of the applicant with respect to the services provided and may conduct or cause to be conducted an on-site inspection in all matters affecting such services during normal business hours.~~

~~**B.** The funds disbursed pursuant to these rules shall be subject to audit. A refund shall be requested by the Department for any funds expended for purposes not set forth in the approved application.~~

~~**R9-18-107.**~~ **R9-18-106.** ~~**Notice to department**~~ **Notice to Department**

~~The applicant shall provide written notice to the Office within 15 calendar days of any change of licensed personnel involved in the local health department services and of any material change in any circumstance upon for which funds were granted.~~
A local health department shall provide written notice to the Department within 30 calendar days of any change in the physician, registered nurse, or sanitarian who are specified in R9-18-104, and of any modification to the narrative plan described in R9-18-102(A)(1).

R9-18-107. Renumbered

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 2. DEPARTMENT OF WEIGHTS AND MEASURES

[R06-352]

PREAMBLE

1. Sections Affected	**Rulemaking Action**
R20-2-701	Amend
R20-2-702	Amend
R20-2-708	Amend
R20-2-709	Amend
R20-2-710	Amend
R20-2-711	Amend
R20-2-714	Amend
R20-2-715	Amend
R20-2-716	Amend
R20-2-717	Amend
R20-2-718	New Section
R20-2-719	New Section
R20-2-750	Amend
R20-2-751	Amend
R20-2-752	Amend
R20-2-753	Amend
R20-2-755	Amend
R20-2-757	Amend
R20-2-758	Repeal
R20-2-759	Amend
Table A	New Table
R20-2-760	Amend
Table 1	Amend
Table 2	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. § 41-2065(A)(4) and (D)

Implementing statute: A.R.S. §§ 41-2083 and 41-2122

3. The effective date of the rules:

September 12, 2006

Under A.R.S. § 41-1032(A)(1), the rules, except as noted below, will be effective when filed with the Office of the Secretary of State. Under Laws 2005, Ch 104, standards for motor fuel were changed. An immediate effective date is needed to implement the new standards on November 1, which is the beginning of the winter driving season. The immediate effective date will preserve public health by ensuring greater use of cleaner burning gasoline.

As indicated in the rule text, subsections of R20-2-701**,** R20-2-702, R20-2-751, R20-2-755, and R20-2-759, and Tables 1 and 2 will not become effective until Arizona's State Implementation Plan (SIP) dealing with CARB Phase 3 Reformulated Gasoline and shortening the winter season is approved by the EPA.

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

Notice of Rulemaking Docket Opening: 11 A.A.R. 2451, July 1, 2005

Notice of Proposed Rulemaking: 12 A.A.R. 1518, May 12, 2006

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

Name: Duane Yantorno

Address: Department of Weights and Measures
4425 W. Olive, Ste. 134
Glendale, AZ 85302

Telephone: (623) 463-9942

Fax: (623) 939-7825

E-mail: Dyantorno@azdwm.gov

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

In consultation with the Department of Environmental Quality, the Department of Weights and Measures is changing fuel formulation, quality assurance, and other requirements related to CBG (Cleaner Burning Gasoline) and conventional motor fuel to reflect recent legislative changes and industry standards. The Department is also making the rules more clear, concise, and understandable.

The following changes are made so the rules are consistent with recent statutory changes:

- Includes statutory definitions, some of which have been changed for language consistency;
- Clarifies the definition of "gasoline" to exclude E85;
- Clarifies that E85 is a motor fuel rather than gasoline;
- Establishes labeling and dispenser requirements for motor fuel dispensing sites that dispense E85;
- Establishes reporting requirements for producers of E85;
- Includes statutory requirements for biodiesel;
- Prohibits use of MTBE in motor fuel;
- Recognizes a downstream tolerance of a maximum 3.7 weight percent oxygen for fuel ethanol including test method reproducibility;
- Establishes the maximum vapor pressure allowed for Arizona CBG in February and March;
- Shortens the winter oxygenate season to November 1 through January 31 rather than November 2 through March 31;
- Allows use of CARB (California Air Resources Board) phase 3 reformulated gasoline as an alternative standard for motor fuel in the CBG-covered area; and
- Adopts use of the CARBOB (California Reformulated Blendstock for Oxygenated Blending) model for certifying an alternative formulation of AZRBOB (Arizona Reformulated Blendstock for Oxygenated Blending) and fuel ethanol.

The following changes are designed to provide flexibility to the industry, facilitate use of E85, and protect the public and the environment:

- Establishes standards for E85 (fuel ethanol);
- Establishes specifications for fuel ethanol to be used as a blending component with AZRBOB or Arizona CBG;
- Requires producers outside the CBG-covered area to ensure that a motor fuel produced or offered for sale meets motor-fuel specifications and to certify its octane number;
- Reduces the amount of sulfur allowed in Arizona CBG to 80 ppm;
- Requires a registered supplier, third-party terminal, or pipeline that has submitted a quality assurance/quality control plan to the Department to resubmit the plan if significant changes are made to the plan;
- Allows a registered supplier to contract with an independent third party to perform the required quality assurance sampling and testing of AZRBOB after the addition of fuel ethanol, subject to approval by the Director;
- Establishes additional test methodologies for use in certifying Arizona CBG and AZRBOB; and
- Allows use of alternative test methodologies approved by the Director if required correlations are done.

As noted in the text of the rules, the following subsections and Tables will not become effective until EPA approves Arizona's revised State Implementation Plan regarding use of CARB 3 and shortening the winter season.

Section	Subsection Subject Matter	SIP required to be approved
R20-2-701	Definition of "PM" or "Predictive Model Procedures"	CARB 3
R20-2-702(9), (11), and (12)	Materials incorporated by reference	CARB 3
R20-2-751 (A)(6)(a), (b), (c), and (f), (A)(7)(i) and (ii), and (A)(8)	Arizona CBG requirements	CARB 3 and shortening winter season
R20-2-751 (B)	Arizona CBG requirements	Shortening winter season
R20-2-751(D)(2)	Arizona CBG requirements	Shortening winter season
R20-2-751 (E)	Arizona CBG requirements	Shortening winter season
R20-2-751(I)	Arizona CBG requirements	CARB 3 and shortening winter season
R20-2-755(A)(1)(a)	Additional requirements for AZRBOB and downstream oxygenate blending	CARB 3
R20-2-759(C) and (D)	Testing methodologies	CARB 3
Table 1	Type 1 Arizona CBG standards	CARB 3 and shortening winter season
Table 2	Type 2 Arizona CBG standards	CARB 3 and shortening winter season

To facilitate implementation of R20-2-759(D), the Department will develop a substantive policy statement regarding test methods for certification of Arizona CBG and AZRBOB that specifies the procedures the Department will use to determine whether a proposed test method produces results for each fuel parameter that are equal to or better than the precision and accuracy of the designated test methods.

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

A copy of the following study, which is available from the Department, was prepared at the direction of the Legislature and was used by the Legislature in amending A.R.S. § 41-2124 in 2004. The Department reviewed and also relied on the study.

Cost, Supply, and Emissions Impacts of Adopting the California Phase 3 Gasoline Standard for Arizona's Cleaner Burning Gasoline Program: A Technical and Economic Analysis of Cleaner Burning Gasoline Supply under HB 2207; MathPro, Inc. (PO Box 34404, West Bethesda, MD 20827-0404) and Meszler Engineering Services (906 Hamburg Drive, Abingdon, MD 21009); December 1, 2005

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

Not applicable

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

The economic, small business, and consumer impact statement does not consider the economic impacts that result from establishing reporting requirements for producers of E85, requiring labels on dispensers of E85, prohibiting MTBE in motor fuel, establishing the maximum vapor pressure allowed for Arizona CBG during February and March, shortening the winter oxygenate season, and adopting use of the CARBOB model for certifying an alternative formulation of AZRBOB. These changes were made by the legislature rather than this rulemaking.

The 2005 federal energy bill spurred the search for a practical alternative motor fuel. This rulemaking clarifies that E85 may be sold or offered for sale within the CBG-covered area. The rulemaking sets standards for E85.

E85 consists of 85% denatured, fuel-grade ethanol and 15% gasoline. The fuel ethanol typically is produced from corn or other grain products but can be produced from agricultural and forestry wastes. The resources used to make fuel ethanol are renewable. The production process leaves the nutritional content of the grain products largely intact and still suitable for use in feeding livestock. E85 has an octane of approximately 105. E85 reduces the incidence of greenhouse emissions and is water soluble, non-toxic, and biodegradable. Increased use of E85 will promote energy independence and benefit farmers who grow grain products and producers of E85. E85 can be used in a "flex-fuel" motor vehicle, which is designed to operate on either gasoline or E85. It is estimated there are approximately 74,000 flex-fuel motor vehicles in Arizona but most are operated on gasoline because E85 is not widely available. There are plans to build a fuel ethanol facility near the town of Maricopa in the near future and to use the production byproducts in a cattle feed lot adjacent to the fuel ethanol facility.

This rulemaking will have economic benefits for those who produce the biomass products used in the production of fuel ethanol and for those who produce the fuel ethanol. It will also have an economic impact on the owner of a flex-fuel motor vehicle because the owner will be able to buy E85 more readily.

Requiring a producer outside the CBG-covered area to ensure that a motor fuel produced or offered for sale meets all motor-fuel specifications and has its octane certified will impose economic costs on only the two producers not currently in compliance with this requirement. Currently, the owner or operator of a motor fuel dispensing site is required to ensure that motor fuel sold or offered for sale meets all motor-fuel specifications. Because there are more than 2,000 motor fuel dispensing sites, the cost of compliance is huge and compliance is difficult for the owner or operator of a motor fuel dispensing site. The rule change places the responsibility for ensuring compliance with motor-fuel specifications on producers, who are in best position to comply and most of whom are already in compliance. This will have a significant economic benefit for consumers and owners or operators of motor fuel dispensing sites by ensuring that they receive the quality of motor fuel they believe they are receiving. It will also reduce the number of complaints received by the Department regarding bad motor fuel. During 2002 through 2005, the Department received 499 complaints about fuel quality. If a consumer inadvertently purchases motor fuel that does not meet motor-fuel specifications, the consumer may experience major engine damage to the consumer's motor vehicle and costs.

Reducing the amount of sulfur allowed in a motor fuel from 500 to 80 ppm ensures that Arizona's standards are consistent with the federal standard. The reduction of sulfur helps reduce ozone precursors. An exception is made for a small refinery. The EPA is requiring that motor fuel contain only 30 ppm on average by later this year. The rule change will have little economic effect because producers already comply with the federal standard.

The rule changes regarding quality assurance/quality control, test methodologies, and use of an independent third party provide increased flexibility to registered suppliers, pipelines, and third-party terminals and ensure that the Department is apprised of the quality assurance/quality control procedures being used. The increased flexibility may provide economic benefits for registered suppliers, pipelines, and third-party terminals. The rule changes may provide increased economic opportunity for independent third parties that contract to do quality assurance/quality control sampling and testing of AZRBOB.

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

In addition to the changes identified in item 11, word choice and formatting changes were made between the proposed and final rules. Additionally, language was added to clarify the definition of "product transfer document," testing procedures in R20-2-752(H)(1), and the standard used by the Director to approve a QA/QC program under R20-2-752(E), R20-2-753(G), and R20-2-755(I). None of the changes is substantial as defined in A.R.S. § 41-1025.

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

An oral proceeding was held on June 12, 2006. Written comments were received from the Western States Petroleum Association (WSPA), Arizona Petroleum Marketers Association (APMA), Dave Smith representing BP, Robert Shuler representing Pinal Energy Ethanol Plant (PEEP), Victor Dugan representing Exxon-Mobil, and EPA, Region IX. A teleconference was held with EPA on July 10, 2006. The comments and the Department's analysis of and response to each follow:

Comment	Department's Analysis	Department's Response
WSPA strongly supports all of the proposed changes.	The Department appreciates the hard work of WSPA members and the significant contribution they made to the development of these rules.	No change

PEEP: The plant referenced in the summary in item 8 of the Preamble is not being built by the City of Maricopa.	The comment is correct. The Notice of Proposed Rulemaking incorrectly indicated that an ethanol plant was being built by the town of Maricopa rather than within the town.	The language in the Preamble is changed to correctly reflect that an ethanol plant is being built within the town of Maricopa.
EPA: EPA is concerned about the Director's discretion in R20-2-759.	The Department determined that having Director discretion regarding approval of alternative testing methods adds needed flexibility. The Department believes it limited the Director's discretion by specifying standards for exercise of the discretion.	The Department clarified that the Director's discretion for approving an alternative test method is limited. Although the Department believes the standard was implied in the proposed rule, the Department specified in the final rule that the Director is required to approve an alternative test method only if the alternative test method has accuracy and precision equal to or better than the approved test method.
APMA thanks the Department for working with the regulated community on the rulemaking and providing clarification regarding biodiesel and other fuels.	The Department appreciates the hard work of APMA members and the significant contribution they made to the development of these rules.	No change
APMA: Which Sections require EPA approval before becoming effective?	The Department understands this is important information for those who must comply with the rules.	The Department added rule text and information in the Preamble regarding subsections that do not become effective until EPA approves the State Implementation Plan.
Exxon-Mobile: There appears to be an inconsistency between the VOC percent in R20-2-751(A)(8) and Table 1.	The Department agrees.	The change was made. The inconsistency was inadvertent. The Department believes that a reasonable reader of the proposed rule would have understood that the inconsistency was inadvertent.
BP: In R20-2-701, we recommend that the final E85 blend meet the same sulfur specification as other gasoline that could be used in a flex-fuel vehicle.	The Department agrees.	The change was made. This change is not substantial because it makes the rule consistent with federal law.
BP: In R20-2-719(A), it is recommended that the sulfur limit of biodiesel or a biodiesel blend be reduced from 500 ppm to 15 ppm starting September 1, 2006.	The Department agrees that this change is needed to meet the new federal requirement at 40 CFR 80.520.	The change was made. Because the rule will go into effect after September 1, 2006, it was not necessary to specify a beginning date.
BP: R20-2-719(A) needs to clearly indicate that it is applicable to both retail and wholesale sales.	The Department believes that the language is clear.	No change

BP: R20-2-719(B) needs to indicate that both the supplier of neat biodiesel and the blender are required to report information to the Department.	The language at issue is statutory. Evidently the legislature did not intend to impose reporting requirements on a supplier of neat biodiesel. A statutory change is required to accomplish what BP requests.	No change
BP: In R20-2-751, we believe that Arizona needs to commit to updating it rules to incorporate the latest materials when they are completed.	The Department recognizes that the update of this material will be important. But the Department cannot incorporate material that is not currently effective. The Department plans to do a rulemaking each year to incorporate the latest version of all materials.	No change
BP: In R20-2-755(A)(1)(a), it appears that the use of the CARBOB model is allowed for both Types 1 and 2 Arizona CBG. The use of the CARBOB model is only appropriate for Type 2 Arizona CBG.	The Department agrees.	The change was made. The reference to Type 1 Arizona CBG was inadvertent because Type 1 Arizona CBG is not an alternative formulation to which the CARBOB model could be applicable. The change is technical rather than substantial because it corrects an inapplicable reference.

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

A.R.S. §§ 41-2065(D), 41-2083(C), and 41-2122(B) require the director of the Department of Weights and Measures to consult with the director of the Department of Environmental Quality in making rules regarding quality standards and test methods for motor fuel including oxygenated fuel and approving alternate fuel control measures. This consultation was done.

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

ASTM D 975-04c, Standard Specification for Diesel Fuel Oils, 2004, American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, incorporated at R20-2-702

ASTM D 4806-04a, Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel, 2004, American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, incorporated at R20-2-702

ASTM D 4814-04a, Standard Specification for Automotive Spark-Ignition Engine Fuel, 2004, American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, incorporated at R20-2-702

ASTM D 5798-99, Standard Specification Fuel Ethanol (Ed75-Ed85) for Automotive Spark-Ignition Engines, reapproved 2004, American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, incorporated at R20-2-702

ASTM D 6751-03a, Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels, 2003, American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959, incorporated at R20-2-702.

California Air Resources Board, California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model, as amended April 25, 2001, CARB, P.O. Box 2815, Sacramento, CA 95812, incorporated at R20-2-702.

California Air Resources Board, The California Reformulated Gasoline Regulations, Title 13, California Code of Regulations, Section 2266.5 (Requirements Pertaining to California Reformulated Gasoline Blendstock for Oxygen Blending (CARBOB) and Downstream Blending), April 9, 2005, CARB, PO Box 2815, Sacramento, CA 95812, incorporated in R20-2-702

California Air Resources Board, Procedures for Using the California Model for California Reformulated Gasoline Blendstocks for Oxygenate Blending (CARBOB), adopted April 25, 2001, CARB, P.O. Box 2815, Sacramento, CA 95812, incorporated in R20-2-702

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

No.

15. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 2. DEPARTMENT OF WEIGHTS AND MEASURES

ARTICLE 7. MOTOR FUELS AND PETROLEUM PRODUCTS

Section
R20-2-701. Definitions
R20-2-702. Material Incorporated by Reference
R20-2-708. Oxygenated Fuel Blends
R20-2-709. Retail Oxygenated Fuel Labeling
R20-2-710. Blending Requirements
R20-2-711. Alcohol-oxygenated Gasoline Storage Tank Requirements
R20-2-714. Requirements for ~~Gasoline Products Outside~~ Motor Fuels outside the CBG-covered Area
R20-2-715. Motor Fuel Quality Testing Methods and Requirements
R20-2-716. Sampling and Access to Records
R20-2-717. ~~Hold Open~~ Hold-open Latch Exception
R20-2-718. ~~Renumbered~~ Requirements for the Production or Sale of E85
R20-2-719. ~~Repealed~~ Requirements for the Sale of Biodiesel
R20-2-750. Registration Relating to Arizona CBG or AZRBOB
R20-2-751. Arizona CBG Requirements
R20-2-752. General Requirements for Registered Suppliers
R20-2-753. General Requirements for Pipelines and Third-party Terminals
R20-2-755. Additional Requirements for AZRBOB and Downstream Oxygenate Blending
R20-2-757. Product Transfer Documentation; Records Retention
R20-2-758. ~~Adoption of Fuel Certification Models~~ Repealed
R20-2-759. Testing Methodologies
Table A. Arizona Department of Weights and Measures Test Methods for Arizona CBG and AZRBOB
R20-2-760. Compliance Surveys
Table 1. Type 1 ~~Gasoline~~ Arizona CBG Standards
Table 2. Type 2 ~~Gasoline~~ Arizona CBG Standards

ARTICLE 7. MOTOR FUELS AND PETROLEUM PRODUCTS

R20-2-701. Definitions

In addition to the definitions in R20-2-101, the following definitions apply to this Article unless the context otherwise requires:

~~1.~~ "Area A" has the same meaning as in A.R.S. § 49-541.

~~2.~~ "Area B" has the same meaning as in A.R.S. § 49-541.

~~3.~~ "Arizona Cleaner Burning Gasoline" or "Arizona CBG" means a gasoline blend that meets the requirements of this Article for gasoline produced and shipped to or within Arizona and sold or offered for sale for use in motor vehicles within the CBG-covered area, except as provided under A.R.S. § 41-2124(K).

~~4.~~ "AZRBOB" or "Arizona Reformulated Blendstock for Oxygenate Blending" means a ~~petroleum-derived motor fuel~~ combination of gasoline blendstocks that is intended to be or ~~is~~ represented to constitute Arizona CBG upon the addition of a specified ~~type and percentage~~ amount (or range of ~~percentages~~ amounts) of ~~oxygenate~~ fuel ethanol after the ~~fuel has been~~ blendstock is supplied from the ~~production or import~~ facility at which it was produced or imported.

~~5.~~ "Batch" means a quantity of ~~gasoline~~ motor fuel or AZRBOB that is homogeneous for ~~those~~ motor fuel properties specific for the motor fuel standards applicable to that motor fuel or AZRBOB ~~that are specified for Arizona CBG certified under R20-2-751~~.

~~6.~~ "Beginning of transport" means the point at which:

~~a.~~ A registered supplier relinquishes custody of Arizona CBG or AZRBOB to a transporter or ~~a~~ third-party terminal; or

~~b.~~ A registered supplier ~~who~~ that retains custody of Arizona CBG or AZRBOB ~~commences~~ begins transfer of the Arizona CBG or AZRBOB into a vessel, tanker, or other container for transport to the ~~CBG covered~~ CBG-covered area.

"Biodiesel" means a diesel fuel substitute that satisfies all of the following:

Is produced from nonpetroleum renewable resources if the qualifying volume of nonpetroleum renewable resources meets the standards for California diesel fuel as adopted by the California air resources board pursuant to 13 California code of regulations sections 2281 and 2282 in effect on January 1, 2000.

Meets the registration requirement for fuels and additives established by the environmental protection agency pursuant to section 211 of the clean air act as defined in section 49-401.01.

The use of the diesel fuel substitute complies with the requirements listed in 10 Code of Federal Regulations part 490, as printed in the federal register, volume 64, number 96, May 19, 1999.

Is sold, offered or exposed for sale as a neat product or blended with diesel fuel. A.R.S. § 41-2051(1).

~~7.~~ "Blendstock" means any liquid compound that is blended with ~~other~~ another liquid ~~compounds~~ compound to produce a motor fuel, including Arizona CBG. ~~Deposit control additives~~ A deposit-control or ~~other~~ similar ~~additives~~ additive registered under 40 CFR 79 ~~are~~ is not ~~considered blendstocks~~ a blendstock.

"CARB" means the California Air Resources Board.

"CARBOB" means California Reformulated Gasoline Blendstock for Oxygenate Blending.

"CARBOB Model" means the procedures incorporated by reference in R20-2-702(12).

"CARB Phase 2 gasoline" means gasoline that meets the specifications incorporated by reference in R20-2-702(8).

"CARB Phase 3 gasoline" means gasoline that meets the specifications incorporated by reference in R20-2-702(9).

~~8.~~ "~~CBG covered~~ CBG-covered area" means a county with a population of 1,200,000 or more persons according to the most recent United States decennial census and any portion of a county ~~contained in~~ within area A.

~~9.~~ "Conventional gasoline" means gasoline that conforms ~~with~~ to the requirements of this Chapter for sale or use in Arizona, but does not meet the requirements of Arizona CBG or AZRBOB.

~~10. "Co-solvent" means a chemical compound soluble in, and added to, a methanol-gasoline blend to prevent phase separation, reduce corrosion, and improve lubrication. A co-solvent may be any one or a mixture of the following:~~

~~a. Ethanol,~~

~~b. Any propanol,~~

~~c. Any butanol, or~~

~~d. Gasoline grade tertiary butyl alcohol.~~

~~11.~~ "Designated alternative limit" means a motor fuel property specification, expressed in the nearest part per million by weight for sulfur content, nearest 10th percent by volume for aromatic hydrocarbon content, nearest 10th percent by volume for olefin content, and nearest degree Fahrenheit for T90 and T50, that is assigned by a registered supplier to a final blend of Type 2 Arizona CBG or AZRBOB for purposes of compliance with the Predictive Model Procedures.

~~12.~~ "Diesel" or "diesel fuel" means a refined middle ~~distallate~~ distillate for use as a motor fuel in a compression-ignition internal-combustion engine.

~~13.~~ "Downstream oxygenate blending" means combining AZRBOB and ~~an oxygenate~~ fuel ethanol to produce fungible Arizona CBG.

"Duplicate" means a portion of a sample that is treated the same as the original sample to determine the accuracy and precision of an analytical method.

"E85" means a fuel ethanol gasoline blend that meets the specifications in ASTM D 5798, which is incorporated by reference in R20-2-702.

"EPA" means the United States Environmental Protection Agency.

~~14.~~ "EPA waiver" means a waiver granted by the Environmental Protection Agency as described in "Waiver Requests under Section 211(f) of the Clean Air Act," which is incorporated by reference in R20-2-702.

~~15.~~ "Final distribution facility" means a stationary ~~gasoline~~ motor-fuel transfer point ~~from~~ at which motor fuel or AZRBOB is transferred into a cargo tank truck, pipeline, or other delivery vessel from which the motor fuel or AZRBOB will be delivered to a ~~gasoline~~ motor-fuel dispensing site. A cargo tank truck is a final distribution facility if the cargo tank truck transports motor fuel or AZRBOB and carries documentation that the type and amount or range of amounts of oxygenates designated by the registered supplier will be or have been blended directly into the cargo tank truck before delivery of the resulting motor fuel to ~~the~~ ~~gasoline~~ a motor-fuel dispensing site.

"Fleet" means at least 25 motor vehicles owned or leased by the same person.

"Fleet vehicle fueling facility" means a facility or location where a motor fuel is dispensed for final use by a fleet.

~~16. "Fuel" means any material capable of releasing energy or power by combustion or other chemical or physical reaction.~~

~~17.~~ "~~Fuel property" means any characteristic listed in R20-2-751(A)(1) through (A)(7), R20-2-751(B)(1) through (B)(7), or Table 2.~~

"Fuel ethanol" means denatured ethanol that meets the specifications in ASTM D 4806, which is incorporated by reference in R20-2-702.

"Gasoline" means a volatile, highly flammable liquid mixture of hydrocarbons that does not contain more than .05 grams of lead for each United States gallon, is produced, refined, manufactured, blended, distilled, or compounded from petroleum, natural gas, oil, shale oils or coal, and other flammable liquids free from undissolved water, sediment, or suspended matter, with or without additives, and is commonly used as a fuel for spark-ignition internal-combustion engines. Gasoline does not include diesel fuel or E85.

~~18.~~ "Importer" means any person ~~who~~ that assumes title or ownership of Arizona CBG or AZRBOB produced by an unregistered supplier.

"Manufacturer's proving ground" means a facility used only to develop complete motor vehicles, that are not currently available on the retail market, for an automotive manufacturer.

~~19.~~ "Motor fuel" means petroleum or a petroleum-based substance ~~that is~~ such as motor gasoline, any grade of oxygenated gasoline, aviation ~~gasoline~~ fuel, number one or number two diesel fuel~~,~~ including neat biodiesel or a biodiesel blend, and E85 ~~or any grade of oxygenated gasoline~~ typically used in the operation of a motor engine.

"Motor fuel dispensing site" means a facility or location where a motor fuel is dispensed into commerce for final use.

"Motor fuel property" means any characteristic listed in R20-2-751(A)(1) through (A)(7), R20-2-751(B)(1) through (B)(7), Table 1, Table 2, or any other motor fuel standard referenced in this Article.

~~20~~. "Motor vehicle" means ~~any~~ a vehicle equipped with a spark-ignited or compression-ignition internal-combustion engine except:

a. ~~Vehicles~~ A vehicle that ~~run~~ runs on~~,~~ or ~~are~~ is guided by~~,~~ rails; or

b. ~~Vehicles~~ A vehicle that ~~are~~ is designed primarily for travel through air or water.

"Motor vehicle racing event" means a competition, including related practice and qualifying and demonstration laps that uses unlicensed motor vehicles designed and manufactured specifically for racing and is conducted on a public or private racecourse for the entertainment of the general public.

~~21.~~ "MTBE" means methyl tertiary butyl ether.

"Neat" means straight or 100 percent; not blended with gasoline.

~~22.~~ "NOx" means oxides of nitrogen.

~~23.~~ "Octane," "octane number," or "octane rating" mean the anti-knock characteristic of gasoline as determined by the resultant arithmetic test average of ASTM D 2699 and ASTM D 2700.

~~24.~~ "Oxygenate" means any oxygen-containing ashless, organic compound, including aliphatic alcohols and aliphatic ethers, ~~which is able to~~ that may be used as a fuel or as a gasoline blending component and is approved as a blending agent under the provisions of a waiver issued by the EPA under 42 U.S.C. 7545(f).

~~26.~~ "Oxygenate blender" means ~~any~~ a person ~~who~~ that owns, leases, operates, controls, or supervises an oxygenate-blending facility, or ~~who~~ that owns or controls the blendstock or gasoline used, or the gasoline produced, at an oxygenate-blending facility.

~~25.~~ "Oxygenate-blending facility" means any location (including a truck) where ~~oxygenate~~ fuel ethanol is added to Arizona CBG or AZRBOB~~,~~ and the resulting quality or quantity of Arizona CBG is not altered in any other manner except for the addition of ~~deposit control additives~~ a deposit-control or ~~other~~ similar ~~additives~~ additive registered under 40 CFR 79.

~~27.~~ "Oxygenated Arizona CBG" means Arizona CBG with a minimum oxygen content of ~~3.5~~ 3.7 wt. % or another minimum oxygen content approved by the Director under A.R.S. § 41-2124, that is produced and shipped to or within Arizona and sold or offered for sale for use in motor vehicles in the CBG-covered area from November 1 through ~~March~~ January 31 of each year.

~~28.~~ "Oxygen content" means the percentage by weight of oxygen contained in a gasoline oxygenate blend as calculated by ASTM ~~D4815-94a~~ D 4815.

~~29.~~ "Performance standard" means the VOC and NOx emission reduction percentages in R20-2-751(A)(8)~~, R20-2-751(A)(9),~~ and Table 1.

~~30.~~ "Pipeline" means a transporter ~~who~~ that owns or operates an interstate common-carrier pipe to transport motor fuels into Arizona.

~~31.~~ "PM" or "Predictive Model Procedures" means the California Predictive Model~~,~~ and ~~California Air Resources Board's~~ CARB's "California Procedures for Evaluating Alternative ~~Specification~~ Specifications for Phase 2 Reformulated Gasoline Using the California Predictive Model," as adopted April 20, 1995, and "California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model," as amended April 25, 2001, both of which are ~~which is~~ incorporated by reference in ~~R20-2-758~~ R20-2-702. This definition will not become effective until Arizona's revised State Implementation Plan regarding CARB 3 is approved by EPA.

~~32.~~ "PM alternative gasoline formulation" means a final blend of Arizona CBG or AZRBOB that is subject to a set of PM alternative specifications.

~~33~~. "PM alternative specifications" means the specifications for the following fuel properties, as determined ~~under~~ using a testing methodology in R20-2-759:

~~a.~~ Maximum RVP, expressed in the nearest 100th of a pound per square inch;

~~b.~~ Maximum sulfur content, expressed in the nearest part per million by weight;

~~c.~~ Maximum olefin content, expressed in the nearest 10th of a percent by volume;

~~d.~~ Minimum and maximum oxygen content, expressed in the nearest 10th of a percent by weight;

~~e.~~ Maximum T50, expressed in the nearest degree Fahrenheit;

~~f.~~ Maximum T90, expressed in the nearest degree Fahrenheit; and

~~g.~~ Maximum aromatic hydrocarbon content, expressed in the nearest 10th of a percent by volume.

~~34.~~ "PM averaging compliance option" means, with reference to a specific fuel property, the compliance option for PM alternative gasoline formulations by which final blends of Arizona CBG and AZRBOB are assigned designated alternative limits under R20-2-751~~(F),~~ (G), ~~and~~ (H), and (I).

~~35.~~ "PM averaging limit" means a PM alternative specification that is subject to the PM averaging compliance option.

~~36.~~ "PM flat limit" means a PM alternative specification that is subject to the PM flat limit compliance option.

~~37.~~ "PM flat limit compliance option" means, with reference to a specific fuel property, the compliance option that each gallon of gasoline must meet for ~~the~~ that specified fuel property as contained in the PM alternative specifications.

~~38.~~ "Produce" means:

~~a.~~ Except as otherwise provided ~~in subsections (b) or (c)~~, to convert a liquid compound that is not Arizona CBG or AZRBOB into Arizona CBG or AZRBOB. If a person blends ~~blendstocks~~ a blendstock that ~~are~~ is not Arizona CBG or AZRBOB with Arizona CBG or AZRBOB acquired from another person, and the resulting blend is Arizona CBG or AZRBOB, the person conducting the blending produces only the portion of the blend not previously Arizona CBG or AZRBOB. If a person blends Arizona CBG or AZRBOB with other ~~of~~ Arizona CBG or AZRBOB in accordance with this Article, without the addition of ~~blendstocks~~ a blendstock that ~~are~~ is not Arizona CBG or AZRBOB, that person is not a producer of Arizona CBG or AZRBOB.

~~b.~~ If a person supplies Arizona CBG or AZRBOB to a refiner ~~who~~ that agrees in writing to further process the Arizona CBG or AZRBOB at the refiner's refinery and be treated as the producer of ~~the~~ Arizona CBG or AZRBOB, the refiner is ~~deemed~~ the producer of the Arizona CBG or AZRBOB.

~~c.~~ If an oxygenate blender blends oxygenates into AZRBOB supplied from a gasoline production ~~facility~~ or import facility, and does not alter the quality or quantity of the AZRBOB or the quality or quantity of the resulting Arizona CBG certified by a registered supplier in any other manner except for the addition of ~~deposit control additives~~ a deposit-control or ~~other~~ similar ~~additives~~ additive, ~~then~~ the producer or importer of the AZRBOB, rather than the oxygenate blender, ~~is not a producer of any portion of the resulting Arizona CBG, and the producer or importer of the AZRBOB~~ is considered the producer or importer of the full volume of the resulting Arizona CBG.

~~39.~~ "Producer" means a refiner or other person ~~who~~ that produces a motor fuel, including Arizona CBG or AZRBOB.

~~40.~~ "Production facility" means a facility ~~where~~ at which a motor fuel, including Arizona CBG or AZRBOB, is produced. Upon request of a producer, the Director may designate, as part of the producer's production facility, a physically separate bulk storage facility that:

~~a.~~ Is owned or leased by the producer~~,~~ ;

~~b.~~ Is operated by or at the direction of the producer~~,~~ ; and

~~c.~~ Is used to store or distribute motor fuels, including Arizona CBG or AZRBOB, that ~~is~~ are supplied only from the production facility.

"Product transfer document" means a bill of lading, loading ticket, manifest, delivery receipt, invoice, or other paper that is provided by the transferor at the time motor fuel is delivered and evidences that custody or title of the motor fuel is transferred to the transferee. A product transfer document is not required when motor fuel is sold or dispensed at a motor fuel dispensing site or fleet vehicle fueling facility.

41. "Refiner" means ~~any~~ a person ~~who~~ that owns, leases, operates, controls, or supervises a refinery in the United States, including its trust territories.

43. "Refinery" means a facility that produces a liquid ~~fuels~~ fuel, including Arizona CBG or AZRBOB, by distilling petroleum, or a transmix facility that produces a motor fuel offered for sale or sold into commerce as a finished motor fuel.

44. "Registered supplier" means ~~any~~ a producer or importer ~~who~~ that supplies Arizona CBG or AZRBOB and is registered with the Director under R20-2-750.

45. "Reproducibility" means the testing method margin of error as provided in the ASTM specification or other testing method required under this Article.

~~46. "Service station" means a retail business operated for the purpose of dispensing motor fuel into the fuel tanks of motor vehicles.~~

42. "RVP" means Reid vapor pressure equivalent of gasoline or blendstock as measured according to ASTM D 5191.

47. "Supply" means to provide or transfer motor fuel to a physically separate facility, vehicle, or transportation system.

"Test result" means any document that contains a result of testing including all original test measures, all subsequent test measures that are not identical to the original test measure, and all worksheets on which calculations are performed.

48. "Third-party terminal" ~~or "3rd-party terminal"~~ means an owner or operator of a gasoline storage tank facility ~~who~~ that accepts custody, but not ownership, of Arizona CBG or AZRBOB from a registered supplier, oxygenate blender, pipeline, or other third-party terminal and relinquishes custody of the Arizona CBG or AZRBOB to a transporter ~~for interstate transport into Arizona~~.

49. "Transmix" means a mixture of petroleum distillate fuel and gasoline that does not meet the Arizona standards for either petroleum distillate fuels or gasoline.

"Transmix facility" means a facility at which transmix is processed into its components and then the components either are combined with a finished product or further processed to produce a finished motor fuel.

50. "Transporter" means ~~any~~ a person ~~who is not a producer or importer and who:~~ that

~~a.~~ ~~Causes~~ causes ~~transport of~~ motor fuels, including Arizona CBG or AZRBOB, to be transported into or within Arizona~~; and~~

~~b. Does not acquire title or assume ownership of the Arizona CBG or AZRBOB~~.

51. "Type 1 ~~gasoline~~ Arizona CBG" means a gasoline that meets the standards contained in R20-2-751(A) and Table 1.

52. "Type 2 ~~gasoline~~ Arizona CBG" means a gasoline that meets the standards contained in Table 2~~,~~ or is certified using the PM according to the requirements of R20-2-751~~(F),~~ (G), ~~and~~ (H), and (I), and:

~~a.~~ Meets the requirements in R20-2-751(A) beginning ~~April~~ February 1 through October 31 of each year; and

~~b.~~ Meets the requirements in R20-2-751(B) beginning November ~~2~~ 1 through ~~March~~ January 31 of each year.

"Vehicle emissions control area" has the same meaning as in A.R.S. § 49-541 except that a vehicle emissions control area does not include a manufacturer's proving ground that is located in the vehicle emissions control area.

53. "VOC" means volatile organic compound.

"Winter" means November 1 through January 31.

R20-2-702. Material Incorporated by Reference

A. The following documents are incorporated by reference and on file with the Department. The documents incorporated by reference contain no future editions or amendments.

1. 16 CFR 306 - Automotive Fuel Ratings, Certification and Posting, January 1, 1998 Edition, Superintendent of Documents, U.S. Government Printing Office, Mail Stop SSOP, Washington, D.C. 20402-9328.
2. ASTM D ~~975-98b~~ 975-04c, Standard Specification for Diesel Fuel Oils, ~~published in ASTM Annual Book of Standards, Petroleum Products, Lubricants, and Fossil Fuels, Volume 05.01, 2001~~2004, American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959.
3. ASTM D 4806-04a, Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel, 2004, American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959.

~~3.~~4. ASTM D ~~4814-00~~ 4814-04a, Standard Specification for Automotive Spark-Ignition Engine Fuel, ~~published in ASTM Annual Book of Standards, Petroleum Products, Lubricants, and Fossil Fuels, Volume 05.02, 2001~~ 2004, American

Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959.

~~4.~~ 5. Waiver Requests under Section 211(f) of the Clean Air Act, (August 22, 1995 edition), United States Environmental Protection Agency, Transportation and Regional Programs Division, Fuels Program Support Group, Mail Code ~~6406J~~ 6406-J, Washington, D.C. 20460.

6. ASTM D 5798-99, Standard Specification for Fuel Ethanol (Ed75-Ed85) for Automotive Spark-Ignition Engines, re-approved 2004, American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959.

7. ASTM D 6751-03a, Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels, 2003, American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959.

8. California Air Resources Board, "California Procedures for Evaluating Alternative Specifications for Phase 2 Reformulated Gasoline Using the California Predictive Model," adopted April 20, 1995. A copy may be obtained at: CARB, P.O. Box 2815, Sacramento, CA 95812.

9. California Air Resources Board, "California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model," as amended April 25, 2001. A copy may be obtained at: CARB, P.O. Box 2815, Sacramento, CA 95812.

10. The Federal Complex Model as contained in 40 CFR 80.45, January 1, 1999. A copy may be obtained at: U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328.

11. California Air Resources Board, The California Reformulated Gasoline Regulations, Title 13, California Code of Regulations, Section 2266.5 (Requirements Pertaining to California Reformulated Gasoline Blendstock for Oxygen Blending (CARBOB) and Downstream Blending), as of April 9, 2005. A copy may be obtained at: CARB, P.O. Box 2815, Sacramento, CA 95812.

12. California Air Resources Board, Procedures for Using the California Model for California Reformulated Gasoline Blendstocks for Oxygenate Blending (CARBOB), adopted April 25, 2001. A copy may be obtained at: CARB, P.O. Box 2815, Sacramento, CA 95812.

B. Subsections (A)(9), (A)(11), and (A)(12) will not become effective until Arizona's revised State Implementation Plan regarding CARB 3 is approved by EPA.

R20-2-708. Oxygenated Fuel Blends

A person ~~who~~ that has custody of gasoline blended with an oxygenate shall ensure that the amount of oxygenate does not exceed the amount allowed by EPA waivers, Section 211(f) of the Clean Air Act, and A.R.S. § 41-2122. The maximum oxygen content of gasoline shall not exceed 3.7 percent by weight for fuel ethanol and as specified in A.R.S. § 41-2122 for other oxygenates. ~~Except as allowed by EPA waivers, gasolines blended with methanol shall contain a corrosion inhibitor in an amount specified by the manufacturer of the inhibitor. Any gasoline blend containing methanol shall contain a co-solvent in an amount equal to or greater than the amount allowed by EPA waivers for gasolines within the oxygen limits allowed.~~

R20-2-709. Retail Oxygenated Fuel Labeling

A. ~~A service station~~ The owner or operator of a motor fuel dispensing site shall ensure that a ~~service station~~ motor fuel dispenser that offers gasoline containing ~~an oxygenate, or combination of oxygenates,~~ fuel ethanol that results in a gasoline blend containing 1.5~~%~~ percent or more by weight of oxygen is clearly labeled with the ~~oxygenate~~ fuel ethanol volume information. ~~If only one oxygenate is blended into a gasoline, each~~ Each face of each motor fuel dispenser shall be clearly labeled with the oxygenate volume information if the percent by volume is~~:~~

~~1. More than 0.3% by volume of methanol,~~

~~2. More~~ more than 4.3~~%~~ percent by volume of fuel ethanol~~,~~

~~3. More than 8.3% by volume of MTBE, or~~

~~4. Any other oxygenate or combination of oxygenates at a level that requires an EPA waiver~~.

B. ~~A service station~~ The owner or operator of a motor fuel dispensing site shall ensure that labels required under subsection (A) are displayed on the upper 60~~%~~ percent of each face of each motor fuel dispenser. The label indicating the maximum percent by volume of ~~each~~ oxygenate contained in the oxygenated fuel shall state:

~~1.~~ "Contains up to _____ % fuel ethanol~~;~~."

~~2. Contains up to _____ % methanol and _____% co-solvent;~~

~~3. Contains up to _____ % ether (MTBE); or~~

~~4. Contains up to _____ % other (specify name of oxygenate).~~

C. In the CBG-covered area and area B, ~~a service station~~ the owner or operator of a motor fuel dispensing site shall ensure that a label displayed on each face of each ~~service station~~ motor fuel dispenser ~~also~~ contains the following statement: "This gasoline is oxygenated and will reduce carbon monoxide emissions from motor vehicles." The statement may be printed on the label required in subsection (B) or on a separate label. If the statement is printed on a separate label, the label shall be displayed next to the label required in subsection (B).

~~**D.** A service station owner or operator shall ensure that any other oxygenate blended with gasoline is disclosed in the format described in subsections (B) and (C).~~

~~**E.**~~**D.** ~~A service station~~ The owner or operator of a motor fuel dispensing site shall ensure that:

1. The label required by subsection (B) is clean, legible, and visible at all times;
2. The label is printed in black or white block letters on a sharply contrasting background; and
3. The lettering on labels required by subsections (B) and (C) is no less than 1/4".

R20-2-710. Blending Requirements

A. A person ~~who~~ that has custody of or transports an oxygenated gasoline blend shall ensure ~~than~~ that no neat oxygenate blending occurs at a ~~service station~~ motor fuel dispensing site or fleet ~~location~~ vehicle fueling facility.

B. If a ~~service station~~ motor fuel dispensing site storage tank contains an oxygenated gasoline blend that does not contain the amount of oxygen required by A.R.S. §§ 41-2122, 41-2123, 41-2125, or R20-2-751, the ~~service station~~ owner or operator of the motor fuel dispensing site shall do one of the following:

1. Add gasoline that contains no more than 20~~%~~ percent by volume of ~~any~~ the same oxygenate to the non-compliant oxygenated gasoline blend;
2. Add a gasoline blend that dilutes the non-compliant oxygenated gasoline blend to the level of oxygen content required by A.R.S. §§ 41-2122, 41-2123, 41-2125, or R20-2-751; or
3. Empty the storage tank and replace the non-compliant oxygenated gasoline blend with a required oxygenate blend.

R20-2-711. Alcohol-oxygenated Gasoline Storage Tank Requirements

A. Before a person adds an alcohol-oxygenated gasoline into a storage tank, the person shall:

1. Test the storage tank for the presence of water and, if any water is detected, remove ~~it~~ the water from the storage tank; and
2. Install a fuel ~~filters~~ filter designed for use with alcohol-oxygenated gasoline in the fuel line of all motor fuel dispensers that dispense alcohol-oxygenated gasoline ~~blends~~.

B. If water ~~of a mixture of alcohol and water~~ is detected in a storage tank or in an alcohol-oxygenated gasoline ~~at any time~~ in a storage tank, the owner or operator shall empty the storage tank.

R20-2-714. Requirements for ~~Gasoline Products Outside~~ Motor Fuels outside the CBG-covered Area

A. A person ~~who~~ that owns or operates a ~~service station~~ motor fuel dispensing site or transmix or production facility outside the CBG-covered area shall ensure that ~~gasoline and gasoline-oxygenate blends~~ a motor fuel offered for sale at ~~a service station~~ the motor fuel dispensing site or transmix or production facility ~~outside the CBG-covered area meet~~ meets all the ~~ASTM D 4814-00 requirements~~ appropriate specifications in R20-2-702 except:

1. ~~The minimum vapor pressure shall be 6.4 pounds per square inch;~~
2. ~~2.~~ From May 1 through September 30, gasoline shall meet the specifications in ASTM D 4814-04a except maximum vapor pressure shall be 9.0 pounds per square inch;
3. ~~3.~~2. For gasoline blends, the vapor pressure may be no more than one pound per square inch greater than the vapor pressures established by ASTM D ~~4814-00~~ 4814-04a during:
   a. May 1 through September 15, if the ~~base fuel~~ gasoline-fuel ethanol blend meets the requirements of ASTM D ~~4814-00~~ 4814-04a, the volatility requirements of subsection ~~(A)(2)~~ (A)(1), and the final gasoline-fuel ethanol blend contains at least nine percent fuel ethanol by volume but does not exceed the volume specified in EPA waivers; and
   b. September 16 through April 30, if the ~~base fuel~~ gasoline-fuel ethanol blend meets the requirements of ASTM D ~~4814-00~~ 4814-04a and the final gasoline-fuel ethanol blend contains at least 1.5 percent fuel ethanol by weight ~~and~~ but does not exceed the volume specified in EPA waivers.

B. ~~A service station~~ The owner or operator of a motor fuel dispensing site shall ensure that the finished gasoline is visually free of water, sediment, and suspended matter and is clear and bright at ambient temperature or 70° F (21° C), whichever is greater.

C. ~~A service station~~ The owner or operator of a motor fuel dispensing site or transmix or production facility shall ensure that the minimum octane rating determined by the test average of ASTM D 2699 and ASTM D 2700, also known as the (R+M)/2 method, is:

1. 87 for unleaded or regular;
2. 88 for mid-grade, extra, or any other gasoline with an octane rating of 88 or higher; and
3. 90 for super, high performance, premium, or any other gasoline with an octane rating of 90 or higher.

D. Prohibited activities regarding a motor fuel sold or offered for sale outside the CBG-covered area.

1. The owner or operator of a motor fuel dispensing site shall not sell or offer for sale from the motor fuel dispensing site storage tank a product that is not a motor fuel;
2. The owner or operator of a motor fuel dispensing site or transmix or production facility shall not sell or offer for sale a motor fuel that contains more than 0.3 volume percent MTBE or more than 0.1 weight percent oxygen from all other ethers or alcohols as listed in A.R.S. § 41-2122.
3. A transporter shall not deliver to a motor fuel dispensing site or place in a motor fuel dispensing site storage tank a product that is not motor fuel.

R20-2-715. Motor Fuel Quality Testing Methods and Requirements

A. Unless otherwise required in A.R.S. Title 41, Chapter 15, or this Chapter, ~~a person testing a gasoline blend~~ the producer of a motor fuel shall ~~use~~ test the motor fuel for its motor fuel properties using the methodologies in R20-2-702 and ensure that the motor fuel ~~and meet~~ meets the ~~test requirements of ASTM D 4814-00~~ applicable specifications in the material incorporated by reference in R20-2-702.

B. Unless otherwise required in A.R.S. Title 41, Chapter 15, or this Chapter, a person testing #1 or #2 diesel fuel shall use the methodologies and meet the ~~test requirements~~ specifications of ASTM D ~~975-98b~~ 975-04c.

C. The owner or operator of a transmix or production facility shall ensure that all gasoline sold or offered for sale outside the CBG-covered area has its octane rating determined and certified in accordance with 16 CFR 306 using the average of ASTM D 2699 and ASTM D 2700, also known as the (R+M)/2 method. The owner or operator of a motor fuel dispensing site shall ensure that all gasoline sold or offered for sale outside the CBG-covered area has its octane rating posted in accordance with 16 CFR 306.

R20-2-716. Sampling and Access to Records

A. The Department shall obtain motor fuel samples for testing from:
1. The same motor fuel dispenser used for sales to customers;
2. The same motor fuel dispenser used for dispensing motor fuel into fleet vehicles;
3. A bulk storage facility;
4. A ~~common carrier~~ pipeline having custody of motor fuel, including Arizona CBG or AZRBOB;
5. A transporter of motor fuel, including Arizona CBG or AZRBOB;
6. A final distribution facility;
7. A third-party terminal having custody of motor fuel, including Arizona CBG or AZRBOB; ~~or~~
8. An oxygenate blender or registered supplier~~.~~ ; or
9. A transmix or production facility.

B. ~~A person required by this Article to~~ An owner or operator of a motor fuel dispensing site, pipeline, third-party terminal, or storage, transmix, production, or distribution facility, or a transporter, registered supplier, or oxygenate blender shall maintain for five years records relating to ~~the production, importation~~ producing, importing, blending, ~~transport, distribution, or delivery~~ transporting, distributing, delivering, testing, or storing ~~of~~ motor fuels, including Arizona CBG or AZRBOB, and shall ~~ensure that~~ make the records ~~are~~ available for Department inspection upon request.

R20-2-717. Hold-open Latch Exception

If ~~a service station~~ an owner or operator of a motor fuel dispensing site has a motor fuel nozzle equipped with a hold-open latch, the owner or operator shall ensure that the latch ~~shall operate~~ operates according to the manufacturer's specifications.

R20-2-718. ~~Renumbered~~ Requirements for the Production or Sale of E85

A. Requirements applicable statewide.
1. A producer of E85 or the owner or operator of a motor fuel dispensing site that dispenses E85 shall ensure that the E85 sold or offered for sale in Arizona meets all the specifications in ASTM D 5798-99.
2. An owner or operator of a motor fuel dispensing site shall ensure that both the motor fuel dispenser and nozzle from which E85 is dispensed have labels affixed that indicate E85 is not gasoline and is intended for use only in a flexible-fuel vehicle, and stating, "Check your owner's manual to ensure that this fuel can be used in your vehicle."
3. An owner or operator of a motor fuel dispensing site shall ensure that any motor fuel dispenser from which E85 is dispensed is compatible with E85 and meets the requirements in R20-2-203.
4. A producer of E85 shall report to the Department, by the 15th of the month following the production of E85, the following information regarding the E85 production:
   a. The amount of fuel ethanol used during the previous month,
   b. The amount of gasoline used during the previous month,
   c. The total amount of E85 produced during the previous month,
   d. The total amount of E85 sold during the previous month,
   e. The fuel quality properties for the gasoline and fuel ethanol components making up each batch of E85, and
   f. The fuel quality properties of each batch of final E85 blend.

B. Requirements applicable in the CBG-covered area.
1. A producer of E85 for sale in the CBG-covered area shall use Arizona CBG or AZRBOB as the gasoline portion of the E85 blend.
2. A producer of E85 for sale in the CBG-covered area shall ensure that the fuel ethanol used meets the standard in R20-2-751(C).

R20-2-719. ~~Repealed~~ Requirements for the Sale of Biodiesel

A. A person shall not sell or offer or expose for sale:
1. Biodiesel that is not tested or does not meet the specifications established by ASTM D 6751,

2. A blend of biodiesel and diesel fuel that is not tested or does not meet the specifications established by ASTM D 975-04c, or
3. Biodiesel or a blend of biodiesel and diesel fuel for use in Area A that contains sulfur in excess of 15 ppm.

B. *A person who blends biodiesel that is intended as a final product for the fueling of motor vehicles shall report to the director by the fifteenth day of each month the quantity and quality of biodiesel shipped to or produced in this state during the preceding month. A person who supplies biodiesel subject to this subsection shall report the following by batch:*

1. *The percentage of biodiesel in a final blend.*
2. *The volume of the finished product.*
3. *For neat biodiesel, the results of analysis for those parameters established by ASTM D6751.*
4. *For biodiesel blended with any diesel fuel, the results of the analysis of the following motor fuel parameters as established by ASTM D975:*
   a. *Sulfur content.*
   b. *Aromatic hydrocarbon content.*
   c. *Cetane number.*
   d. *Specific gravity.*
   e. *American petroleum institute gravity.*
   f. *The temperatures at which ten per cent, fifty per cent and ninety per cent of the diesel fuel boiled off during distillation.* A.R.S. § 41-2083(L).

C. A person required to submit a report under subsection (B) shall use a form prescribed by the Director, certify the truthfulness and accuracy of the data submitted, and consent to the Department or its authorized agent collecting samples and accessing records as provided in this Article. A corporate officer who is responsible for operations at the facility that produces or ships the final product shall sign the report.

D. A person shall label a dispenser at which biodiesel is dispensed in a manner that notifies other persons of the volume percentage of biodiesel in the finished product and with the statement: "This fuel contains biodiesel. Check the owner's manual or with your engine manufacturer before using."

R20-2-750. Registration Relating to Arizona CBG or AZRBOB

A. Each of the following shall register with the Director ~~prior to~~ before ~~the first date that the person will produce, import~~ producing, importing, or ~~obtain~~ obtaining custody of Arizona CBG or AZRBOB:
1. A refiner ~~who~~ that produces Arizona CBG or AZRBOB;
2. An importer ~~who~~ that imports Arizona CBG or AZRBOB;
3. An oxygenate blender ~~who~~ that blends oxygenate with AZRBOB to produce Arizona CBG; or
4. A pipeline or third-party terminal ~~who~~ that has custody of Arizona CBG or AZRBOB.

B. A person listed in subsection (A) shall register on a form prescribed by the Director and ~~shall~~ include the following information:
1. Business name, business address, and contact name or position title and telephone number;
2. For each ~~separate~~ refinery ~~and~~ or oxygenate blending facility, the facility name, physical location, contact name or position title and~~,~~ telephone number, and type of facility;
3. For each ~~separate~~ refinery, ~~and~~ oxygenate blending facility, ~~and for each~~ or importer:
   a. The location of the records required under this Article. If records are kept off-site, the primary off-site storage facility name, physical location, and contact name or position title~~,~~ and telephone number; and
   b. If an independent laboratory is used to meet the requirements of R20-2-752(F), the name~~,~~ and address of the independent laboratory, and contact name~~,~~ or position title and telephone number ~~of the independent laboratory.~~ ;
4. If required under 40 CFR 80.76(d), the EPA registration number; and
5. A statement of ~~the registrant's~~ consent permitting the Department or its authorized agent to collect samples and access records as provided in R20-2-716.

C. ~~Changes to any information in~~ A person registered under subsection (B) shall ~~be sent to~~ notify the Director ~~not later than~~ within 10 days after the effective date of ~~the~~ a change in any of the information provided under subsection (B).

D. If a refiner, importer, or oxygenate blender fails to register under this Section, all Arizona CBG or AZRBOB produced by the refiner or oxygenate blender or imported by the importer and transported to the CBG-covered area is presumed ~~noncomplying~~ to be noncompliant from the date that ~~the~~ registration should have occurred.

E. The Department shall maintain a ~~listing~~ list of all registered suppliers.

R20-2-751. Arizona CBG Requirements

A. General fuel property and performance requirements. In addition to the other requirements of this Article and except as provided in subsection (B), all Arizona CBG shall meet the following requirements and for any fuel property not specified, shall meet the requirements in ASTM D 4814-04a. The dates in this subsection are compliance dates for ~~service station operators~~ the owner or operator of a motor fuel dispensing site or a ~~and~~ fleet ~~owners~~ vehicle fueling facility.

~~**Fuel Property/Performance Standard – Limits**~~

1. Sulfur: ~~500~~ 80 ppm by weight (max)

2. Aromatics: 50~~%~~ percent by volume (max)
3. Olefins: 25~~%~~ percent by volume (max)
4. E200: 70-30~~%~~ percent volume
5. E300: 100-70~~%~~ percent volume
6. Maximum Vapor Pressure
   a. October 1 - ~~March~~ January 31: 9.0 pounds per square inch (psi)
   b. February: 13.5 psi
   c. March: 11.5 psi
   ~~b.~~ d. April: 10.0 psi
   ~~c.~~ e. May: 9.0 psi
   ~~d.~~ f. June 1 - September 30: 7.0 psi for CARB Phase 2 gasoline and 7.2 psi for CARB Phase 3 gasoline
7. Oxygen and Oxygenates
   a. Minimum Content:
      i. November 1 - ~~March~~ January 31: 10~~%~~ percent fuel ethanol by volume. If A.R.S. § 41-2124(E) petition in effect: 2.7~~%~~ percent oxygen by weight ~~(other than ethanol)~~ as approved by the Director.
      ii. ~~April~~ February 1 - October 31: 0~~%~~ percent by weight (any oxygenate).
   b. The maximum oxygen content shall not exceed ~~4.0%~~ 3.7 percent by weight for fuel ethanol and ~~3.5% by weight~~ as specified in A.R.S. § 41-2122 for other oxygenates, and shall comply with the requirements of A.R.S. § 41-2123.
   c. Arizona CBG shall not contain more than 0.3 volume percent MTBE nor more than 0.1 weight percent oxygen from all other ethers or alcohols listed in A.R.S. § 41-2122.
8. Type 1 Arizona CBG shall meet the Federal Complex Model VOC ~~Emissions Reduction Percentage~~ emissions reduction percentage May 1 through September 15: ~~>~~ ~~25.0%~~ ≥27.5 percent (Federal Complex Model settings: Summer, Area Class B, Phase 2). Type 2 Arizona CBG shall meet CARB Phase 2 or Phase 3 PM requirements.

B. Wintertime requirements. In addition to the other requirements of this Article, the owner or operator of a motor fuel dispensing site or a fleet vehicle fueling facility shall ensure that beginning November ~~2~~ 1 through ~~March~~ January 31 of each year, all Arizona CBG ~~shall meet~~ meets the following fuel property requirements. ~~The dates in this subsection are compliance dates for service station operators and fleet owners.~~

	~~Fuel Property~~	~~Limits~~
~~1.~~	~~Sulfur~~	~~80 ppm by weight (max)~~
~~2.~~	~~Aromatics~~	~~30% by volume (max)~~
~~3.~~	~~Olefins~~	~~10% by volume (max)~~
~~4.~~	~~90% Distillation Temp. (T90)~~	~~330° F (max)~~
~~5.~~	~~50% Distillation Temp. (T50)~~	~~220° F (max)~~
~~6.~~	~~Vapor Pressure~~	~~9.0 psi (max)~~
~~7.~~	~~Oxygenate - Ethanol~~	

1. Sulfur: 80 ppm by weight (max);
2. Aromatics: 30% by volume (max);
3. Olefins: 10% by volume (max);
4. 90% Distillation Temp. (T90): 330° F (max);
5. 50% Distillation Temp. (T50): 220° F (max);
6. Vapor pressure: 9.0 psi (max); and
7. Oxygenate - Fuel ethanol;
   a. Minimum oxygenate content - 10~~%~~ percent fuel ethanol by volume;

b. Maximum oxygen content - ~~4.0%~~ 3.7 percent oxygen by weight, and shall comply with the requirements of A.R.S. § 41-2123~~.~~ ; and

c. Alternative ~~oxygenates~~ minimum fuel ethanol content may be used if approved by the Director under A.R.S. § 41-2124(D).

C. Fuel ethanol specifications. A person that uses fuel ethanol as a blending component with AZRBOB or Arizona CBG shall ensure that the fuel ethanol meets the requirements in ASTM D 4806-04a and the following:

1. A sulfur content not exceeding 10 ppm by weight,
2. An olefins content not exceeding 0.5 percent by volume, and
3. An aromatic hydrocarbon content not exceeding 1.7 percent by volume.

~~C.~~**D.** General ~~Elections~~ elections. Except as provided in subsection ~~(D)~~ (E), ~~all~~ a registered ~~suppliers~~ supplier shall make an initial election, and a subsequent election each time a change occurs, before ~~the~~ beginning ~~of~~ to transport ~~of the~~ Arizona CBG or AZRBOB. ~~Registered suppliers~~ A registered supplier shall make the election with the Director on a form or in a format prescribed by the Director. The election shall state:

1. Whether the registered supplier (at each point where the Arizona CBG or AZRBOB is certified) will supply Arizona CBG or AZRBOB that complies with Type 1 Arizona CBG, Type 2 Arizona CBG, or the PM alternative gasoline formulation requirements and, if the registered supplier will supply Arizona CBG or AZRBOB that complies with the PM alternative gasoline formulation requirements, whether the registered supplier will certify using the CARB Phase 2 or Phase 3 model; and
2. For each applicable fuel property or performance standard ~~for~~ in the election ~~in~~ under subsection ~~(C)~~ (D)(1), whether the Arizona CBG or AZRBOB will comply with the average standards or per-gallon standards. A registered supplier shall not elect to comply with average standards unless the registered supplier is in compliance with R20-2-760. ~~(A)~~ A registered supplier shall not elect to comply with Type 1 Arizona CBG average standards in Table 1, columns B and C, from September 16 through ~~November 1~~ October 31 and ~~April~~ February 1 through April 30.

~~D.~~ **E.** Winter elections. Beginning November ~~2~~ 1 through ~~March~~ January 31 of each year, a registered supplier shall ensure that all Arizona CBG or AZRBOB ~~shall comply~~ complies with Type 2 ~~gasoline~~ Arizona CBG requirements or the PM alternative gasoline formulation requirements under Table 2. ~~All~~ A registered ~~suppliers~~ supplier shall make an initial election, and a subsequent election each time a change occurs, before ~~the~~ beginning ~~of~~ to transport ~~of the~~ Arizona CBG or AZRBOB. ~~Registered suppliers~~ A registered supplier shall make the election with the Director on a form or in a format prescribed by the Director. The election shall state:

1. Whether the registered supplier (at each point where the Arizona CBG or AZRBOB is certified) will supply Arizona CBG or AZRBOB that complies with the Type 2 ~~gasoline~~ Arizona CBG or the PM alternative gasoline formulation requirements; and
2. For each applicable fuel property, whether the Arizona CBG or AZRBOB will comply with the average standards or per-gallon standards.

~~E.~~ **F.** Certification as Type 1 Arizona CBG or Type 2 Arizona CBG. ~~Registered suppliers~~ A registered supplier shall certify Arizona CBG or AZRBOB under R20-2-752 as meeting all requirements of the election made in subsection ~~(C)~~ ~~or~~ (D) or (E). For each fuel property, Type 1 ~~gasoline~~ Arizona CBG shall comply with the requirements in either column A~~,~~ or columns B through D of Table 1, and shall be certified using the Federal Complex Model, which is incorporated by reference in R20-2-702. For each fuel property, Type 2 ~~gasoline~~ Arizona CBG shall comply with the requirements of columns A and B (averaging option), or column C in Table 2. The PM alternative gasoline formulation shall meet the requirements of subsections ~~(F),~~ (G), ~~and~~ (H), and (I) and column A of Table 2. A registered supplier may certify Arizona CBG or AZRBOB using an equivalent test method that the Department approves using the criteria stated in R20-2-759.

~~F.~~**G.** Certification and ~~Use~~ use of Predictive Model for ~~Alternative~~ alternative PM ~~Gasoline Formulations~~ gasoline formulations.

1. Except as provided in subsections ~~(F)~~ (G)(4) and ~~(H)~~ (I), ~~the use of~~ a registered supplier shall use the PM ~~shall be~~ as provided in the Predictive Model Procedures.
2. A registered supplier shall certify a PM alternative gasoline formulation with the Director by either:
   a. Submitting to the Director a complete copy of the documentation provided to the executive officer of ~~the California Air Resources Board~~ CARB according to 13 California Code of Regulations, Section 2264 and subsection ~~(H)~~ (I); or
   b. Notifying the Director, on a form prescribed by or in a format acceptable to the Director, of:
      i. The PM alternative specifications that apply to the final blend, including for each specification whether it is a PM flat limit or a PM averaging limit; and
      ii. The numerical values for percent change in emissions for oxides of nitrogen and hydrocarbons determined in accordance with the Predictive Model Procedures.
3. ~~The~~ A registered supplier shall deliver the certification required under subsection (G)(2) to the Director before ~~the beginning of transport of~~ transporting the PM alternative gasoline formulation.
4. Restrictions for elections to sell or supply final blends as PM alternative gasoline formulations.
   a. A registered supplier ~~may~~ shall not make a new election to sell or supply from its production or import facility a

final blend of Arizona CBG as a PM alternative gasoline formulation if the registered supplier has ~~any~~ an outstanding ~~requirements~~ requirement under subsection (J) to provide offsets for fuel properties at the same production or import facility ~~under subsection (I)~~.

b. If a registered supplier elects to sell or supply from its production or import facility a final blend of Arizona CBG as a PM alternative gasoline formulation subject to a PM averaging compliance option for one or more fuel properties, the registered supplier ~~may~~ shall not elect any other compliance option, including another PM alternative gasoline formulation, if an outstanding ~~requirements~~ requirement to provide offsets for fuel properties ~~exist~~ exists under the provisions of subsection ~~(I)~~ (J). This subsection ~~shall~~ does not preclude a registered supplier from electing another PM alternative gasoline formulation if:
   i. The PM flat limit for one or more fuel properties is changed to a PM averaging limit, or a single PM averaging limit for which there ~~are~~ is no outstanding ~~requirements~~ requirement to provide offsets~~,~~ is changed to a PM flat limit;
   ii. There are no changes to the PM alternative specifications for remaining fuel properties; and
   iii. The new PM alternative formulation meets the criteria in the Predictive Model Procedures.

c. ~~Once~~ If a registered supplier elects to sell or supply from ~~its~~ the registered supplier's production or import facility a final blend of Arizona CBG as a PM alternative gasoline formulation, the registered supplier ~~may~~ shall not use a previously assigned designated alternative limit for a fuel property to provide offsets under subsection ~~(I)~~ (J).

d. If a registered supplier notifies the Director under subsection ~~(C) or~~ (D) or (E) that a final blend of Arizona CBG is sold or supplied from a production or import facility as a PM alternative gasoline formulation, all final blends of Arizona CBG or AZRBOB subsequently sold or supplied from that production or import facility are subject to the same PM alternative specifications until the registered supplier either:
   i. Designates a final blend at that facility as a PM alternative gasoline formulation subject to different PM alternative specifications~~,~~ ; or
   ii. Elects, under subsection ~~(C) or~~ (D) or (E), a final blend at that facility subject to a flat limit compliance option or an averaging compliance option.

~~G.~~ **H.** Prohibited activities regarding PM alternative gasoline formulations.

~~1.~~ A registered supplier shall not sell, offer for sale, supply, or offer to supply from ~~its~~ the registered supplier's production or import facility Arizona CBG that is reported as a PM alternative gasoline formulation under R20-2-752 if any of the following occur:

~~a.~~ 1. The elected PM alternative specifications do not meet the criteria for approval in the Predictive Model Procedures~~;~~ ,

~~b.~~ 2. The registered supplier is prohibited by subsection ~~(F)~~ (G)(4)(a) from electing to sell or supply the gasoline as a PM alternative gasoline formulation~~;~~ ,

~~c.~~ 3. The gasoline fails to conform with any PM flat limit in the PM alternative specifications election~~;~~ , or

~~d.~~ 4. With respect to any fuel property for which the registered supplier elects a PM averaging limit~~,~~ :

   ~~i.~~ a. The gasoline exceeds the applicable PM average limit in Table 2, column B, and no designated alternative limit for the fuel property is established for the gasoline in accordance with subsection ~~(F)~~ (G)(2); or

   ~~ii.~~ b. A designated alternative limit for the fuel property is established for the gasoline in accordance with subsection ~~(F)~~ (G)(2), and either ~~of the following occur:~~ the gasoline exceeds the designated alternative limit for the fuel property~~;~~ or ~~when~~ the designated alternative limit for the fuel property exceeds the PM averaging limit~~,~~ and the exceedance is not fully offset in accordance with subsection ~~(I)~~ (J).

~~H.~~ **I.** Oxygen content requirements for PM alternative gasoline formulations. ~~All alternative PM gasoline formulations from~~ A registered supplier shall ensure that from November 1 through ~~March~~ January 31, all alternative PM gasoline formulations ~~shall~~ comply with oxygen content requirements for the CBG-covered area. Regardless of the oxygen content, a registered supplier shall certify the final alternative PM gasoline formulation ~~shall be certified~~ using the PM with a minimum oxygen content of 2.0% by weight. A registered supplier may use the CARBOB Model as a substitute for the preparation of a fuel ethanol hand blend and use the fuel qualities calculated under the CARBOB Model for compliance and reporting purposes.

~~I.~~ **J.** Offsetting ~~Fuel Properties~~ fuel properties and ~~Performance Standards~~ performance standards. ~~Each~~ A registered supplier ~~who~~ that elects to comply with the averaging standards for any of the fuel properties or performance standards contained in Tables 1 ~~or~~ and 2, or the PM, shall, from a single production or import facility, complete physical transfer ~~from the same production or import facility~~ of certified Arizona CBG or AZRBOB in sufficient quantity to offset the amount by which the ~~gasoline~~ Arizona CBG or AZRBOB exceeds the averaging standard according to the following schedule:

1. ~~Registered suppliers electing~~ A registered supplier that elects to comply with the averaging standards contained in Table 2 or the PM shall offset each exceeded average standard within 90 days before or after ~~the~~ beginning ~~of~~ to transport ~~of~~ any final blend of Arizona CBG or AZRBOB from ~~a~~ the production or import facility;
2. ~~Registered suppliers electing~~ A registered supplier that elects to comply with the averaging standard for the VOC Emission Reduction Percentage in Table 1, column B, shall offset an exceedance of the ~~standards~~ standard that occurs from May 1 to September 15 ~~of each calendar year~~ during that same ~~time~~ period; and

3. ~~Registered suppliers electing~~ A registered supplier that elects to comply with the averaging standard for the NOx Emission Reduction Percentage contained in Table 1, column B, shall offset an exceedance of the ~~summer~~ standard that occurs from May 1 to September 15 ~~of each calendar year~~ during that same ~~time~~ period.

~~J.~~ **K.** Consequence of failure to comply with averages.

1. In addition to a penalty under R20-2-762, if any, ~~under R20-2-762,~~ a registered supplier ~~who~~ that fails to comply with ~~the requirements~~ a requirement of subsection ~~(I)~~ (J) shall meet the applicable per-gallon standards contained in Table 1, Table 2, or ~~for any~~ an alternative PM gasoline formulation, for a probationary period as follows:
   a. For a registered ~~suppliers electing~~ supplier that elects to comply with the standards contained in Table 1, the probationary period begins on the first day of the next ~~corresponding~~ averaging season and ends on the last day of that averaging season if the conditions of subsection (K)(2) are met;
   b. For a registered ~~suppliers electing~~ supplier that elects to comply with the standards contained in Table 2 or the PM, the probationary period begins no later than 90 days after the registered supplier determines, or receives a notice from the Director, that the registered supplier did not comply with the requirements of subsection ~~(I)~~ (J). Before the probationary period begins, the registered supplier shall notify the Director in writing of the beginning date of the probationary period. The probationary period ~~shall be~~ ends 90 days after its beginning date.
2. A registered supplier ~~may~~ shall not produce or import Arizona CBG or AZRBOB under an averaging compliance election until:
   a. The registered supplier submits a compliance plan to the Director that includes:
      i. An implementation schedule for actions to correct noncompliance, and
      ii. Reporting requirements that document ~~the plan~~ implementation of the compliance plan~~;~~ ,
   b. The Director approves the plan~~;~~ ,
   c. The registered supplier implements the plan~~;~~ , and
   d. The registered supplier achieves compliance.
3. If a registered supplier fails to comply with the requirements of subsection ~~(I)~~ (J) within one year of the end of a probationary period under subsection ~~(J)~~ (K)(1), the registered supplier shall comply with applicable per-gallon standards for a subsequent probationary period of two years, or until the conditions in subsection ~~(J)~~ (K)(2) are satisfied, whichever is later.
   a. If a registered supplier elects ~~compliance~~ to comply with the Table 1 standards, the probationary period begins on the first day of the next ~~corresponding~~ averaging season.
   b. If a registered supplier elects ~~compliance~~ to comply with the Table 2 standards or the PM, the probationary period begins no later than 90 days after the registered supplier determines, or receives notice from the Director, that the registered supplier did not comply with the requirements of subsection ~~(I)~~ (J). Before the probationary period begins, the registered supplier shall notify the Director in writing of the beginning date of the probationary period.
4. If a registered supplier fails to comply with the requirements of subsection ~~(I)~~ (J) within one year ~~of~~ after the end of a probationary period provided under subsection ~~(J)~~ (K)(3), the registered supplier shall permanently comply with applicable per-gallon standards.

~~K.~~ **L.** Effect of VOC survey failure. Each time ~~the CBG-covered area fails~~ a VOC survey conducted under R20-2-760 shows excess VOC emissions in the CBG-covered area, the VOC emissions performance reduction in R20-2-751(A)(8) and the minimum per-gallon VOC emission reduction percentage in Table 1, column C shall be increased by an absolute 1.0~~%~~ percent, not to exceed the VOC percent emissions reduction percentage per-gallon standard in Table 1, column A.

~~L.~~ **M.** Effect of NOx survey failure. Each time ~~the CBG-covered area fails~~ a NOx survey conducted under R20-2-760 shows excess NOx emissions in the CBG-covered area, the NOx average emission reduction percentage applicable to the period of May 1 through September 15 in Table 1, column B shall be increased by an absolute 1.0~~%~~ percent.

~~M.~~ **N.** Subsequent survey compliance. If the minimum VOC ~~emission reduction percentage~~ or average NOx emissions reduction percentage has been made more stringent according to subsection ~~(K) or~~ (L) or (M) and ~~the CBG-covered area passes~~ all emissions reduction surveys for VOC or NOx for two consecutive years show emissions within the applicable adjusted reduction percentage in the CBG-covered area, the applicable VOC or NOx emissions adjusted reduction percentage ~~adjusted standard~~ shall be reduced by an absolute 1.0~~%~~ percent beginning in the year following the ~~second~~ year ~~of the~~ in which the second compliant survey is conducted. Each ~~standard~~ emissions reduction percentage adjusted under this subsection shall not be decreased below the following:

1. >~~25.0%~~ 27 percent for the VOC ~~Emission Reduction Percentage~~ emissions reduction percentage, May 1 - September 15, Table 1, column C; and
2. >6.8~~%~~ percent for the NOx ~~Emission Reduction Percentage~~ emissions reduction percentage, May 1 - September 15, Table 1, column B.

~~N.~~ **O.** Subsequent survey failures. If a VOC or NOx emissions reduction percentage is made less stringent under subsection ~~(M)~~ (N) and ~~the CBG-covered area fails~~ a subsequent VOC or NOx survey shows excess VOC or NOx emissions in the CBG-covered area:

1. For a VOC survey failure, the Federal Complex Model VOC emissions reduction percentage in R20-2-751(A)(8) and

the minimum per gallon VOC emission reduction percentage in Table 1, column C shall be increased by an absolute 1.0~~%~~ percent, not to exceed the VOC percent emissions reduction percentage per gallon standard in Table 1, column A;

2. For a NOx survey failure, the NOx average emission reduction percentage applicable ~~to the period of~~ May 1 through September 15 in Table 1, column B shall be increased by an absolute 1.0~~%~~ percent; and
3. ~~The~~ If the VOC or NOx emission reduction percentage ~~for the performance standard~~ is increased under subsection (O)(1) or (O)(2), the VOC or NOx emission reduction percentage shall not be made less stringent regardless of the ~~results~~ result of subsequent surveys for ~~that performance standard~~ VOC or NOx emissions.

~~O.~~**P.** Effective date for adjusted standards. If a performance standard is adjusted by operation of ~~subsections (K),~~ subsection (L), (M), ~~or~~ (N), or (O), the effective date for the change ~~shall begin with~~ is the beginning of the next averaging season for which the standard is applicable.

Q. Subsections (A)(6)(a), (b), (c), and (f), (A)(7)(a)(i) and (ii), (A)(8), (B), (D)(2), (E), and (I) will not become effective until Arizona's revised State Implementation Plan regarding CARB 3 and shortening the winter season is approved by EPA.

R20-2-752. General Requirements for Registered Suppliers

A. A registered supplier shall certify that each batch of Arizona CBG or AZRBOB transported for sale or use in the CBG-covered area meets the standards in this Article.

B. ~~The~~ A registered supplier shall ~~sign~~ make the certification on a form or in a format prescribed by the Director. The registered supplier shall include in the certification ~~shall include~~ information on ~~the~~ shipment volumes, fuel properties as determined under R20-2-759, and performance standards for each batch of Arizona CBG or AZRBOB. ~~For each batch transported, the~~ The registered supplier shall submit the certification to the Director on or before the 15th day of each month for ~~the~~ each batch of Arizona CBG or AZRBOB transported during the previous month.

C. Recordkeeping and records retention.

1. ~~Each~~ A registered supplier ~~who~~ that samples and analyzes a final blend or shipment of Arizona CBG or AZRBOB under this Section shall maintain, for five years from the date of each sampling, records of the following:
   a. Sample date;
   b. Identity of blend or product sampled;
   c. Container or other vessel sampled;
   d. The final blend or shipment volume; and
   e. The test results for sulfur, aromatic hydrocarbon, olefin, oxygen, RVP, and as applicable, T50, T90, E200, and E300 as determined under R20-2-759.
2. ~~All~~ If Arizona CBG or AZRBOB produced or imported by a registered supplier~~, that~~ is not tested and documented as required by this Section, the Director shall ~~be deemed~~ deem the Arizona CBG or AZRBOB to have a RVP, sulfur, aromatic hydrocarbon, olefin, oxygen, T50, and T90 ~~exceeding~~ that exceeds the standards specified in R20-2-751~~,~~ or ~~exceeding~~ the comparable PM averaging limits, unless the registered supplier demonstrates to the Director that the Arizona CBG or AZRBOB meets all applicable ~~standards and~~ fuel property limits ~~for fuel properties~~ and performance standards.
3. A registered supplier shall provide to the Director any records maintained by the registered supplier under this ~~subsection~~ Section within 20 days of a written request from the Director. If a registered supplier fails to provide records for a blend or shipment of Arizona CBG or AZRBOB ~~under this Section~~, the Director shall deem the final blend or shipment of Arizona CBG or AZRBOB ~~shall be deemed supplied~~ in violation of R20-2-751, unless the registered supplier demonstrates to the Director that the Arizona CBG or AZRBOB meets all applicable ~~standards and~~ fuel property limits ~~for fuel properties~~ and performance standards.

D. Notification requirement. A registered supplier shall notify the Director by ~~facsimile prior to the beginning of transport of~~ fax before transporting Arizona CBG or AZRBOB into the CBG-covered area by a means other than a pipeline.

E. Quality Assurance and Quality Control (QA/QC) Program. A registered supplier shall develop a QA/QC program to demonstrate the accuracy and effectiveness of the registered supplier's laboratory testing of Arizona CBG or AZRBOB. The registered supplier shall submit the QA/QC program ~~shall be submitted~~ to the Director for approval at least three months before ~~transport of~~ the registered supplier transports Arizona CBG or AZRBOB. The Director shall approve a QA/QC program only if the Director determines that the QA/QC program ensures that the registered supplier's laboratory testing procedures comply with R20-2-759 and the data generated by the registered supplier's laboratory are complete, accurate, and reproducible. If the registered supplier makes significant changes to the QA/QC program, the registered supplier shall resubmit the QA/QC program to the Director for review and approval. Within 30 days of receiving the changed QA/QC program, the Director shall determine whether the changed QA/QC program meets the original quality objectives. The Director shall approve the changed QA/QC program if it meets the quality objectives. Instead of developing a QA/QC program, a registered supplier may ~~opt to~~ comply with the independent testing requirements of subsection (F).

F. Independent testing.

1. A registered supplier of Arizona CBG or AZRBOB ~~who~~ that does not ~~comply with subsection (E)~~ develop a QA/QC program shall conduct a program of independent sample collection and ~~analyses~~ analysis for the Arizona CBG or AZRBOB produced or imported, that complies with one of the following:

a. Option 1. A registered supplier shall, for each batch of Arizona CBG or AZRBOB produced or imported, have an independent laboratory collect and analyze a representative sample from the batch using the methodology specified in R20-2-759 for compliance with each fuel property ~~or~~ and performance standard for which the Arizona CBG or AZRBOB is certified.

b. Option 2. A registered supplier shall have an independent testing program for all Arizona CBG or AZRBOB ~~produced~~ that the registered supplier produces or ~~imported~~ imports that consists of the following:

i. An independent laboratory shall collect a representative sample from each batch;

ii. The Director or designee shall identify up to 10% of the ~~total number of~~ samples collected under subsection (F)(1)(b)(i) for analysis; and

iii. The ~~designated~~ independent laboratory shall, for each sample identified by the Director or designee, analyze the sample using the methodology specified in R20-2-759 for compliance with each fuel property ~~or~~ and performance standard for which the ~~batch~~ Arizona CBG or AZRBOB is certified.

2. The Director or designee may request in writing a ~~portion~~ duplicate of the batch sample collected under subsection (F)(1)(a) or (F)(1)(b) for analysis by a laboratory selected by the Director or designee. The registered supplier shall submit a duplicate of the sample to the Director within 24 hours of the written request.

~~2.~~3. Designation of ~~Independent Laboratory~~ independent laboratory.

a. A registered supplier ~~who~~ that does not ~~comply with subsection (E)~~ develop a QA/QC program shall designate one independent laboratory for each production or import facility at which the registered supplier produces or imports Arizona CBG or AZRBOB ~~is produced or imported~~. The independent laboratory shall collect samples and perform analyses according to subsection (F).

b. A registered supplier shall identify the designated independent laboratory to the Director under the registration requirements of R20-2-750.

c. A laboratory is considered independent if:

i. The laboratory is not operated by a registered supplier or the registered supplier's subsidiary or employee;

ii. The laboratory does not have any interest in any registered supplier; and

iii. The registered supplier does not have any interest in the designated laboratory.

d. Notwithstanding the restrictions in ~~subsections~~ subsection ~~(F)(2)I(i) through (iii)~~ (F)(3)(c), the Director shall consider a laboratory independent if it is owned or operated by a ~~gasoline~~ pipeline ~~company~~ owned or operated by four or more ~~producers or importers~~ registered suppliers.

~~d.~~e. A registered supplier shall not use a laboratory that is debarred, suspended, or proposed for debarment according to the Government-wide Debarment and Suspension regulations, 40 CFR 32, or the Debarment, Suspension and Ineligibility provisions of the Federal Acquisition Regulations, 48 CFR ~~9(9.4)~~ 9.4.

~~3.~~ 4. A registered supplier shall ~~cause~~ ensure that its designated independent laboratory ~~to~~:

a. ~~Record~~ Records the following at the time the designated independent laboratory collects a representative sample from a batch of Arizona CBG or AZRBOB:

i. The producer's or importer's assigned batch number for the batch ~~being~~ sampled;

ii. The volume of the batch;~~-~~

iii. The identification number of the gasoline storage tank ~~or tanks~~ in which the batch is stored at the time the sample is collected;

iv. The date and time the batch became Arizona CBG or AZRBOB~~, and the date and time the sample is collected~~;

v. The date and time the sample is collected;

~~v.~~ vi. The grade of the batch (for example, unleaded premium, unleaded mid-grade, or unleaded); and

~~vi.~~ vii. For Arizona CBG or AZRBOB produced by computer-controlled in-line blending, the date and time the blending process began and the date and time the blending process ended, unless exempt under subsection (G);

b. ~~Retain~~ Retains each sample collected under this subsection for at least 45 days, ~~except~~ unless this time ~~may be~~ is extended by the Director for up to 180 days ~~upon request by the Director~~;

c. ~~Submit~~ Submits to the Director a quarterly report on the 15th day of January, April, July, and October of each year~~. The report shall include~~ that includes, for each sample of Arizona CBG or AZRBOB analyzed under subsection (F):

i. The results of the independent laboratory's analyses for each fuel property, and

ii. The information specified in subsection ~~(F)(3)(a)~~ (F)(4)(a) for each sample; and

d. ~~Supply~~ Supplies to the Director, upon request, a ~~portion~~ duplicate of the sample.

G. Exemptions to QA/QC and ~~Independent Laboratory Testing Requirements~~ independent laboratory testing requirements. A registered supplier ~~who~~ that produces or imports Arizona CBG or AZRBOB using computer-controlled in-line blending equipment and ~~is operating~~ operates under an exemption from EPA under 40 CFR 80.65(f)~~(4)~~ (iv), is exempt from the requirements of subsections (E) and (F), ~~provided that~~ if reports of the results of the independent audit program of the ~~refiner's~~ registered supplier's computer-controlled in-line blending operation, which are submitted to EPA under 40 CFR

80.65(f)~~(4)~~ (iv), are submitted to the Director by March 1 of each year.

H. Use of ~~Laboratory Analysis for Certification~~ laboratory analysis for certification of Arizona CBG and AZRBOB.

1. If both a registered supplier and an independent laboratory collect a sample from the same batch of Arizona CBG or AZRBOB and perform a laboratory analysis under subsection (F) to determine compliance of the sample with a fuel property, the registered supplier and independent laboratory shall use the same test methodology. ~~for the same batch for compliance with subsection (F), the~~ The results of the analysis conducted by the registered supplier shall be used for certification of the Arizona CBG or AZRBOB under subsection (B), unless the absolute value of the difference between the two ~~laboratory test~~ results is larger than one of the following:

	~~Fuel Property~~	~~Range~~
~~a.~~	~~Sulfur content~~	~~25 ppm by weight~~
~~b.~~	~~Aromatics~~	~~2.7% by volume~~
~~c.~~	~~Olefins~~	~~2.5% by volume~~
~~d.~~	~~Ethanol~~	~~0.4% by volume~~
~~e.~~	~~Methanol~~	~~0.2% by volume~~
~~f.~~	~~MTBE (and other methyl ethers)~~	~~0.6% by volume~~
~~g.~~	~~ETBE (and other ethyl ethers)~~	~~0.6% by volume~~
~~h.~~	~~TAME~~	~~0.6% by volume~~
~~i.~~	~~t-Butanol content~~	~~0.6% by volume~~
~~j.~~	~~RVP~~	~~0.3 psi~~
~~k.~~	~~50% distillation temperature~~	~~5° Fahrenheit~~
~~l.~~	~~90% distillation temperature~~	~~5° Fahrenheit~~
~~m.~~	~~E200~~	~~2.5% by volume~~
~~n.~~	~~E300~~	~~3.5% by volume~~
~~o.~~	~~API gravity~~	~~0.3° API~~

   a. Sulfur content: 25 ppm by weight;
   b. Aromatics: 2.7% by volume;
   c. Olefins: 2.5% by volume;
   d. Fuel ethanol: 0.4% by volume;
   e. RVP: 0.3 psi;
   f. 50% distillation temperature: ASTM reproducibility for that sample using the slope from the registered supplier's results;
   g. 90% distillation temperature: ASTM reproducibility for that sample using the slope from the registered supplier's results;
   h. E200: 2.5% by volume;
   i. E300: 3.5% by volume; or
   j. API gravity: 0.3° API.

2. If the absolute value of the ~~differences of~~ difference between the results of the analyses conducted by the registered supplier and independent laboratory is larger than one of the values specified in subsection (H)(1), the registered supplier shall use one of the following ~~laboratory testing results~~ for certification of the batch of Arizona CBG or AZRBOB under subsection (B):
   a. The larger of the two values for ~~the~~ each fuel property, except ~~that~~ the smaller of the two values shall be used for measures of oxygenates; or
   b. ~~The registered supplier shall have~~ Have ~~one additional~~ a second independent laboratory analyze the Arizona CBG or AZRBOB for ~~the~~ each fuel property. If the ~~laboratory~~ difference between the results obtained by the ~~additional~~ second independent laboratory and those obtained by the registered supplier ~~is~~ are within the range listed in ~~this~~ subsection (H)(1) ~~as compared to the results obtained by the registered supplier~~, the registered sup-

plier's ~~laboratory analysis~~ results shall be used for certifying the Arizona CBG or AZRBOB ~~certification~~ under subsection (B).

R20-2-753. General Requirements for Pipelines and Third-party Terminals

A. A pipeline or third-party terminal shall not accept Arizona CBG or AZRBOB for transport unless:
1. The Arizona CBG or AZRBOB is physically transferred from an importer, refiner, oxygenate blender, pipeline, or third-party terminal registered with the Department under R20-2-750; and
2. The registered supplier provides written verification that the gasoline is Arizona CBG or AZRBOB and complies with the standards in R20-2-751(A) or (B), as applicable, without reproducibility or numerical rounding.

B. A pipeline or third-party terminal that transports Arizona CBG or AZRBOB shall collect a sample of each incoming batch. The pipeline or third-party terminal shall retain the sample for at least 30 days~~, except~~ unless this time ~~may be~~ is extended for an individual ~~samples~~ sample for up to 180 days ~~upon request~~ by the Director.

C. A pipeline shall conduct quality control testing of Arizona CBG or AZRBOB at a frequency of ~~not less than~~ at least one sample from one batch completing shipment ~~per~~ for each registered supplier ~~per~~ each day at each input location.

D. A pipeline shall provide the Director with a report summarizing the ~~laboratory~~ quality control testing results ~~required in~~ obtained under subsection (C) within 10 days of the end of each month. The report shall contain the quantity of Arizona CBG or AZRBOB, date tendered, whether the Arizona CBG or AZRBOB was transported by pipeline, present sample location, and laboratory analysis results.

E. If ~~any~~ a batch does not meet the standards in R20-2-751(A) or (B), as applicable, but is within reproducibility, the pipeline shall notify the Director by ~~facsimile~~ fax within 48 hours ~~with~~ of the batch volume and date tendered, proposed shipment date, whether the batch was transported by the pipeline, present batch location, and laboratory analysis results.

F. If ~~any~~ a batch does not meet the standards in R20-2-751(A) or (B), as applicable, including reproducibility, the pipeline or third-party terminal shall notify the Director by ~~facsimile~~ fax within 24 hours ~~with~~ of the batch quantity and date tendered, proposed shipment date, whether the batch was transported by the pipeline, present batch location, and laboratory analysis results. If the batch is in the pipeline's or third-party terminal's control, the pipeline or third-party terminal shall ~~stop the~~ prevent release of the batch from a distribution point until the batch is certified as meeting the standards in R20-2-751(A) or (B), as applicable.

G. ~~The~~ A pipeline or third-party terminal shall develop a QA/QC program to demonstrate the accuracy and effectiveness of the pipeline's or third-party terminal's laboratory testing. The QA/QC program for a pipeline or third-party ~~terminals~~ terminal shall include a description of the laboratory testing protocol used to verify that Arizona CBG or AZRBOB transported to the CBG-covered area meets the standards in R20-2-751(A) or (B). ~~The~~ A pipeline or third-party terminal shall submit the QA/QC program to the Director for approval at least three months before ~~the first date~~ the pipeline or third-party terminal ~~transports~~ begins to transport Arizona CBG or AZRBOB. The Director shall approve a QA/QC program only if the Director determines that the QA/QC program ensures that the pipeline's or third-party terminal's laboratory testing produces data that are complete, accurate, and reproducible. If a pipeline or third-party terminal makes significant changes to the QA/QC program, the pipeline or third-party terminal shall resubmit the QA/QC program to the Director for review and approval. Within 30 days of receiving the changed QA/QC program, the Director shall determine whether the changed QA/QC program meets the quality objectives originally approved by the Department. The Director shall approve the changed QA/QC program if it meets the quality objectives.

H. A portion of a facility that a third-party terminal uses for production, import, or oxygenate blending is exempt from this Section, but the third-party terminal shall ~~be operated~~ operate the exempt portion of the facility in compliance with requirements for registered suppliers in R20-2-752 and oxygenate blenders in R20-2-755, as applicable.

I. A pipeline is not liable under R20-2-761 if it follows all of the procedures in this Section.

R20-2-755. Additional Requirements for AZRBOB and Downstream Oxygenate Blending

A. Application of Arizona CBG standards to AZRBOB.
1. Determining whether AZRBOB complies with Arizona CBG standards.
   a. If a registered supplier designates a final blend as AZRBOB and complies with the provisions of this Section, the fuel properties and performance standards of the ~~final blend~~ AZRBOB, for purposes of compliance with ~~Tables~~ Table ~~1 or~~ 2, are determined by adding the specified ~~type and~~ amount of ~~oxygenate~~ fuel ethanol to a representative sample of the AZRBOB and ~~determining the fuel properties and performance standards of~~ testing the resulting gasoline ~~according to~~ using the test methods in R20-2-759 or certifying the ARZBOB using the CARBOB model. If the registered supplier designates a range of amounts of ~~oxygenate or more than one oxygenate type~~ fuel ethanol to be added to the AZRBOB, the minimum designated amount of ~~the oxygenate having the smallest designated volume~~ fuel ethanol shall be added to the AZRBOB to determine the fuel properties and performance standards of the ~~final blend~~ resulting Arizona CBG. If a registered supplier does not comply with this subsection, the Department shall determine whether ~~compliance of~~ the ~~final blend~~ AZRBOB complies with applicable fuel ~~property~~ properties and performance standards, excluding requirements for RVP, ~~shall be determined~~ without adding ~~oxygenate~~ fuel ethanol to the AZRBOB.
   b. In determining whether AZRBOB complies with the Arizona CBG standards, the registered supplier shall ensure

that the fuel ethanol ~~oxygenate~~ added ~~shall be~~ to the representative sample under subsection (A)(1)(a) is representative of the ~~oxygenate~~ fuel ethanol the registered supplier reasonably expects will be subsequently added to the ~~final blend~~ AZRBOB.

2. Calculating the volume of ~~a final blend of~~ AZRBOB. If a registered supplier designates a final blend as AZRBOB and complies with this Section, the volume of ~~a final blend~~ AZRBOB is calculated for compliance purposes under R20-2-751 by adding the minimum ~~designated~~ amount of ~~the oxygenate having the smallest volume~~ fuel ethanol designated by the registered supplier. If a registered supplier fails to comply with this subsection, the Department shall calculate the volume of ~~the final blend~~ AZRBOB for purposes of compliance with applicable fuel ~~property~~ properties and performance standards ~~shall be calculated~~ without adding the amount of ~~oxygenate~~ fuel ethanol to the AZRBOB.

B. Restrictions on transferring AZRBOB.

1. A person shall not transfer ownership or custody of AZRBOB to any other person unless the transferee notifies the transferor in writing that:
   a. The transferee is a registered oxygenate blender and will add ~~oxygenate of~~ fuel ethanol in the ~~types and~~ amount (or within the range of amounts) designated in R20-2-757 before the AZRBOB is transferred from a final distribution facility, or
   b. The transferee will take all reasonably prudent steps necessary to ensure that the AZRBOB is transferred to a registered ~~oxygen~~ oxygenate blender ~~who~~ that adds the ~~type and~~ amount (or within the range of amounts) of ~~oxygenate~~ fuel ethanol designated in R20-2-757 to the AZRBOB before the AZRBOB is transferred from a final distribution facility.
2. A person shall not sell or supply ~~AZRBOB~~ Arizona CBG from a final distribution facility if the ~~type and~~ amount or range of amounts of ~~oxygenate~~ fuel ethanol designated in R20-2-757 ~~have~~ has not been added to the AZRBOB.

C. Restrictions on blending AZRBOB with other products. A person shall not combine ~~any~~ AZRBOB supplied from the facility at which ~~it~~ the AZRBOB is produced or imported with any other AZRBOB, gasoline, blendstock, or oxygenate, except for:

1. ~~Oxygenate of~~ Fuel ethanol in the ~~type and~~ amount (or within the range of amounts) specified by the registered supplier at the time the AZRBOB is supplied from the production or import facility, or
2. Other AZRBOB for which the same ~~oxygenate type and~~ fuel ethanol amount (or range of amounts) is specified by the registered supplier at the time the AZRBOB is supplied from the production or import facility.

D. Quality ~~Assurance Sampling~~ assurance sampling and ~~Testing~~ testing requirements for a registered supplier supplying AZRBOB from a production or import facility. A registered supplier supplying AZRBOB from a production or import facility shall use an independent third-party quality assurance sampling and testing program as described in subsection (E) or conduct a quality assurance sampling and testing program that meets the requirements of 40 CFR 80.69(a)(7), as it existed on July 1, 1996, except for the changes listed in subsections (D)(1) through (D)(3). 40 CFR 80.69(a)(7), July 1, 1996, is incorporated by reference and on file with the Department. A copy may be obtained at the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328. The material incorporated includes no future editions or amendments.~~:~~

1. 40 CFR 80.69(a)(7). The word "RBOB" is changed to read "AZRBOB";
2. 40 CFR 80.69(a)(7). "...using the methodology specified in § 80.46..." is changed to read "...using the methodology specified in R20-2-759...~~;~~" ~~;~~ and
3. 40 CFR 80.69(a)(7)(ii). "(within the correlation ranges specified in § 80.65(e)(2)(i)]" is changed to read "(within the ranges of the applicable test methods)." ~~. 40 CFR 80.69(a)(7), as it existed on July 1, 1996, is incorporated by reference and on file with the Department and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments. A copy may be obtained at: U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328.~~

E. General requirements for an independent third-party quality assurance sampling and testing program. A registered supplier may contract with an independent third party that conducts a quality assurance sampling and testing program for one or more registered suppliers. The registered supplier shall ensure that the quality assurance sampling and testing program:

1. Is designed and conducted by a third party that is independent of the registered supplier. To be considered independent:
   a. The third party shall not be an employee of a registered supplier,
   b. The third party shall not have an obligation to or interest in any registered supplier, and
   c. The registered supplier shall not have an obligation to or interest in the third party;
2. Is conducted from November 1 through January 31 on all samples collected under the program design previously approved by the Director under subsection (G);
3. Involves sampling and testing that is representative of all Arizona CBG dispensed in the CBG-covered area;
4. Analyzes each sample for oxygenate according to the methodologies specified in R20-2-759;
5. Bases results on an analysis of each sample collected during the sampling period unless a specific sample does not comply with the applicable per gallon maximum or minimum standards for the fuel property being evaluated in addition to any reproducibility applicable to the fuel property;

6. Participates in a correlation program with the Director to ensure the validity of analysis results;
7. Does not provide advance notice, except as provided in subsection (F), of the date or location of any sampling;
8. Provides a duplicate of any sample, with information regarding where and the date on which the sample was collected, upon request of the Director, within 30 days after submitting the report required under subsection (E)(10);
9. Permits a Department official to monitor sample collection, transportation, storage, and analysis at any time; and
10. Prepares and submits a report to the Director within 30 days after the sampling is completed that includes the following information:
    a. Name of the person collecting the samples;
    b. Attestation by an officer of the third party that the sampling and testing was done according to the program plan approved by the Director under subsection (G) and the results are accurate;
    c. Identification of the registered supplier for whom the sampling and testing program was conducted if the sampling and testing program was conducted for only one registered supplier;
    d. Identification of the area from which the samples were collected;
    e. Address of each motor fuel dispensing site from which a sample was collected;
    f. Dates on which the samples were collected;
    g. Results of the analysis of the samples for oxygenate type and oxygen weight percent, aromatic hydrocarbon, and olefin content, E200, E300, and RVP, and the calculated VOC or NOx emissions reduction percentage, as applicable;
    h. Name and address of each laboratory at which the samples were analyzed;
    i. Description of the method used to select the motor fuel dispensing sites from which a sample was collected;
    j. Number of samples collected at each motor fuel dispensing site; and
    k. Justification for excluding a collected sample if one was excluded.

F. An independent third party that contracts with one or more registered suppliers to conduct a quality assurance sampling and testing program shall begin the sampling on the date selected by the Director. The Director shall inform the third party of the date selected at least 10 business days before sampling is to begin.

G. To obtain the Director's approval of an independent third-party quality assurance sampling and testing program plan, the person seeking the approval shall:
1. Submit the plan to the Director no later than January 1 to cover the sampling and testing period from November 1 through January 31 of each year, and
2. Have the plan signed by an officer of the third party that will conduct the sampling and testing program.

H. No later than September 1 of each year, a registered supplier that intends to meet the requirements in subsection (D) by contracting with an independent third party to conduct quality assurance sampling and testing from November 1 through January 31 shall enter into the contract and pay all of the money necessary to conduct the sampling and testing program. The registered supplier may pay the money necessary to conduct the sampling and testing program to the third party or to an escrow account with instructions to the escrow agent to release the money to the third party as the testing program is implemented. No later than September 15, the registered supplier shall submit to the Director a copy of the contract with the third party, proof that the money necessary to conduct the sampling and testing program has been paid, and, if applicable, a copy of the escrow agreement.

~~**E.**~~ **I.** Requirements for oxygenate blenders.
1. Requirement to add ~~oxygenate~~ fuel ethanol to AZRBOB. If an oxygenate blender receives AZRBOB from a transferor to whom the oxygenate blender ~~has represented~~ represents that ~~oxygenate~~ fuel ethanol will be added to the AZRBOB, the oxygenate blender shall add fuel ethanol to the AZRBOB ~~oxygenate of~~ in the ~~types and~~ amount (or within the range of amounts) identified in the documentation accompanying the AZRBOB.
2. Additional requirements for oxygenate blending at terminals. An oxygenate blender ~~who~~ that makes ~~a final blend of~~ Arizona CBG by blending ~~an oxygenate~~ fuel ethanol with ~~any~~ AZRBOB in a motor fuel storage tank, other than a truck used ~~for delivering~~ to deliver motor fuel to ~~retail outlets or bulk purchaser-consumer facilities~~ a retail outlet or bulk-purchaser consumer facility, shall determine the oxygen content and volume of the Arizona CBG before shipping, by collecting and analyzing a representative sample of the Arizona CBG, using the methodology in R20-2-759.
3. Additional requirements for oxygenate blending in trucks. An oxygenate blender ~~who~~ that blends AZRBOB in a motor fuel delivery truck shall conduct quality assurance sampling and testing that meets the requirements in 40 CFR 80.69(e)(2), as it existed on July 1, 1996, except~~:~~ for the changes listed in subsections (I)(3)(a) through (I)(3)(c). 40 CFR 80.69(e)(2), July 1, 1996, is incorporated by reference and on file with the Department. A copy may be obtained at the U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328. The material incorporated includes no future editions or amendments.
    a. 40 CFR 80.69(e)(2). The word "RBOB" is changed to read "AZRBOB~~";~~ ;"
    b. 40 CFR 80.69(e)(2)(iv). "... using the testing methodology specified at § 80.46 ..." is changed to read "... using the testing methodology specified in R20-2-759..."~~;~~ ;" and
    c. 40 CFR 80.69(e)(2)(v). "(within the ranges specified in § 80.70(b)(2)(I)~~,~~)" is changed to read "(within the ranges of the applicable test methods)~~".~~ ." ~~40 CFR 80.69(e)(2), as it existed on July 1, 1996, is incorporated by reference~~

~~and on file with the Department and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments. A copy may be obtained at: U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328.~~

4. Additional requirements for in-line oxygenate blending in pipelines using computer-controlled blending.
   a. An oxygenate blender ~~who~~ that produces Arizona CBG by blending ~~oxygenate~~ fuel ethanol with AZRBOB into a pipeline using computer-controlled in-line blending shall, for each batch of Arizona CBG produced:
      i. Obtain a flow proportional composite sample after the addition of ~~oxygenate~~ fuel ethanol and before combining the resulting Arizona CBG with any other Arizona CBG;
      ii. Determine the oxygen content of the Arizona CBG by analyzing the composite sample within 24 hours of blending using the methodology in R20-2-759; and
      iii. Determine the volume of the resulting Arizona CBG.
   b. If the test results for the Arizona CBG indicate that it does not contain the ~~specified type and~~ amount of ~~oxygenate~~ fuel ethanol specified by ~~within~~ the ranges of the applicable test methods, the oxygenate blender shall:
      i. Notify the pipeline to downgrade the Arizona CBG to conventional gasoline or transmix upon arrival in Arizona;
      ii. Begin an investigation to determine the cause of the noncompliance;
      iii. Collect ~~spot samples~~ a representative sample every two hours during each in-line blend of AZRBOB and ~~oxygenate~~ fuel ethanol, and analyze the samples ~~with~~ within 12 hours of collection, until the cause of the noncompliance is determined and corrected; and
      iv. Notify the Director in writing within one business day that the Arizona CBG does not comply with the requirements of this Article.
   c. The oxygenate blender shall comply with ~~this~~ subsection (I)(4)(b)(iii) until the Director ~~approves~~ determines that the corrective action ~~taken under subsection (iii)~~ has remedied the noncompliance.
5. Recordkeeping and ~~Records Retention~~ records retention.
   a. An oxygenate blender shall maintain, for five years from the date of each sampling, records of the following:
      i. Sample date,
      ii. Identity of blend or product sampled,
      iii. Container or other vessel sampled,
      iv. ~~The~~ Volume of final blend or shipment ~~volume~~, ~~and~~
      v. ~~The oxygen~~ Oxygen content as determined under R20-2-759~~.~~, and
      vi. Results from all testing.
   b. The Director shall deem that Arizona CBG blended by an oxygenate blender ~~that is~~ and not tested and documented as required by this Section ~~shall be deemed to have~~ has an oxygen content ~~exceeding~~ that exceeds the standards specified in R20-2-751~~,~~ or ~~exceeding~~ exceeds the comparable PM averaging limits, if applicable, unless the oxygenate blender demonstrates to the Director that the Arizona CBG meets the standards in R20-2-751.
   c. Within 20 days of the Director's written request, an oxygenate blender shall provide any records maintained by the oxygenate blender under ~~R20-2-755~~ this Section. If ~~an~~ the oxygenate blender fails to provide records requested for a blend or shipment of Arizona CBG ~~under this Section~~, the Director shall deem that the ~~final~~ blend or shipment of Arizona CBG ~~shall be deemed in violation of~~ violates R20-2-751~~,~~ or ~~deemed to exceed~~ exceeds the comparable PM averaging limits, if applicable, unless the oxygenate blender demonstrates to the Director that the Arizona CBG meets the standards and limits under R20-2-751.
6. Notification requirement. An oxygenate blender shall notify the Director by ~~facsimile prior to the beginning of transport of~~ fax before transporting Arizona CBG or AZRBOB into the CBG-covered area by a means other than a pipeline.
7. Quality ~~Assurance~~ assurance and ~~Quality Control~~ quality control (QA/QC) ~~Program~~ program. An oxygenate blender ~~conducting laboratory~~ that conducts sampling and ~~analysis~~ testing under subsection ~~(E)~~ (I) in the oxygenate blender's own laboratory shall develop a QA/QC program to demonstrate the accuracy and effectiveness of the oxygenate blender's ~~laboratory~~ sampling and testing of Arizona CBG or AZRBOB. The oxygenate blender shall submit the QA/QC program to the Director for approval at least three months before ~~transport of~~ transporting Arizona CBG. The Director shall approve a QA/QC program only if the Director determines that the QA/QC program ensures that the oxygenate blender's sampling and testing produces data that are complete, accurate, and reproducible. Instead of developing a QA/QC program, an oxygenate blender may ~~opt to~~ comply with the independent testing requirements of R20-2-752(F), except that, for sampling and ~~analysis~~ testing conducted under subsection ~~(E)(3)~~ (I)(3), the minimum number of samples collected and ~~analyzed~~ tested by the independent laboratory shall be 10% of the number of samples required to be ~~analyzed~~ collected and tested under subsection ~~(E)(3)~~ (I).
8. An oxygenate blender that does not ~~conducting~~ conduct laboratory sampling and ~~analysis~~ testing required under subsection ~~(E)~~ (I) in its own laboratory shall designate an independent laboratory, as ~~required~~ described in R20-2-752(F), to conduct ~~all of~~ the ~~laboratory~~ sampling and ~~analysis~~ testing required under subsection ~~(E)~~ (I)(7).

9. Within 24 hours of the ~~Director~~ Director's or designee's written request, an oxygenate blender shall submit a ~~portion~~ duplicate of any sample collected under subsection ~~(E)(7) or (8)~~ (I)(7).

J. Subsection (A)(1)(a) will not become effective until Arizona's revised State Implementation Plan regarding CARB 3 is approved by EPA.

R20-2-757. Product Transfer Documentation; Records Retention

A. If a person transfers custody or title to ~~any~~ Arizona CBG or AZRBOB, other than when Arizona CBG is sold or dispensed at a ~~service station~~ motor fuel dispensing site or fleet vehicle fueling facility, the transferor shall provide to the transferee documents that include the following:

1. ~~The name~~ Name and address of the transferor;
2. ~~The name~~ Name and address of the transferee;
3. ~~The volume~~ Volume of Arizona CBG or AZRBOB being transferred;
4. ~~The location~~ Location of the Arizona CBG or AZRBOB at the time of ~~the~~ transfer;
5. ~~The date~~ Date of the transfer;
6. Product transfer document number;
7. Identification of the gasoline as Arizona CBG or AZRBOB;
8. ~~The minimum~~ Minimum octane rating of the Arizona CBG or ARZBOB;
9. ~~The applicable Federal Complex Model VOC and NOx reduction percentage standards contained in R20-2-751(A) to which the Arizona CBG or AZRBOB conforms;~~
10. For oxygenated Arizona CBG designated for sale for use in motor vehicles from November 1 through ~~March~~ January 31, the ~~type and~~ minimum quantity of ~~oxygenate~~ fuel ethanol contained in the Arizona CBG; and
11. 10.~~In the case of~~ If the product transferred is AZRBOB for which ~~oxygenate~~ fuel ethanol blending is intended:
    a. Identification of the fuel as AZRBOB~~,~~ and a statement that the "AZRBOB does not comply with the standards for Arizona CBG without the addition of ~~oxygenate";~~ fuel ethanol;"
    b. ~~The designation~~ Designation of the AZRBOB as suitable for blending with fuel ethanol~~:~~
        ~~i. Any oxygenate;~~
        ~~ii. Ether only; or~~
        ~~iii. A specified oxygenate type or types and amount or amounts~~;
    c. ~~The oxygenate type or types and~~ Fuel ethanol amount or range of amounts that the AZRBOB requires to meet the fuel properties or performance standards claimed by the registered supplier of the AZRBOB, and the applicable specifications for volume percent ~~oxygenate~~ fuel ethanol and weight percent oxygen content ~~specifications~~; and
    d. Instructions to the transferee that the AZRBOB may not be combined with any other AZRBOB unless ~~it~~ the other AZRBOB has the same requirements for ~~oxygenate type or types and~~ fuel ethanol amount or range of amounts.

B. A registered supplier, third-party terminal, or pipeline may comply with subsection (A) by using standardized product codes on pipeline tickets if the codes are specified in a manual distributed by the pipeline to transferees of the Arizona CBG or AZRBOB, and the manual ~~sets forth~~ includes all required information for the Arizona CBG or AZRBOB.

C. Any transferee in subsection (A), other than a registered supplier, oxygenate blender, third-party terminal, pipeline, ~~service station~~ motor fuel dispensing site ~~operator~~, or fleet ~~owner~~ vehicle fueling facility shall retain product transfer documents for each shipment of Arizona CBG or AZRBOB transferred during the 24~~-month period~~ months ~~preceding~~ before the most recent transfer ~~or delivery~~. The transferee shall maintain product transfer ~~or delivery~~ documents for the 30~~-day period~~ days ~~preceding~~ before the most recent transfer ~~or delivery~~ at the business address listed on the product transfer document. The transferee may ~~retain~~ maintain all remaining product transfer ~~or delivery~~ documents for the preceding 24 months elsewhere ~~but shall make them available to the Director within two working days from the time of request by the Director or designee~~.

D. A ~~service station operator~~ motor fuel dispensing site or fleet ~~owner~~ vehicle fueling facility shall retain product transfer documents for each shipment of Arizona CBG ~~delivered~~ transferred during the 12 months ~~preceding that shipment~~ before the most recent transfer. ~~The documentation~~ The motor fuel dispensing site or fleet vehicle fueling facility shall maintain product transfer documents for the three most recent ~~deliveries~~ transfers ~~shall be maintained~~ on the ~~service station or fleet owners'~~ premises. ~~A service station operator or fleet owner~~ The motor fuel dispensing site or fleet vehicle fueling facility may maintain ~~documentation~~ the remaining product transfer documents ~~for the remainder of all deliveries~~ for the ~~12-month period~~ preceding 12 months elsewhere ~~but shall make it available to the Director within two working days from the time of request by the Director~~.

E. A registered supplier, oxygenate blender, third-party terminal, or pipeline shall retain product transfer documents for each shipment of Arizona CBG or AZRBOB transferred during the ~~60-month period preceding~~ 60 months before the most recent transfer ~~or delivery~~. ~~Transfer or delivery~~ The transferee shall maintain product transfer documents ~~made during the 30-day period~~ for each shipment of Arizona CBG or AZRBOB transferred during the 30 days preceding the most recent transfer ~~or delivery shall be maintained~~ at the business address listed on the product transfer document. ~~Documents~~ The transferee may maintain all remaining product transfer documents ~~for the remainder of all transfers or deliveries~~ for the preceding 60 months elsewhere ~~shall be available within two working days from the time of request by the Director or designee~~.

F. When a person transfers custody or title of fuel ethanol that is intended for use as a blend component in AZRBOB or Arizona CBG, the person shall provide the transferee a document that prominently states that the fuel ethanol complies with the standards for fuel ethanol intended for use as a blend component in AZRBOB or Arizona CBG.

~~F.~~G. Upon request by the Director or designee, a person shall present product transfer documents to the Department within two working days of the request. Legible photocopies ~~shall be~~ of the product transfer documents are acceptable.

R20-2-758. ~~Adoption of Fuel Certification Models~~ Repealed

~~The following documents are incorporated by reference and on file with the Department and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.~~

1. ~~The California Predictive Model (PM), California Air Resources Board's "California Procedures for Evaluating Alternative Specification for Phase 2 Reformulated Gasoline Using the California Predictive Model," as adopted April 20, 1995 (Predictive Model Procedures). A copy may be obtained at: California Air Resources Board, P.O. Box 2815, Sacramento, CA 95812.~~
2. ~~The Federal Complex Model as contained in 40 CFR 80.45, January 1, 1999. A copy may be obtained at: U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328.~~

R20-2-759. Testing Methodologies

A. ~~Except as provided in subsections (C) and (D), a person certifying Arizona CBG or AZRBOB as meeting standards under Table 1 shall test the fuel with the methods under 13 California Code of Regulations, Section 2263, incorporated by reference as of January 1, 1997 and on file with the Department and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments. A copy may be obtained at: California Air Resources Board, P.O. Box 2815, Sacramento, CA 95812.~~ Except as provided in subsection (C), a registered supplier or importer certifying Arizona CBG or AZRBOB as meeting the requirements of this Article shall use one of the methods listed in Table A. A copy of the EPA- or CARB-approved ASTM methods may be obtained at: American Society for Testing and Materials, 100 Bar Harbor Drive, West Conshohocken, PA 19428-2959. A copy of the CARB methods may be obtained at: California Air Resources Board, P.O. Box 2815, Sacramento, CA 95812.

B. ~~Except as provided in subsection I, a person certifying Arizona CBG or AZRBOB as meeting standards under Table 2 shall test the fuel with methods under 13 California Code of Regulations, Section 2263, as incorporated by reference in subsection (A).~~ An oxygenate blender or third-party terminal certifying Arizona CBG or AZRBOB before transport to the CBG-covered area shall measure fuel ethanol in accordance with the oxygenate blender's or third-party terminal's approved QA/QC program or in accordance with one of the methods listed in Table A.

C. ~~A registered supplier, oxygenate blender, or third-party terminal certifying Arizona CBG or AZRBOB before transport to the CBG-covered area shall measure oxygenate using ASTM D4815-94a procedures and RVP using ASTM D4814-99 standards. For Arizona CBG located in the CBG covered area, oxygenate shall be measured using ASTM D4815-94a, and RVP shall be measured using ASTM D5191-99. ASTM D4814-99, ASTM D4815-94a and ASTM D5191-99 are incorporated by reference and on file with the Department and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments. Copies may be obtained at American Society for Testing and Materials, 100 Bar Harbor Drive, West Conshohocken, PA 19428-2959.~~ Rather than using a method listed in Table A to certify Arizona CBG or AZRBOB, a registered supplier may use the CARBOB Model and use the fuel-quality measures calculated using the CARBOB Model for compliance and reporting purposes.

D. ~~Except as required in subsection I, a registered supplier of Arizona CBG or AZRBOB may certify Type 1 Arizona CBG produced or imported at any facility using the federal test methods contained in 40 CFR 80.46 (a) through (g), incorporated by reference as of July 1, 1996, provided these are the only test methods used by that registered supplier to certify Arizona CBG or AZRBOB at that facility. 40 CFR 80.46(a) through (g) is on file with the Department and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments. A copy may be obtained at: U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328.~~ A test method that the Department determines is equivalent to those listed in Table A may be used to certify Arizona CBG or AZRBOB. The Department has determined that test methods approved by either the EPA or CARB are equivalent test methods. To determine whether a proposed test method is equivalent to those listed in Table A, the Department shall thoroughly review data from both the proposed and designated test methods and assess whether the accuracy and precision of the proposed method is equal to or better than the accuracy and precision of the designated method and whether there is significant bias between the two methods. The Department shall approve a proposed test method only if the

Department determines that the accuracy and precision of the proposed test method is equal to or better than the accuracy and precision of the designated method. A correlation equation may be required to align the two methods. If a correlation equation is required to align the two methods, the correlation equation becomes part of the equivalent method.

E. Subsections (C) and (D) will not become effective until Arizona's revised State Implementation Plan regarding CARB 3 is approved by EPA.

Table A. Arizona Department of Weights and Measures Test Methods for Arizona CBG and AZRBOB

Fuel Parameter	Units		EPA-approved Test Method	EPA-approved Reproducibility		CARB-approved Test Method	CARB-approved Reproducibility
Aromatics	V%		D 5769-98				
	V%		D 1319-02a[A]	1.65		D 5580-00	1.4
Benzene	V%		D 3606-99	0.21		D 5580-00	0.1409 (X) $^{1.133}$
Olefins	V%		D 1319-02a	0.32 (x)$^{0.5}$		D 6550-00	0.32 (X) $^{0.5;\ \text{Footnote 1}}$
Oxygenates	W%		D 5599-00	See test method		D 4815-99	See test method
	W%		D 4815-99[B]	See test method			
Vapor Pressure (Correlation Equation) Footnote 2	psi		D 5191-01	0.3		13 CCR Section 2297	0.21
Sulfur	wppm		D 2622-98			D 5453-93	0.2217 (x)$^{0.92}$ wppm
						D 2622-94 (modified)	10-30 wppm R=0.405 (x) > 30 wppm R =0.192 (x)
Distillation T50	deg F		D 86-01	See test method		D 86-99ae1	See test method
Distillation T90	deg F		D 86-01	See test method		D 86-99ae1	See test method

[A] A refinery or importer may determine aromatics content using ASTM D 1319-02a if the result is correlated to ASTM D 5769-98.

[B] A refinery or importer may determine oxygenate content using ASTM D 4815-99 if the result is correlated to ASTM D 5599-00.

Footnotes:

1. Replace the last sentence in ASTM D 6550-00 Section 1.1 with the following: "The application range is from 0.3 to 25 mass percent total olefin, as defined in Section 2263(b), Title 13, California Code of Regulations. If olefin concentrations are not detected, substitute one-half of the detection limit."

2. When determining RVP, the only correlation equation to be used is the CARB (RVP= (0.972 X Ptot) – 0.715).

R20-2-760. Compliance Surveys

A. A registered supplier ~~who~~ that elects to certify that Arizona CBG or AZRBOB meets ~~any~~ an averaging standard under R20-2-751 shall ~~conduct~~ ensure that compliance surveys are conducted in accordance with a compliance survey program plan approved by the Director. The Director shall approve a compliance survey program plan if it:

1. Consists of at least four VOC and NOx surveys ~~during the period~~ conducted at least one per month between May 1 through September 15 of each year; and
2. Complies with subsection ~~I~~ (J).

B. If a registered supplier fails to ~~conduct~~ ensure that an approved compliance survey program is conducted, the Director shall issue an order requiring ~~compliance~~ the registered supplier to comply with all applicable fuel property and performance standards on a per-gallon basis for ~~at least~~ six months~~, extending~~ or through the end of the survey period identified in subsection (A)(1)~~, and ending after the six-month period~~ whichever is longer. ~~The requirement for~~ Regardless of when a failure to survey occurs, the Director's order shall require compliance with per-gallon standards ~~applies~~ from the beginning of the survey period during which the failure to survey occurs~~, regardless of when the failure to survey occurs during that period~~.

C. General compliance survey requirements. A registered supplier shall ensure that a compliance survey conforms to the following:

1. ~~A survey shall consist~~ Consists of all samples that are collected under ~~the applicable~~ an approved survey ~~design~~ program plan during any consecutive ~~seven-day period~~ seven days and that are not excluded under subsection ~~F~~ (C)(4)~~.~~ ;
2. ~~A survey shall be~~ Is representative of all Arizona CBG being dispensed in the CBG-covered area as provided in subsection ~~(F).~~ (G);
3. ~~Each~~ Analyzes each sample included in ~~a~~ the compliance survey ~~shall be analyzed~~ for oxygenate type and content, olefins, sulfur, aromatic hydrocarbons, E200, E300, and RVP according to the ~~methodologies specified~~ test methods in R20-2-759. RVP ~~shall be~~ is required to be analyzed ~~during the time period of~~ only from May 1 through September 15~~.~~ ;
4. ~~The~~ Bases the results of ~~each~~ the compliance survey ~~shall be based~~ upon ~~the results of the~~ an analysis of each sample collected during the course of the compliance survey, unless a sample does not comply with the applicable per gallon maximum or minimum ~~standards for the~~ fuel property standard being evaluated in addition to any reproducibility that applies to the fuel property standard~~.~~ ; and
5. ~~A survey sample that does not comply with R20-2-751, or that constitutes evidence of noncompliance with a standard or requirement under this Article, may be used by the Director in an enforcement action.~~
6. ~~Each~~ If a laboratory ~~that~~ analyzes the compliance survey samples~~,~~ ~~shall participate~~ the laboratory participates in a correlation program with the Director to ensure the validity of analysis results.

D. If the Director determines that a sample used in a compliance survey does not comply with R20-2-751 or another requirement under this Article, the Director shall take enforcement action against the registered supplier.

~~D.~~ E. ~~The results of each~~ A registered supplier shall comply with the following VOC and NOx compliance survey ~~shall be determined as follows~~ requirements:

1. For each compliance survey sample ~~from the survey~~, determine the VOC and NOx emissions reduction percentage ~~is determined~~ based upon the tested fuel properties for that sample using the ~~applicable~~ methodology for calculating VOC and NOx emissions reductions at 40 CFR 80.45, as incorporated by reference in ~~R20-2-758~~ R20-2-702;
2. The CBG-covered area fails ~~the~~ a VOC compliance survey if the VOC emissions reduction percentage average of all samples collected during ~~that~~ the compliance survey is less than the per-gallon standard for VOC emissions reduction percentage in Table 1, column A.
3. The CBG-covered area fails ~~the~~ a NOx compliance survey if the NOx emissions reduction percentage average of all samples collected during ~~that~~ the compliance survey is less than the per-gallon standard for NOx emissions reduction percentage in Table 1, column A.

~~E.~~ F. ~~The~~ A registered supplier shall determine the result ~~results~~ of ~~each~~ the series of NOx ~~survey series~~ compliance surveys conducted between May 1 and September 15 ~~shall be determined~~ as follows:

1. For each compliance survey sample ~~from a survey series~~, the NOx emissions reduction percentage is determined based upon the tested fuel properties for that sample using the ~~applicable~~ methodology for calculating NOx emissions reduction ~~under~~ at 40 CFR 80.45~~,~~ as incorporated by reference in ~~R20-2-758~~ R20-2-702; and
2. The CBG-covered area fails the NOx ~~survey series~~ series of compliance surveys conducted between May 1 and September 15 if the NOx emissions reduction percentage average for all compliance survey samples collected during that ~~survey series~~ time is less than the Federal Complex Model per-gallon standard for the NOx emissions reduction percentage in Table 1, column A.

~~F.~~ G. ~~Each survey program shall~~ General requirements for an independent surveyor conducting a compliance survey. A registered supplier may have the compliance surveys required by this Section conducted by an independent surveyor. The Director shall approve a compliance survey program conducted by an independent surveyor if the compliance survey program:

1. ~~Be~~ Is designed and conducted by a ~~person~~ surveyor that is independent of the registered supplier ~~(the surveyor)~~. To be considered independent:
   a. The surveyor shall not be an employee of any registered supplier~~;~~ ,
   b. The surveyor shall not have ~~any~~ an obligation to or interest in any registered supplier~~;~~ , and
   c. The registered supplier shall not have ~~any~~ an obligation to or interest in the surveyor~~.~~ ;
2. ~~Be designed to include~~ Includes enough samples to ensure that the average levels of oxygen, RVP, aromatic hydrocarbons, olefins, T50, T90, and sulfur are determined with a 95% confidence level, with error of less than 0.1 psi for RVP, 0.1% for oxygen (by weight), 0.5% for aromatic hydrocarbons (by volume), 0.5% for olefins (by volume), 5°F.

for T50 and T90, and 10 ~~ppm~~ wppm for sulfur;

3. ~~Require~~ Requires that the surveyor~~: a. Except as provided in subsection (G),~~ not ~~inform anyone, in~~ provide advance notice, except as provided in subsection (H), of the date or location of any survey sampling;

~~b.~~4. ~~Upon~~ Requires that the surveyor ~~request of the Director,~~ provide a duplicate of any sample taken during the survey, with information regarding the name and address of the facility from and the date on which the sample was taken, upon request of the Director, within 30 days following submission of the survey report required under subsection (G)(6)~~:~~;

~~i. To a location specified by the Director;~~

~~ii. Identified by the name and address of the facility where the sample was collected; and~~

~~iii. Showing the date of collection.~~

~~c.~~5. ~~Permit~~ Requires that the surveyor permit a Department official ~~at any time~~ to monitor ~~the conduct of the survey, including~~ sample collection, transportation, storage, and analysis at any time~~.~~ ;

~~4.~~ 6. ~~Require~~ Requires the surveyor to submit a report of each survey to the Director~~,~~ within 30 days ~~following completion of the survey, to the Director. The report shall include~~ after sampling for the survey is completed that includes the following information:

a. ~~The name~~ Name of the person conducting the survey;

b. ~~An attestation~~ Attestation by an officer of the ~~surveying company~~ surveyor that the ~~survey~~ sampling and testing was conducted according to the compliance survey program plan and the ~~survey~~ results are accurate;

c. ~~If~~ Identification of the registered supplier for whom the compliance survey was conducted if the compliance survey was conducted for only one registered supplier~~, the identification of that supplier~~;

d. ~~The identification~~ Identification of the area from which ~~gasoline~~ survey samples were selected;

e. ~~The dates~~ Dates on which the survey was conducted;

f. ~~The address~~ Address of each facility at which a ~~gasoline~~ sample was collected, and the date of collection;

g. ~~The results~~ Results of the ~~analyses~~ analysis of samples for oxygenate type and oxygen weight percent, aromatic hydrocarbon, and olefin content, E200, E300, and RVP, and the calculated VOC or NOx emissions reduction percentage, as applicable, for each survey conducted during the period identified in subsection (A)(1);

h. ~~The name~~ Name and address of each laboratory ~~where~~ ~~gasoline~~ at which samples were analyzed;

i. ~~A description~~ Description of the ~~methodology~~ method used to select the ~~locations for~~ facilities from which a sample ~~collection~~ was collected ~~and the numbers of samples collected~~;

j. Number of samples collected from each facility;

~~j.~~k. ~~For~~ Justification for excluding a collected sample ~~any samples that were excluded~~ from the survey, ~~a justification for the exclusion~~ if one was excluded; and

~~k.~~l. ~~The average~~ Average VOC and NOx emissions reduction percentage.

~~G.~~**H.** ~~Each survey shall be commenced~~ An independent surveyor shall begin each survey on a date selected by the Director. The Director shall notify the surveyor of the date selected at least 10 business days before the ~~beginning date of the~~ survey is to begin.

~~H.~~**I.** ~~The procedure for seeking Director~~ To obtain the Director's approval ~~for a~~ of a compliance survey program plan ~~is~~, the person seeking approval shall:

1. ~~The person seeking survey program plan approval shall submit~~ Submit the plan to the Director ~~for the Director's approval~~ no later than January 1 to cover the survey period of May 1 through ~~March 31~~ September 15 of each year; and
2. ~~The survey program~~ Have the plan ~~shall be~~ signed by a corporate officer of the registered supplier~~,~~ or ~~in the case of a comprehensive survey program plan,~~ by an officer of the ~~organization coordinating the survey program~~ independent surveyor.

~~I.~~**J.** No later than April 1 of each year, ~~the~~ a registered ~~supplier's~~ ~~contract with the surveyor~~ supplier that intends to meet the requirements in subsection (A) by contracting with an independent surveyor to ~~carry out~~ conduct the ~~entire~~ compliance survey plan for the next summer and winter season shall ~~be in effect,~~ enter into the contract and ~~the registered supplier shall~~ pay ~~an amount~~ all of the money necessary to ~~carry out the entire~~ conduct the compliance survey plan. ~~To the surveyor or~~ The registered supplier may pay the money necessary to conduct the compliance survey plan to the independent surveyor or to ~~place the money into~~ an escrow account with instructions to the escrow agent to ~~pay~~ release the money ~~over~~ to the independent surveyor ~~during the course of the conduct of~~ as the compliance survey plan is implemented. No later than April 15 ~~preceding the period in which a survey will be conducted~~, the registered supplier shall ~~give~~ submit to the Director a copy of the contract with the independent surveyor, proof that the money necessary to ~~carry out~~ conduct the compliance survey plan has ~~either~~ been paid ~~to the surveyor or placed into an escrow account~~, and, if ~~placed into an escrow account~~ applicable, a copy of the escrow agreement.

Table 1. Type 1 ~~Gasoline~~ Arizona CBG Standards
Table 1 will not become effective until Arizona's revised State Implementation Plan regarding CARB 3 and shortening the winter season is approved by EPA.

	Non-averaging Option	Averaging Option		
	A	B	C	D
Performance Standard/Fuel Property**	**Per-Gallon (minimum)**	**Average**	**Minimum (per-gallon)**	**Maximum (per-gallon)**
VOC Emission Reduction (%) May 1 - Sept. 15	≥ 27.5	≥ 29.0	≥ 25.0	N/A
NOx Emission Reduction (%) May 1 - Sept. 15	≥ 5.5	≥ 6.8	N/A	N/A
NOx Emission Reduction (%) Sept. 16 - ~~Nov. 1~~ October 31 and ~~April~~ February 1 - April 30***	≥ 0.0	N/A	N/A	N/A
Oxygen content: fuel ethanol, (% by weight unless otherwise noted) Nov. ~~2~~ 1 - ~~March~~ January 31*** ~~April~~ February 1 - ~~Nov. 1~~ October 31	 N/A 0.0*	 N/A N/A	 N/A 0.0	 N/A ~~4.0~~ 3.7
Oxygen content: other than fuel ethanol, (% by weight) Nov. ~~2~~ 1 - ~~March~~ January 31*** ~~April~~ February 1 - ~~Nov. 1~~ October 31	 N/A 0.0	 N/A N/A	 N/A 0.0	 N/A ~~2.7~~****

* Maximum oxygen content ~~must~~ shall comply with the EPA oxygenate waiver requirements and with A.R.S. § 41-2122.
** Dates represent compliance dates for ~~service stations and fleet owners~~ the owner of a motor fuel dispensing site or a fleet vehicle fueling facility.
*** ~~Registered suppliers~~ A registered supplier shall certify all Arizona CBG as Type 2 ~~gasoline~~ Arizona CBG meeting the standards in Table 2 beginning November ~~2~~ 1 through ~~March~~ January 31.
**** As specified in A.R.S. § 41-2122.

Table 2. Type 2 ~~Gasoline~~ Arizona CBG Standards

Table 2 will not become effective until Arizona's revised State Implementation Plan regarding CARB 3 and shortening the winter season is approved by EPA.

	Averaging Option		Non-averaging Option	
	A	B	C	
Fuel Property	**Maximum Standard (per gallon)**	**Averaging Standard***	**Flat Standard * (per gallon maximum)**	**Units of Standard**
Sulfur Content	80/30	30/15	40/20	Parts per million by weight
Olefin Content	10.0	4.0	6.0	% by volume
90% Distillation Temperature (T90)	330	290/295	300/305	Degrees Fahrenheit
50% Distillation Temperature (T50)	220	200/203	210/213	Degrees Fahrenheit
Aromatic Hydrocarbon Content	30.0/35	22.0	25.0	% by volume
Oxygen content: fuel ethanol***** Nov. ~~2~~ 1 - ~~March~~ January 31 ~~April~~ February 1 - ~~Nov. 1~~ October 31 The maximum oxygen content EtOH year around	10% fuel ethanol** ~~2.7~~	-- --	10% fuel ethanol** ~~2.7~~**3.7	% by vol. % by weight
~~Oxygen content: other than ethanol**** Nov. 2 - March 31 April 1 - Nov. 1~~	~~3.5*** 2.7~~	~~-- --~~	~~3.5*** 2.7**~~	~~% by weight % by weight~~

* Instead of the standards in columns B and C, a registered supplier may ~~elect to~~ comply with the standards contained in column A, and R20-2-751(F), (G), and (H) for the use of the PM.

** Maximum oxygen content shall comply with the EPA oxygenate waiver requirements.

~~*** Non-ethanol oxygenate is allowed only if approved by the Director under A.R.S. § 41-2124(D). Maximum oxygen content shall comply with the EPA oxygenate waiver requirements.~~

A registered supplier shall certify all Arizona CBG using fuel ethanol as the oxygenate beginning November ~~2~~ 1 through ~~March~~ January 31. Alternative ~~oxygenates~~ fuel ethanol contents not less than 2.7% total oxygen may be used if approved by the Director under A.R.S. § 41-2124(D).

~~NOTE~~ NOTES: Dates represent compliance dates for ~~service stations and fleet owners~~ the owner of a motor fuel dispensing site or fleet vehicle fuel facility.

Standards shown in the form of x/y denote standards for CARB Phase 2/Phase 3 gasolines.

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Contents of this Issue

General Information **146**
Public Participation in the Rulemaking Process **147**
Notices of Supplemental Proposed Rulemaking **148**
1 A.A.C. 1 . . . . . Secretary of State – Rules and Rulemaking 148
Notices of Final Rulemaking. **167**
9 A.A.C. 28 . . . . Arizona Health Care Cost Containment System – Arizona Long-term Care System 167
20 A.A.C. 2 . . . . Department of Weights and Measures 190
County Notices Pursuant to A.R.S. § 49-112 . . . . . **221**
Maricopa County 221
Maricopa County 246
Notices of Public Information. **247**
Arizona Health Care Cost Containment System 247
Office of the Secretary of State 248
Governor's Executive Orders/Proclamations **249**
Religious Freedom Day 249
Ronald Reagan Day 249
Arizona Statehood Day 250
Record Store Day 251
Index. **252**
Effective Date Schedule and *Register* Deadlines **254**
Governor's Regulatory Review Council Deadlines **257**

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AGE GROUP 0 - 5 MEDICAL ASSESSMENT	Weight
Cerebral Palsy	5.0
Epilepsy	5.0
Moderate, Severe, or Profound Mental Retardation (36 Months and older only)	15.0
Autism + M-CHAT (18 Months and older only) Fails at least six M-CHAT based questions	7.0
Autism + Behaviors (30-35 Months only) Exhibits at least 3 of 4 specific behaviors	5.0
Autism + Behaviors (36 Months and older only) Exhibits at least 6 of 8 specific behaviors	10.0
Drug Regulation + Administration (6 Months to 35 Months)	1.0
Drug Regulation + Administration (36 Months and older)	1.5
Non-Bowel/Bladder Ostomy Care (6 Months to 35 Months)	7.0
Non-Bowel/Bladder Ostomy Care (36 Months and older)	5.0
Tube Feeding (6 Months to 35 Months)	7.0
Tube Feeding (36 Months and older)	5.0
Physical Therapy or Occupational Therapy (6 Months to 35 Months)	1.0
Physical Therapy or Occupational Therapy (36 Months and older)	1.5
Acute Hospital Admission (One)	1.0
Acute Hospital Admissions (Two or more)	2.0
Direct Care Staff Trained (6 Months to 11 Months)	0.5
Direct Care Staff Trained (12 Months and older)	1.0
Special Diet	2.0

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 2. DEPARTMENT OF WEIGHTS AND MEASURES

Editor's Note: The following Notice of Final Rulemaking was reviewed per Laws 2009, 3rd Special Session, Ch. 7, § 28. (See the text of § 28 at 15 A.A.R. 1942, November 20, 2009.) The Governor's Office authorized the notice to proceed through the rulemaking process on February 9, 2010.

[R11-03]

PREAMBLE

1. Sections Affected	Rulemaking Action
R20-2-701	Amend
R20-2-702	Amend
R20-2-704	Amend
R20-2-707	Amend
R20-2-708	Amend
R20-2-709	Amend
R20-2-713	Amend
R20-2-714	Amend
R20-2-715	Amend
R20-2-718	Amend
R20-2-719	Repeal
R20-2-749	New Section
R20-2-751	Amend
R20-2-752	Amend
R20-2-754	Amend
R20-2-755	Amend

R20-2-756	Amend
R20-2-757	Amend
R20-2-759	Amend
Table A	Amend
R20-2-760	Amend
Table 1	Amend
Table 2	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. §§ 41-2065(A)(4), (D), and 41-2083(N)

Implementing statute: A.R.S. §§ 41-2083 and 41-2122

3. The effective date for the rules:

March 12, 2011

4. List of all previous notices appearing in the *Register* addressing the final rules:

Notice of Rulemaking Docket Opening: 16 A.A.R. 535, April 2, 2010

Notice of Proposed Rulemaking: 16 A.A.R. 980, June 25, 2010

Notice of Rulemaking Docket Opening: 16 A.A.R. 1228, July 9, 2010

Notice of Proposed Rulemaking: 16 A.A.R. 1198, July 9, 2010

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

Name:	Duane Yantorno
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Fax:	(623) 939-7825
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6. An explanation of the rules, including the agency's reasons for initiating the rulemaking:

In a rulemaking that was effective in September 2006, the effect of several subsections was contingent upon the State's Implementation Plan regarding CARB 3 and shortening the winter season to November 1 through January 31 being approved by the U.S. Environmental Protection Agency. The EPA did not approve the State's Implementation Plan regarding CARB 3 because the Energy Policy Act of 2005 prohibited EPA from adding any boutique fuels to the list of approved fuels. EPA did not approve the State's Implementation Plan regarding shortening the winter season because an analysis conducted by EPA suggested that shortening the winter season would increase particulate pollution.

Because EPA did not approve the SIP regarding CARB 3 and the shorter winter season, in this rulemaking the Department is:

- Deleting reference to a winter season that runs from November 1 through January 31. This will make the winter season run from November 1 through March 31; and
- Removing CARB (California Air Resources Board) phase 3 reformulated gasoline as an alternative standard for motor fuel in the CBG-covered area.

In this rulemaking, the Department is also:

- Responding to amendments made in 2007 to A.R.S. § 41-2083 regarding product transfer document requirements for a final destination and labeling requirements for dispensers at motor fuel dispensing sites;
- Responding to HB 2621, enacted in 2008, regarding biofuel standards and requirements;
- Moving definitions relating to Arizona CBG and AZRBOB from R20-2-701 to a new Section, R20-2-749;
- Modifying motor fuel standards for ethanol blending;
- Updating materials incorporated by reference; and
- Amending R20-2-754, in response to a five-year-review report approved by Council on February 6, 2007, to clarify that third-party terminals as well as pipelines may blend transmix into Arizona CBG or AZRBOB. R20-2-707 and R20-2-713, which are included in this rulemaking, were also noted for amendment in that five-year-review report.

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

None

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

Not applicable

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

The economic impact of this rulemaking will be minimal. Because implementation of rules regarding use of CARB 3 and shortening the winter season was contingent on EPA approving the SIP and because EPA did not approve the SIP, reference to these two items is being deleted. This will cause the rules to remain as they have been.

The rules made in response to recent statutory amendments to A.R.S. § 41-2083 will have some economic impact. Producers, suppliers, and blenders of biofuels and biofuel blends will have to comply with the registration, reporting, labeling, and quality assurance and quality control requirements in this rulemaking. However, these requirements, which are required by statute and minimally burdensome on producers, suppliers, and blenders of biofuels and biofuel blends, are needed to protect the public and to protect the producer, supplier, or blender from liability for any damage resulting when a consumer misfuels. Any cost associated with compliance is a cost of doing business that will be passed to the ultimate consumer. The requirement regarding transfer documents, which already exists and is simply being clarified to be consistent with statute, is minimally burdensome.

The updated materials incorporated by reference are simply the latest industry standards. Incorporation of a new standard regarding biofuel and biofuel blends is required by statute.

Transmix is an off-grade product generally sold at a reduced price to a transmix processor. The amendment to R20-2-754 allows pipelines and third-party terminals to blend a small amount of transmix into a final product rather than selling it at a reduced price. This is an economic benefit to the pipelines and third-party terminals.

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

In addition to the changes identified in item 11, all of which are non-substantive, minor changes were made between the proposed and final rules. Some of these changes result from comments by G.R.R.C. staff.

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

The Department received comments regarding the proposed rules from the National Biodiesel Board, Western States Petroleum Association, Shuler Government Affairs LLC for Pinal Energy, Caljet, Arizona Petroleum Marketers Association, and BP:

COMMENT	DWM ANALYSIS	RESPONSE
Change the definition of "biodiesel" to be consistent with the definition used by ASTM, EPA, and other entities. (Biodiesel Board; WSPA)	The term "biodiesel" is defined in statute. The Department must use the statutory definition.	To clarify its reliance on the statutory definition, the Department used the exact statutory definition and noted its use by placing it in italics. The statutory definition of "biodiesel" includes an internal definition of "nonpetroleum renewable resources." As a result, the Department deleted its definition of "renewable resource" and clarified its reliance on the statutory definition by using "nonpetroleum renewable resource" in the rule text.
Use a letter other than "B" to distinguish biofuel and biofuel blends. The FTC has developed labeling requirements that limit use of "B" to designate biodiesel blends. (Biodiesel Board)	The Department recognizes that using "B" regarding biofuel blend may cause confusion. To avoid this, the Department changed the letter designation to "C" for biofuel blend.	R20-2-701: Changed the "B" to "C" within the definition of biofuel blend.
The definitions of "biodiesel blend" and "biodiesel" do not clearly indicate that B5 and below is treated as diesel per ASTM D975 rather than biodiesel blend. (WSPA)	Both "biodiesel" and "biodiesel blend" are defined in statute. The Department must use the statutory definitions. However, consistent with ASTM D975, B5 and below is treated as diesel rather than biodiesel blend. The definition of "diesel" references ASTM D975.	To clarify its reliance on the statutory definition, the Department used the exact statutory definition of "biodiesel blend" and noted its use by placing it in italics.

Include a definition of "non-ester renewable diesel" to be consistent with EPA and to clarify the definition of "non-ester renewable diesel blend." (Biodiesel Board)	A careful review of the rule text showed that the term "non-ester renewable diesel blend" is not used. As a result, the Department determined the term could be deleted.	Deleted the definition of "non-ester renewable diesel blend."
The definition of biodiesel FAME (mono-alkyl ester) includes the statement that it is intended to be used in engines designed for conventional fuel, but this is not necessarily the case. (WSPA)	The commenter is correct.	The Department clarified the definition by inserting the word "some." It now indicates that biodiesel FAME is intended for use in some engines designed for conventional fuel.
R20-2-707(A)(9): To be consistent with ASTM D975, clarify that a biodiesel blend with up to 5.49% of biofuel does not have to labeled with the exact percentage of biofuel. (Biodiesel Board)	Under A.R.S. § 41-2083(M), a person is required to prepare a product transfer document in a manner that notifies the transferee of any volume per cent of biodiesel intentionally added to or known by the transferor to be in the product. There is no requirement for labeling. This requirement applies to a product transfer document.	No change
R20-2-708: What is the Department's reason for not including the WSPA recommended language regarding T V/L=20 limits? (WSPA)	Standards regarding these limits have not been finalized so the Department elected not to include them. When standards are finalized, the Department will revisit this issue.	No change
The definition of "motor fuels" is awkward. (WSPA)	The term "motor fuels" is defined in statute. The Department must use the statutory definition.	To clarify its reliance on the statutory definition, the Department used the exact statutory definition of "motor fuel" and noted its use by placing it in italics.
A few provisions still specify the minimum oxygen content at 3.7 wt.%. This should be 3.5 wt.% when there is 10 vol% ethanol. (WSPA)	The Department checked with EPA to determine the correct maximum oxygen content by weight percent. To be consistent with EPA guidance, the maximum oxygen content should be 4.0 wt.%.	Maximum oxygen content was changed to 4.0 wt.% in all places. In certain circumstances, the minimum oxygen content is specified in the rules but the maximum is always 4.0 wt.%.
R20-2-718: This Section needs to clarify that the QA/QC and reporting requirements do not apply to E10 or B5. (WSPA)	The lead to R20-2-718(A)(2) and (3) indicates the requirements are applicable to a person required to register with the EPA under 40 CFR 80, Subpart K. This means the reporting and QA/QC requirements apply regarding B5 but do not apply regarding E10.	No change
R20-2-714 and 751: Clarify that the 9.0 psi gasoline RVP specification is for terminals and a 10 psi is applicable to motor-fuel dispensing sites. (WSPA)	The standards in both R20-2-714 and R20-2-751 are applicable downstream from a terminal. They are not applicable to a terminal. The difference between the two Sections is that R20-2-714 applies outside the CBG-covered area and R20-2-751 applies to CBG.	No change
R20-2-709(C): Delete the added phrase "in the winter." (WSPA)	The Department added this phrase to required labeling because it determined the additional information was needed by the public.	No change

R20-2-701: The definition of "terminal" is so broad that it applies to all bulk storage facilities including those commonly known as jobber facilities. The prior definition of "third-party terminal" recognized terminals that accept custody but not ownership of motor fuels. (APMA)	The Department did not intend to broaden the definition of "terminal." However, the definition of "third-party terminal" is specific to Arizona CBG and AZRBOB.	The Department changed the definition of "terminal" to track the definition of "third-party terminal" but made it applicable to motor fuels rather than specific to Arizona CBG and AZRBOB.
R20-2-701: The definition of "biofuel distributor" includes anyone transporting a biofuel product, even a common carrier. There are more specific definitions for terms relating to a biofuel distributor so this term appears not to be needed. (APMA)	The term "biofuel distributor" is not used in the rule text. The more specific terms relating to a biofuel distributor are used. As a result, the Department determined the term "biofuel distributor" could be deleted.	Deleted the term "biofuel distributor" from R20-2-701.
R20-2-718(A-C): The Department requires that a producer or supplier of biofuels submit a QA/QC manual to the Department for approval. If the manual has to be approved, why does the Department establish minimum sampling frequencies within the rule? (APMA)	The Department establishes minimum sampling standards so a producer or supplier knows the standard that must be present in a QA/QC manual if it is to be approved by the Department.	No change
R20-2-718(B)(5) and (C)(6): Sampling rates for E85 are less than those for biodiesel. This creates a market advantage for marketers of E85. (APMA)	The Department does not agree that the sampling frequency for E85 should be increased to make it equal to that of biodiesel. E85 and biodiesel are very different products produced with very different technology. Production of ethanol is technical, more difficult, and requires more complicated systems than production of biodiesel. Indeed, biodiesel can be produced by almost anyone using readily available equipment. As a result, to protect the public, sampling frequency for biodiesel needs to be greater. There is no market advantage regarding E85 because of the greater difficulty in producing it.	No change
R20-2-718(B)(2): Delete reference to Arizona CBG or AZRBOB and replace with "a pressurant." Arizona CBG or AZRBOB should not be the only allowed hydrocarbon component in formulating E85 within the CBG-covered area. (Shuler; Caljet)	To avoid air-quality problems, in federally defined reformulated gasoline (RFG) areas, when E85 in produced, it is required that production start with a RFG. The Department's requirement that production of E85 in the CBG-covered area begin with Arizona CBG or AZRBOB is consistent with that of EPA.	No change
R20-2-701: Delete the definition of "non-ester renewable diesel blend" because it is not a biofuel if it is not produced entirely from renewable resources. (Caljet)	The Department determined that the phrase "non-ester renewable diesel blend" is not used in the rule text so the definition could be deleted.	Deleted the definition of "non-ester renewable diesel blend."
R20-2-718(C)(7): Clarify that a producer that is accredited under the BQ9000 program submits the BQ9000 quality manual instead of the QA/QC manual required under subsection (C)(6). (Caljet)	This was the Department's intention.	Clarifying language was added.

R20-2-718(D): Delete this subsection because petroleum-based fuels are not biofuels and petroleum-based diesel fuel is not renewable. Where are the QA/QC and testing standards for this fuel? (Caljet) Why the disparity between petroleum-based renewable diesel and other biofuels: Petroleum-based renewable diesel needs only to meet the standards in its definition. (WSPA)	The EPA currently is developing standards for petroleum-based renewable diesel but at the moment, the only standard is that provided by ASTM D975. The Department believes it is important to acknowledge petroleum-based renewable diesel exists and include this minimum standard. When additional standards become available, the Department will complete this subsection with QA/QC and testing requirements.	No change
R20-2-708(B)(4): Delete this subsection because it conflicts with subsection (B)(3). (BP)	The Department disagrees that the two subsections are in conflict. Subsection (B)(4) allows use of a sub-octane blendstock to which ethanol is added to meet the specifications in ASTM D4814.	No change

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

Under A.R.S. § 41-2083(C) and (H), the director of the Department is required to consult with the director of the Department of Environmental Quality regarding the rules. This consultation has occurred. Under the state's implementation plan, changes regarding Arizona CBG will have to be submitted to the EPA for approval.

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

The following materials are incorporated by reference in R20-2-702:

ASTM D975-10, Standard Specification for Diesel Fuel Oils, 2010, ASTM International (formerly American Society for Testing and Materials), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org

ASTM D4806-09, Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel, 2010, ASTM International (formerly American Society for Testing and Materials), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org

ASTM D4814- 09b, Standard Specification for Automotive Spark-Ignition Engine Fuel, 2010, ASTM International (formerly American Society for Testing and Materials), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org

ASTM D5798- 09b, Standard Specification for Fuel Ethanol (Ed75-Ed85) for Automotive Spark-Ignition Engines, 2010, ASTM International (formerly American Society for Testing and Materials), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org

ASTM D6751- 09a, Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels, 2010, ASTM International (formerly American Society for Testing and Materials), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org

ASTM D7467-09a, Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20), 2010, ASTM International (formerly American Society for Testing and Materials), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org

14. Were these rules previously made as emergency rules?

No

15. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 2. DEPARTMENT OF WEIGHTS AND MEASURES

ARTICLE 7. MOTOR FUELS AND PETROLEUM PRODUCTS

Section
R20-2-701. Definitions
R20-2-702. Material Incorporated by Reference
R20-2-704. Price and Grade Posting on External Signs
R20-2-707. Product Transfer Documentation and Record Retention for Motor Fuel other than Arizona CBG and AZRBOB
R20-2-708. ~~Oxygenated Fuel~~ Gasoline Ethanol Blends

R20-2-709. Retail Oxygenated Fuel Labeling
R20-2-713. Motor Fuel Storage Tank Labeling
R20-2-714. Requirements for Motor Fuels ~~Outside the CBG-covered Area~~ Other than Arizona CBG
R20-2-715. Motor Fuel Quality Testing Methods and Requirements
R20-2-718. Requirements for ~~the~~ Production, Transport, Distribution, and ~~or~~ Sale of ~~E85~~ Biofuels
R20-2-719. ~~Requirements for the Sale of Biodiesel~~ Repealed
R20-2-749. Definitions Applicable to Arizona CBG and AZRBOB
R20-2-751. Arizona CBG Requirements
R20-2-752. General Requirements for Registered Suppliers
R20-2-754. Downstream Blending Exceptions for Transmix
R20-2-755. Additional Requirements for AZRBOB and Downstream Oxygenate Blending
R20-2-756. Downstream Blending of Arizona CBG with Nonoxygenate Blendstocks
R20-2-757. Product Transfer Documentation; Records Retention
R20-2-759. Testing Methodologies
Table A. Arizona Department of Weights and Measures Test Methods for Arizona CBG and AZRBOB
R20-2-760. Compliance Surveys
Table 1. Type 1 Arizona CBG Standards
Table 2. Type 2 Arizona CBG Standards

ARTICLE 7. MOTOR FUELS AND PETROLEUM PRODUCTS

R20-2-701. Definitions

In addition to the definitions in R20-2-101, the following definitions apply to this Article unless the context otherwise requires:

"Address" means a street number, street name, city, state, and zip code.

"Area A" has the same meaning as in A.R.S. § 49-541.

"Area B" has the same meaning as in A.R.S. § 49-541.

"Arizona Cleaner Burning Gasoline" or "Arizona CBG" means a gasoline blend that meets the requirements of this Article for gasoline produced and shipped to or within Arizona and sold or offered for sale for use in motor vehicles within the CBG-covered area, except as provided under A.R.S. § ~~41-2124(K)~~ 41-2124(J).

"AST" means aboveground storage tank.

"AZRBOB" or "Arizona Reformulated Blendstock for Oxygenate Blending" means a combination of gasoline blendstocks that is intended to be or represented to constitute Arizona CBG upon the addition of a specified amount (or range of amounts) of fuel ethanol after the blendstock is supplied from the facility at which it was produced or imported.

"Batch" means a quantity of motor fuel or AZRBOB that is homogeneous for motor fuel properties specific for the motor fuel standards applicable to that motor fuel or AZRBOB.

"Beginning of transport" means the point at which:

A registered supplier relinquishes custody of Arizona CBG or AZRBOB to a transporter or third-party terminal; or

A registered supplier that retains custody of Arizona CBG or AZRBOB begins transfer of the Arizona CBG or AZRBOB into a vessel, tanker, or other container for transport to the CBG-covered area.

"Biodiesel" means a diesel fuel substitute that ~~satisfies all of the following:~~

~~Is produced from nonpetroleum renewable resources if the qualifying volume of nonpetroleum renewable resources meets the standards for California diesel fuel as adopted by the California air resources board pursuant to 13 California code of regulations sections 2281 and 2282 in effect on January 1, 2000.~~

~~Meets the registration requirement for fuels and additives established by the environmental protection agency pursuant to section 211 of the clean air act as defined in section 49-401.01.~~

~~The use of the diesel fuel substitute complies with the requirements listed in 10 Code of Federal Regulations part 490, as printed in the federal register, volume 64, number 96, May 19, 1999.~~

~~Is sold, offered or exposed for sale as a neat product or blended with diesel fuel. A.R.S. § 41-2051(1)~~ *is produced from nonpetroleum renewable resources as defined by the United States environmental protection agency and meets the registration requirements for fuels and fuel additives established by the United States environmental protection agency pursuant to § 211 of the clean air act as defined in section 49-401.01.* A.R.S. § 41-2051

"Biodiesel blend" means a motor fuel that is comprised of biodiesel and diesel fuel and that is designated by the letter "B," followed by the numeric value of the volume percentage of biodiesel in the blend. A.R.S. § 41-2051

"Biodiesel (mono-alkyl ester)" means a biodiesel or fuel additive that:

Is registered as a motor vehicle fuel or fuel additive under 40 CFR 79,

Is a mono-alkyl ester,

Meets the standards in ASTM D6751,

Is intended for use in some engines designed to run on conventional diesel fuel, and

Is derived from nonpetroleum renewable resources.

"Biodiesel (mono-alkyl ester) blend" means a motor fuel composed of biodiesel (mono-alkyl ester) and diesel fuel and identified by the letter "B" and a numeric value indicating the volume percentage of biodiesel (mono-alkyl ester) in the blend.

"Biofuel" means a solid, liquid, or gaseous fuel that is derived from biomass or nonpetroleum renewable resources and can be used directly for heating or power or as a motor fuel.

"Biofuel blend" means a motor fuel composed of biofuel and petroleum-based motor fuel and identified by the letter "C" and a numeric value indicating the volume percentage of biofuel in the blend.

"Biomass" means biological material, such as animal or plant matter, that can be transformed into biofuel, excluding biological material that has been transformed by geological processes into a substance such as coal petroleum or a derivative of a substance resulting from geological processes.

"Blendstock" means any liquid compound that is blended with another liquid compound to produce a motor fuel, including Arizona CBG. A deposit-control or similar additive registered under 40 CFR 79 is not a blendstock.

"BQ9000" means the cooperative and voluntary program, implemented by the National Biodiesel Accreditation Commission, to accredit producers and marketers of biodiesel fuel using a combination of the ASTM standard for biodiesel (ASTM D6751) and a quality systems program of fuel management practices regarding storing, sampling, testing, blending, shipping, and distributing biodiesel fuel.

"CARB" means the California Air Resources Board.

~~"CARBOB" means California Reformulated Gasoline Blendstock for Oxygenate Blending.~~

"CARBOB Model" means the procedures incorporated by reference in ~~R20-2-702(12)~~ R20-2-702(11).

"CARB Phase 2 gasoline" means gasoline that meets the specifications incorporated by reference in R20-2-702(8).

~~"CARB Phase 3 gasoline" means gasoline that meets the specifications incorporated by reference in R20-2-702(9).~~

"CBG-covered area" means a county with a population of 1,200,000 or more persons according to the most recent United States decennial census and any portion of a county within area A.

"Conventional gasoline" means gasoline that conforms to the requirements of this Chapter for sale or use in Arizona, but does not meet the requirements of Arizona CBG or AZRBOB.

~~"Designated alternative limit" means a motor fuel property specification, expressed in the nearest part per million by weight for sulfur content, nearest 10th percent by volume for aromatic hydrocarbon content, nearest 10th percent by volume for olefin content, and nearest degree Fahrenheit for T90 and T50, that is assigned by a registered supplier to a final blend of Type 2 Arizona CBG or AZRBOB for purposes of compliance with the Predictive Model Procedures.~~

"Diesel" or "diesel fuel" *means a refined middle distillate ~~for use~~ that is used as a ~~motor~~ fuel in a compression-ignition ~~internal-combustion~~ internal combustion engine and that meets the specifications of ASTM D975.* A.R.S. § 41-2051

~~"Downstream oxygenate blending" means combining AZRBOB and fuel ethanol to produce fungible Arizona CBG.~~

"Duplicate" means a portion of a sample that is treated the same as the original sample to determine the accuracy and precision of an analytical method.

"E85" means a fuel ethanol gasoline blend that meets the specifications in ASTM ~~D 5798~~ D5798, which is incorporated by reference in R20-2-702.

"EPA" means the United States Environmental Protection Agency.

"EPA waiver" means a waiver granted by the Environmental Protection Agency as described in "Waiver Requests under Section 211(f) of the Clean Air Act," which is incorporated by reference in R20-2-702.

"Final destination" means the name and address of the location to which a transferee will deliver motor fuel for further distribution or final consumption.

"Final distribution facility" means a stationary motor-fuel transfer point at which motor fuel or AZRBOB is transferred into a cargo tank truck, pipeline, or other delivery vessel from which the motor fuel or AZRBOB will be delivered to a motor-fuel dispensing site. A cargo tank truck is a final distribution facility if the cargo tank truck transports motor fuel or AZRBOB and carries documentation that the type and amount or range of amounts of oxygenates des-

ignated by the registered supplier will be or have been blended directly into the cargo tank truck before delivery of the resulting motor fuel to a motor-fuel dispensing site.

"Fleet" means at least 25 motor vehicles owned or leased by the same person.

"Fleet vehicle fueling facility" means a facility or location where a motor fuel is dispensed for final use by a fleet.

"Fuel ethanol" means denatured ethanol that meets the specifications in ASTM ~~D 4806~~ D4806, which is incorporated by reference in R20-2-702.

"Gasoline" means a volatile, highly flammable liquid mixture of hydrocarbons that does not contain more than .05 grams of lead for each United States gallon, is produced, refined, manufactured, blended, distilled, or compounded from petroleum, natural gas, oil, shale oils or coal, and other flammable liquids free from undissolved water, sediment, or suspended matter, with or without additives, and is commonly used as a fuel for spark-ignition internal-combustion engines. Gasoline does not include diesel fuel or E85.

~~"Importer" means any person that assumes title or ownership of Arizona CBG or AZRBOB produced by an unregistered supplier.~~

"Jobber" means a person that distributes a motor fuel from a bulk storage plant to the owner or operator of a UST or AST or purchases a motor fuel from a terminal for distribution to the owner or operator of a UST or AST.

"Manufacturer's proving ground" means a facility used only to develop complete motor vehicles, ~~that~~ which are not currently available on the retail market, for an automotive manufacturer.

"Marketer" means a person engaged in selling or offering for sale motor fuels.

"Motor fuel" means a petroleum or a petroleum-based substance ~~such as~~ that is motor gasoline, ~~any grade of oxygenated gasoline,~~ aviation ~~fuel~~ gasoline, number one or number two diesel fuel ~~including neat biodiesel or a~~ or any grade of oxygenated gasoline typically used in the operation of a motor engine, including biodiesel ~~blend~~ blends, biofuel blends and the ethanol blend E85 ~~typically used in the operation of a motor engine~~ as defined in ASTM D5798. A.R.S. § 41-2051

"Motor fuel dispensing site" means a facility or location where a motor fuel is dispensed into commerce for final use.

"Motor fuel property" means any characteristic listed in R20-2-751(A)(1) through (A)(7), R20-2-751(B)(1) through (B)(7), Table 1, Table 2, or any other motor fuel standard referenced in this Article.

"Motor vehicle" means a vehicle equipped with a spark-ignited or compression-ignition internal combustion engine except:

A vehicle that runs on or is guided by rails; or

A vehicle ~~that is~~ designed primarily for travel through air or water.

"Motor vehicle racing event" means a competition, including related practice and qualifying and demonstration laps that uses unlicensed motor vehicles designed and manufactured specifically for racing and is conducted on a public or private racecourse for the entertainment of the general public.

"MTBE" means methyl tertiary butyl ether.

"Neat" means ~~straight~~ pure or 100 percent; not blended with ~~gasoline~~ motor fuel.

"NOx" means oxides of nitrogen.

"Octane," "octane number," or "octane rating" mean the anti-knock characteristic of gasoline as determined by the resultant arithmetic test average of ASTM ~~D 2699~~ D2699 and ASTM ~~D 2700~~ D2700.

"Oxygenate" means any oxygen-containing ashless, organic compound, including aliphatic alcohols and aliphatic ethers, that may be used as a fuel or as a gasoline blending component and is approved as a blending agent under the provisions of a waiver issued by the ~~EPA under 42 U.S.C. 7545(f)~~ United State environmental protection agency pursuant to 42 United States Code §7545(f). A.R.S. § 41-2121

"Oxygenate blender" means a person that owns, leases, operates, controls, or supervises an oxygenate-blending facility, or that owns or controls the blendstock or gasoline used, or the gasoline produced, at an oxygenate-blending facility.

~~"Oxygenate-blending facility" means any location (including a truck) where fuel ethanol is added to Arizona CBG or AZRBOB and the resulting quality or quantity of Arizona CBG is not altered in any other manner except for the addition of a deposit control or similar additive registered under 40 CFR 79.~~

~~"Oxygenated Arizona CBG" means Arizona CBG with a minimum oxygen content of 3.7 wt. % or another minimum oxygen content approved by the Director under A.R.S. § 41-2124, that is produced and shipped to or within Arizona and sold or offered for sale for use in motor vehicles in the CBG covered area from November 1 through January 31 of each year.~~

"Oxygen content" means the percentage by weight of oxygen contained in a gasoline oxygenate blend as ~~calculated~~

~~by~~ determined under ASTM ~~D 4815~~ D4815.

~~"Performance standard" means the VOC and NOx emission reduction percentages in R20-2-751(A)(8) and Table 1.~~

"Petroleum-based renewable diesel" means diesel fuel or fuel additive that meets all of the following:

Is registered as a motor vehicle fuel or fuel additive under 40 CFR 79,

Is not a mono-alkyl ester,

Is intended for use in engines designed to run on diesel fuel,

Is derived from petroleum and nonpetroleum renewable resources,

Meets the requirements of ASTM D975, and

Is identified by the letter "R" and a numeric value indicating the volume percentage of the nonpetroleum renewable resources component in the blend.

"Pipeline" means a transporter that owns or operates an interstate common-carrier pipe or is subject to Federal Energy Regulatory Commission tariffs to transport motor fuels into Arizona.

~~"PM" or "Predictive Model Procedures" means the California Predictive Model and CARB's "California Procedures for Evaluating Alternative Specifications for Phase 2 Reformulated Gasoline Using the California Predictive Model," as adopted April 20, 1995, and "California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model," as amended April 25, 2001, both of which are incorporated by reference in R20-2-702. This definition will not become effective until Arizona's revised State Implementation Plan regarding CARB 3 is approved by EPA.~~

~~"PM alternative gasoline formulation" means a final blend of Arizona CBG or AZRBOB that is subject to a set of PM alternative specifications.~~

~~"PM alternative specifications" means the specifications for the following fuel properties, as determined using a testing methodology in R20-2-759:~~

~~Maximum RVP, expressed in the nearest 100th of a pound per square inch;~~

~~Maximum sulfur content, expressed in the nearest part per million by weight;~~

~~Maximum olefin content, expressed in the nearest 10th of a percent by volume;~~

~~Minimum and maximum oxygen content, expressed in the nearest 10th of a percent by weight;~~

~~Maximum T50, expressed in the nearest degree Fahrenheit;~~

~~Maximum T90, expressed in the nearest degree Fahrenheit; and~~

~~Maximum aromatic hydrocarbon content, expressed in the nearest 10th of a percent by volume.~~

~~"PM averaging compliance option" means, with reference to a specific fuel property, the compliance option for PM alternative gasoline formulations by which final blends of Arizona CBG and AZRBOB are assigned designated alternative limits under R20-2-751(G), (H), and (I).~~

~~"PM averaging limit" means a PM alternative specification that is subject to the PM averaging compliance option.~~

~~"PM flat limit" means a PM alternative specification that is subject to the PM flat limit compliance option.~~

~~"PM flat limit compliance option" means, with reference to a specific fuel property, the compliance option that each gallon of gasoline must meet for that specified fuel property as contained in the PM alternative specifications.~~

"Pressurant" means a blendstock component of an E85 blend for sale within the CBG-covered area added specifically to ensure that the vapor pressure meets ASTM D5798 requirements.

~~"Produce" means:~~

~~Except as otherwise provided, to convert a liquid compound that is not Arizona CBG or AZRBOB into Arizona CBG or AZRBOB.~~

~~If a person blends a blendstock that is not Arizona CBG or AZRBOB with Arizona CBG or AZRBOB acquired from another person, and the resulting blend is Arizona CBG or AZRBOB, the person conducting the blending produces only the portion of the blend not previously Arizona CBG or AZRBOB. If a person blends Arizona CBG or AZRBOB with other Arizona CBG or AZRBOB in accordance with this Article, without the addition of a blendstock that is not Arizona CBG or AZRBOB, that person is not a producer of Arizona CBG or AZRBOB.~~

~~If a person supplies Arizona CBG or AZRBOB to a refiner that agrees in writing to further process the Arizona CBG or AZRBOB at the refiner's refinery and be treated as the producer of Arizona CBG or AZRBOB, the refiner is the producer of the Arizona CBG or AZRBOB.~~

~~If an oxygenate blender blends oxygenates into AZRBOB supplied from a gasoline production or import facility, and does not alter the quality or quantity of the AZRBOB or the quality or quantity of the resulting Arizona CBG~~

~~certified by a registered supplier in any other manner except for the addition of a deposit-control or similar additive, the producer or importer of the AZRBOB, rather than the oxygenate blender, is considered the producer or importer of the full volume of the resulting Arizona CBG.~~

"Producer" means a refiner, blender, or other person that produces a motor fuel, including Arizona CBG or AZRBOB.

"Production facility" means a facility at which a motor fuel, including Arizona CBG or AZRBOB, is produced. Upon request of a producer, the Director may designate, as part of the producer's production facility, a physically separate bulk storage facility that:

Is owned or leased by the producer;

Is operated by or at the direction of the producer; and

Is used to store or distribute motor fuels, including Arizona CBG or AZRBOB, that are supplied only from the production facility.

"Product transfer document" means a bill of lading, loading ticket, manifest, delivery receipt, invoice, or other paper that is provided by the transferor at the time motor fuel is delivered and evidences that custody or title of the motor fuel is transferred to the transferee. A product transfer document is not required when motor fuel is sold or dispensed at a motor fuel dispensing site or fleet vehicle fueling facility.

"Refiner" means a person that owns, leases, operates, controls, or supervises a refinery in the United States, including its trust territories.

"Refinery" means a facility that produces a liquid fuel, including Arizona CBG or AZRBOB, by distilling petroleum, or a transmix facility that produces a motor fuel offered for sale or sold into commerce as a finished motor fuel.

~~"Registered supplier" means a producer or importer that supplies Arizona CBG or AZRBOB and is registered with the Director under R20-2-750.~~

"Reproducibility" means the testing method margin of error as provided in the ASTM specification or other testing method required under this Article.

~~"RVP" means Reid vapor pressure equivalent of gasoline or blendstock as measured according to ASTM D 5191.~~

"Supplier" means a marketer or jobber of a biofuel or biofuel blend.

"Supply" means to provide or transfer motor fuel to a physically separate facility, vehicle, or transportation system.

"Terminal" means an owner or operator of a motor fuel storage tank facility that accepts custody, but not ownership, of a motor fuel from a registered supplier, oxygenate blender, pipeline, or other terminal and relinquishes custody of the motor fuel to a transporter.

"Test result" means any document that contains a result of testing including all original test measures, all subsequent test measures that are not identical to the original test measure, and all worksheets on which calculations are performed.

~~"Third-party terminal" means an owner or operator of a gasoline storage tank facility that accepts custody, but not ownership, of Arizona CBG or AZRBOB from a registered supplier, oxygenate blender, pipeline, or other third-party terminal and relinquishes custody of the Arizona CBG or AZRBOB to a transporter.~~

"Transferee" means a person that receives title to or custody of a motor fuel.

"Transferor" means a person that relinquishes title to or custody of a motor fuel to a transporter, marketer, jobber, or motor fuel dispensing site.

"Transmix" means a mixture of petroleum distillate fuel and gasoline that does not meet the Arizona standards for either petroleum distillate fuels or gasoline.

"Transmix facility" means a facility at which transmix is processed into its components and then the components either are combined with a finished product or further processed to produce a finished motor fuel.

"Transporter" means a person that causes motor fuels, including Arizona CBG or AZRBOB, to be transported into or within Arizona.

~~"Type 1 Arizona CBG" means a gasoline that meets the standards contained in R20-2-751(A) and Table 1.~~

~~"Type 2 Arizona CBG" means a gasoline that meets the standards contained in Table 2 or is certified using the PM according to the requirements of R20-2-751(G), (H), and (I), and:~~

~~Meets the requirements in R20-2-751(A) beginning February 1 through October 31 of each year; and~~

~~Meets the requirements in R20-2-751(B) beginning November 1 through January 31 of each year.~~

"UST" means underground storage tank.

"Vapor pressure" means dry vapor pressure equivalent of gasoline or blendstock as measured according to ASTM

D5191.

"Vehicle emissions control area" has the same meaning as in A.R.S. § 49-541 except that a vehicle emissions control area does not include a manufacturer's proving ground that is located in the vehicle emissions control area.

"VOC" means volatile organic compound.

~~"Winter" means November 1 through January 31.~~

R20-2-702. Material Incorporated by Reference

A. The following documents are incorporated by reference and on file with the Department. The documents incorporated by reference contain no future editions or amendments.

1. 16 CFR 306 - Automotive Fuel Ratings, Certification and Posting, January 1, 1998 Edition, ~~Superintendent of Documents, U.S.~~ Government Printing Office, ~~Mail Stop SSOP, Washington, D.C. 20402-9328~~ P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov.
2. ASTM Standard D975, 2010 ~~D 975-04e~~ (ASTM D975-10), "Standard Specification for Diesel Fuel Oils," ~~2004~~ published April 2010, ASTM International (formerly American Society for Testing and Materials), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.
3. ASTM Standard D4806, 2009, ~~D 4806-04a~~ (ASTM D4806-09), "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel," ~~2004~~ published July 2009, ASTM International (formerly American Society for Testing and Materials), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.
4. ASTM Standard D4814, 2009b ~~D 4814-04a~~ (ASTM D4814-09b), "Standard Specification for Automotive Spark-Ignition Engine Fuel," ~~2004~~ published September 2009, ASTM International (formerly American Society for Testing and Materials), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.
5. Waiver Requests under Section 211(f) of the Clean Air Act, (August 22, 1995 edition), United States Environmental Protection Agency, Transportation and Regional Programs Division, Fuels Program Support Group, Mail Code 6406-J, Washington, D.C. 20460.
6. ASTM Standard D5798, 2009b ~~D 5798-99~~ (ASTM D5798-09b), "Standard Specification for Fuel Ethanol (Ed75-Ed85) for Automotive Spark-Ignition Engines," ~~re-approved 2004~~ published May 2009, ASTM International (formerly American Society for Testing and Materials), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.
7. ASTM Standard D6751, 2009a ~~D 6751-03a~~ (ASTM D6751-09a), "Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels," ~~2003~~ published February 2010, ASTM International (formerly American Society for Testing and Materials), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.
8. California Air Resources Board, "California Procedures for Evaluating Alternative Specifications for Phase 2 Reformulated Gasoline Using the California Predictive Model," adopted April 20, 1995. A copy may be obtained at: CARB, P.O. Box 2815, Sacramento, CA 95812 or www.arb.ca.gov.
9. ~~California Air Resources Board, "California Procedures for Evaluating Alternative Specifications for Phase 3 Reformulated Gasoline Using the California Predictive Model," as amended April 25, 2001. A copy may be obtained at: CARB, P.O. Box 2815, Sacramento, CA 95812.~~

~~10.~~9. The Federal Complex Model as contained in 40 CFR 80.45, January 1, 1999. A copy may be obtained at: ~~U.S.~~ Government Printing Office, ~~Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328~~ P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov.

~~11.~~10. California Air Resources Board, The California Reformulated Gasoline Regulations, Title 13, California Code of Regulations, Section 2266.5 (Requirements Pertaining to California Reformulated Gasoline Blendstock for Oxygen Blending (CARBOB) and Downstream Blending), as of April 9, 2005. A copy may be obtained at: CARB, P.O. Box 2815, Sacramento, CA 95812 or www.arb.ca.gov.

~~12.~~11. California Air Resources Board, Procedures for Using the California Model for California Reformulated Gasoline Blendstocks for Oxygenate Blending (CARBOB), adopted April 25, 2001. A copy may be obtained at: CARB, P.O. Box 2815, Sacramento, CA 95812 or www.arb.ca.gov.

12. ASTM Standard D7467, 2009a (ASTM D7467-09a), "Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20)," published June 2009, ASTM International (formerly American Society for Testing and Materials), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.

B. ~~Subsections (A)(9),~~ Subsection (A)(11)~~, and (A)(12)~~ will not become effective until Arizona's revised State Implementation Plan ~~regarding CARB 3~~ is approved by EPA.

R20-2-704. Price and Grade Posting on External Signs

A. No change

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

4. No change
5. No change
6. Describes diesel fuel as No. 1 diesel, #1 diesel, No. 2 diesel, #2 diesel, or biodiesel blend; and
7. No change

B. ~~Effective June 5, 2004, if a sign uses~~ If the following terms are used in a sign to describe a gasoline grade or gasoline-oxygenate blend, the grade or blend shall meet the following minimum antiknock index:

	Term	Minimum Antiknock Index
1.	Regular, Reg, Unleaded, UNL, or UL	87
2.	Midgrade, Mid, or Plus	89
3.	Premium, PREM, Super, Supreme, High, or High Performance	91

R20-2-707. Product Transfer Documentation and Record Retention for Motor Fuel other than Arizona CBG and AZRBOB

A. ~~If~~ When a ~~person~~ transferor transfers custody or title to a motor fuel that is not Arizona CBG or AZRBOB, and the motor fuel is not sold or dispensed at a ~~service station~~ motor fuel dispensing site or fleet vehicle fueling facility, the ~~person~~ transferor shall provide to the transferee documents that include the following information:

~~1. The name and address of the person transferring custody or title;~~
~~2. The name and address of the transferee;~~
~~3.~~1. No change
~~4.~~2. No change
~~5.~~3. No change
~~6.~~4. No change
~~7.~~5. No change
~~8.~~6. No change
~~9.~~7. For conventional gasoline transported in or through the ~~CBG-covered~~ CBG-covered area, the statement, "This gasoline is not intended for use inside the ~~CBG-covered~~ CBG-covered area"; ~~and~~
~~10.~~8. Whether a lead substitute is present in the gasoline and the type of lead substitute present~~.~~;
9. For a biofuel or biofuel blend, the percentage of biofuel in the finished product; and
10. The final destination:
   a. When a terminal is the transferor, the owner or operator of the terminal shall include on the product transfer document the terminal name and address, the transporter name and address, and the final destination, which may be a final distribution facility, jobber, marketer, or motor fuel dispensing site;
   b. When a transporter is the transferor, the transporter shall include on the product transfer document the name and address of the transporter and the final destination, which is the location at which the motor fuel will be delivered and off loaded from the truck; and
   c. When a jobber or marketer is the transferor, the jobber or marketer shall include on the product transfer document the name and address of the jobber or marketer and the final destination, which may be a final distribution facility or a motor fuel dispensing site.

B. To enable a transferor to comply fully with the requirement in subsection (A)(10), the transferee shall supply to the transferor information regarding the final destination.

~~**B.**~~**C.** No change
~~**C.**~~**D.** No change
~~**D.**~~**E.** No change
~~**E.**~~**F.** ~~A service station~~ An owner or operator of a motor fuel dispensing site or fleet owner shall maintain product transfer documentation for the three most recent deliveries of each grade of motor fuel on the ~~service station owner's or operator's~~ premises of the motor fuel dispensing site owner or operator or fleet ~~owner's premises~~ owner. This documentation shall be available for Department review.
~~**F.**~~**G.** No change
~~**G.**~~**H.** No change

R20-2-708. ~~Oxygenated Fuel~~ Gasoline Ethanol Blends

A. A person that has custody of gasoline blended with an oxygenate shall ensure that the amount of oxygenate does not exceed the amount allowed by EPA waivers, Section 211(f) of the Clean Air Act, and A.R.S. § 41-2122. The maximum oxygen content of gasoline oxygenate blends shall not exceed ~~3.7~~ 4.0 percent by weight for fuel ethanol oxygenate and as specified in A.R.S. § 41-2122 for other oxygenates.

B. Special provisions for gasoline ethanol blends.
1. A gasoline ethanol blend that meets the requirements in subsections (B)(1)(a) and (B)(1)(b) shall not exceed the vapor pressure specified in ASTM D4814 by more than one psi:
   a. The gasoline ethanol blend shall contain fuel ethanol. The concentration of the fuel ethanol, excluding the

required denaturing agent, shall be:
i. From May 1 through September 15, at least nine percent and no more than 10 percent by volume of the gasoline ethanol blend; and
ii. From September 16 through April 30, at least 1.5 percent by weight and no more than 10 percent by volume of the gasoline ethanol blend; and
b. The fuel ethanol content of the gasoline ethanol blend shall:
i. Be determined using the appropriate test method listed in ASTM D4814, and
ii. Not exceed any applicable waiver condition under Section 211(f) of the Clean Air Act.
2. The provision in subsection (B)(1) is effective for gasoline ethanol blends sold:
a. Outside the CBG-covered area year around, and
b. Within the CBG-covered area during April and October.
3. Gasoline blended with no more than 10 percent by volume of fuel ethanol shall be blended using one of the following alternatives:
a. The base gasoline complies with the standards in ASTM D4814, the fuel ethanol complies with the standards in ASTM D4806, and the finished blend complies with the standards in ASTM D4814 with the following permissible exceptions:
i. The distillation minimum temperature at the 50 volume percent evaporated point is not less than 66°C (150°F), and
ii. The minimum test temperature at which the vapor/liquid ration is equal to 20 is waived;
b. The finished blend complies with the standards in ASTM D4814; or
c. The base gasoline complies with the standards in ASTM D4814 except distillation and the finished blend complies with the standards in ASTM D4814 with the following permissible exceptions:
i. The distillation minimum temperature at the 50 volume percent evaporated point is not less than 66°C (150°F), and
ii. The minimum test temperature at which the vapor/liquid ration is equal to 20 is waived.
4. A gasoline ethanol blend shall meet the standards specified in ASTM D4814.

C. In addition to complying with the requirements in R20-2-707, the transferor of a gasoline ethanol blend shall ensure that the product transfer document contains a legible and conspicuous statement that the gasoline being transferred contains fuel ethanol and the percentage concentration of fuel ethanol.

R20-2-709. Retail Oxygenated Fuel Labeling

A. No change

B. The owner or operator of a motor fuel dispensing site shall ensure that labels required under subsection (A) are displayed on the upper 60 percent of each face of each motor fuel dispenser. The label indicating the maximum percent by volume of oxygenate contained in the oxygenated fuel shall state: "~~Contains~~ May contain up to _____ % fuel ethanol."

C. In the CBG-covered area and area B, the owner or operator of a motor fuel dispensing site shall ensure that a label displayed on each face of each motor fuel dispenser contains the following statement: "This gasoline is oxygenated with fuel ethanol and will reduce carbon monoxide emissions from motor vehicles in the winter." The statement may be printed on the label required in subsection (B) or on a separate label. If the statement is printed on a separate label, the label shall be displayed next to the label required in subsection (B).

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

R20-2-713. Motor Fuel Storage Tank Labeling

A. ~~A service station~~ An owner or operator of a motor fuel dispensing site shall ensure that all motor fuel storage tank fill pipes and gasoline vapor return lines located at ~~a service station~~ the motor fuel dispensing site are labeled to identify the contents accurately as:
1. Unleaded gasoline,
2. Unleaded midgrade gasoline,
3. Unleaded premium gasoline,
4. No. 1 or #1 diesel fuel,
5. No. 2 or #2 diesel fuel, ~~or~~
6. Gasoline vapor return~~.~~,
7. Biodiesel blend, or
8. E85.

B. ~~A service station~~ An owner or operator of a motor fuel dispensing site shall ensure that ~~labels are~~ the label required under subsection (A) is at least 1 1/2" x 5" with at least 1/4" black or white block lettering on a sharply contrasting background and that the label is clean, visible, and legible at all times.

C. ~~A service station~~ An owner or operator of a motor fuel dispensing site may display other information on the reverse side of a two-sided label.

D. ~~A service station~~ An owner or operator of a motor fuel dispensing site shall not put motor fuel into storage tanks without attaching the proper label.

R20-2-714. Requirements for Motor Fuels ~~Outside the CBG-covered Area~~ Other than Arizona CBG

A. A person that owns or operates a motor fuel dispensing site or transmix or production facility outside the CBG-covered area shall ensure that a motor fuel offered for sale at the motor fuel dispensing site or transmix or production facility meets all the appropriate specifications in R20-2-702 except~~:~~

~~1.~~ ~~From~~ that from May 1 through September 30, gasoline shall meet the specifications in ASTM ~~D 4814-04a~~ D4814 except maximum vapor pressure shall be 9.0 pounds per square inch~~;~~

~~2. For gasoline blends, the vapor pressure may be no more than one pound per square inch greater than the vapor pressures established by ASTM D 4814-04a during:~~

~~a. May 1 through September 15, if the gasoline-fuel ethanol blend meets the requirements of ASTM D 4814-04a, the volatility requirements of subsection (A)(1), and the final gasoline-fuel ethanol blend contains at least nine percent fuel ethanol by volume but does not exceed the volume specified in EPA waivers; and~~

~~b. September 16 through April 30, if the gasoline-fuel ethanol blend meets the requirements of ASTM D 4814-04a and the final gasoline-fuel ethanol blend contains at least 1.5 percent fuel ethanol by weight but does not exceed the volume specified in EPA waivers~~.

B. No change

C. No change

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

D. No change

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

R20-2-715. Motor Fuel Quality Testing Methods and Requirements

A. No change

B. Unless otherwise required in A.R.S. Title 41, Chapter 15, or this Chapter, a person testing #1 or #2 diesel fuel shall use the methodologies and meet the specifications of ASTM ~~D 975-04e~~ D975.

C. No change

R20-2-718. Requirements for ~~the~~ Production, Transport, Distribution, and ~~or~~ Sale of ~~E85~~ Biofuels

~~**A.** Requirements applicable statewide.~~

~~1. A producer of E85 or the owner or operator of a motor fuel dispensing site that dispenses E85 shall ensure that the E85 sold or offered for sale in Arizona meets all the specifications in ASTM D 5798-99.~~

~~2. An owner or operator of a motor fuel dispensing site shall ensure that both the motor fuel dispenser and nozzle from which E85 is dispensed have labels affixed that indicate E85 is not gasoline and is intended for use only in a flexible-fuel vehicle, and stating, "Check your owner's manual to ensure that this fuel can be used in your vehicle."~~

~~3. An owner or operator of a motor fuel dispensing site shall ensure that any motor fuel dispenser from which E85 is dispensed is compatible with E85 and meets the requirements in R20-2-203.~~

~~4. A producer of E85 shall report to the Department, by the 15th of the month following the production of E85, the following information regarding the E85 production:~~

~~a. The amount of fuel ethanol used during the previous month,~~

~~b. The amount of gasoline used during the previous month,~~

~~c. The total amount of E85 produced during the previous month,~~

~~d. The total amount of E85 sold during the previous month,~~

~~e. The fuel quality properties for the gasoline and fuel ethanol components making up each batch of E85, and~~

~~f. The fuel quality properties of each batch of final E85 blend.~~

~~**B.** Requirements applicable in the CBG-covered area.~~

~~1. A producer of E85 for sale in the CBG-covered area shall use Arizona CBG or AZRBOB as the gasoline portion of the E85 blend.~~

~~2. A producer of E85 for sale in the CBG-covered area shall ensure that the fuel ethanol used meets the standard in R20-2-751(C).~~

A. General requirements for producers and suppliers of biofuel or biofuel blends in Arizona.

1. Registration requirement.

a. A producer, supplier, or person required to register with the EPA under 40 CFR 80, Subpart K, shall register with the Director, using a form prescribed by the Director, before producing or supplying biofuel or biofuel blend in

Arizona.

b. A person required to register under subsection (A)(1)(a) shall notify the Director within 10 days after the effective date of a change in any of the information provided under subsection (A)(1)(a).

c. Consequences of failing to register under subsection (A)(1)(a).

i. If a producer fails to register, the Department shall presume that all biofuel or biofuel blend produced is noncompliant with the requirements of this Chapter from the date that registration should have occurred; and

ii. If a supplier or person required to register with the EPA fails to register, the Director shall take action as allowed under A.R.S. § 41-2115 and R20-2-762.

d. The Department shall maintain and make available to the public a list of all persons registered under this Section.

2. Reporting requirement.

a. A person required to register under subsection (A)(1)(a) shall report to the Department by the 15th of the month after producing or supplying biofuel or biofuel blend. The person shall:

i. Report on a form prescribed by the Director;

ii. Provide the information specified in subsections R20-2-718(B) and (C), as applicable;

iii. Attest to the truthfulness and accuracy of the information submitted;

iv. Consent to the Department or its authorized agent collecting samples and accessing records as provided in this Article; and

v. Ensure that the report form is signed by a corporate officer responsible for operations at the facility at or from which the biofuel or biofuel blend was produced or supplied.

b. The Department shall classify the information submitted under subsection (A)(2)(a) as confidential and protected under A.R.S. § 44-1374 if the person that submits the information expressly designates the information as confidential.

3. Quality Assurance and Quality Control (QA/QC) program requirement.

a. A person required to register under subsection (A)(1)(a) shall develop a QA/QC program to ensure the quality of a biofuel or biofuel blend produced in or supplied in or into Arizona.

b. A person required to develop a QA/QC program under subsection (A)(3)(a) shall summarize the QA/QC program in a manual and submit the manual to the Director for approval at least three months before the person plans to produce or supply a biofuel or biofuel blend. The person shall ensure that the manual:

i. Documents the manner in which the QA/QC program ensures that a biofuel or biofuel blend produced or supplied conforms to applicable ASTM specifications, is appropriately blended, and meets all customer-specific requirements;

ii. Contains a policy and objectives that expressly commit the producer or supplier to ensure the quality of the biofuel or biofuel blend produced or supplied;

iii. Contains procedures that will be used to determine and document that operational quality requirements are met; and

iv. Contains a provision for making, maintaining, and controlling documents and records regarding the QA/QC program.

c. A person that submits a manual under subsection (A)(3)(b) shall not produce or supply a biofuel or biofuel blend until the manual is approved by the Director.

d. The Director shall approve a manual submitted under subsection (A)(3)(b) only if the Director determines that the QA/QC program sufficiently ensures the quality of a biofuel or biofuel blend produced or supplied.

B. Specific requirements for producers or suppliers of E85.

1. The owner or operator of a motor fuel dispensing site at which E85 is dispensed shall ensure that:

a. Both the motor fuel dispenser and nozzle from which E85 is dispensed have labels affixed that:

i. Indicate E85 is not gasoline,

ii. Indicate E85 is intended for use only in a flexible-fuel vehicle, and

iii. State "Check your owner's manual to ensure that this fuel can be used in your vehicle," and

b. Any motor fuel dispenser from which E85 is dispensed is compatible with E85 and meets the requirements of this Chapter and A.R.S. § 41-2083.

2. Additional requirement for producing E85 for sale in the CBG-covered area. A producer of E85 for sale in the CBG-covered area shall:

a. Use Arizona CBG or AZRBOB and pressurant as needed to meet the hydrocarbon requirement of ASTM D5798; and

b. Ensure that the fuel ethanol used meets the standards in this Chapter.

3. Reporting requirement for a producer of E85. A producer of E85 intended as a final product for the fueling of motor vehicles shall submit the report required under subsection (A)(2) and ensure that the report includes the following information regarding the E85 produced:

a. The amount of fuel ethanol used to produce E85 in the previous month,

b. The amount of gasoline used to produce E85 in the previous month,

c. The total amount of E85 produced during the previous month,
d. The following fuel quality properties for the finished E85:
i. Appearance,
ii. American Petroleum Institute gravity,
iii. Organic chloride,
iv. Water content,
v. Vapor pressure, and
vi. Sulfur content.

4. Reporting requirement for a supplier of E85. A supplier of E85 intended as a final product for the fueling of motor vehicles shall submit the report required under subsection (A)(2) and ensure that the report includes the following:
a. The amount of E85 sold during the previous month; and
b. A certification by the supplier of E85 that the E85 sold, offered for sale, or dispensed was received from or traceable to a person registered with the Department under subsection (A)(1).

5. Quality Assurance and Quality Control (QA/QC) program for a producer of E85. A producer of E85 shall comply with the QA/QC requirements specified in subsection (A)(3). Additionally, the producer shall ensure that the manual submitted to the Director under subsection (A)(3)(b) contains a description of a QA/QC sampling and testing protocol to be implemented at each facility within the person's operation at which E85 is produced. The producer shall ensure that that sampling and testing protocol meets the following minimum standards:
a. All samples of E85 are collected after any applicable blend component is added;
b. All samples of E85 are collected using approved ASTM methods;
c. Sampling is done at one of the following rates:
i. If E85 is produced in a single storage tank by batch, a rate of at least one sample per tank. For the purpose of this subsection, a storage tank is a stationary tank and does not include a transport trailer;
ii. If E85 is blended or transferred into a delivery truck through the use of computer-controlled in-line blending equipment, a rate of at least one sample for every 500 times E85 is blended or transferred or one sample per week, whichever is more frequent;
iii. If E85 is blended or transferred into a delivery truck without the use of computer-controlled in-line blending equipment, a rate of at least one sample every 250 times E85 is blended or transferred or two samples per week, whichever is more frequent;
d. All testing of E85 is conducted using the appropriate ASTM test method outlined in ASTM D5798;
e. Test results are used to certify the quality of the E85 produced;
f. Sample handling and storage procedures are specified; and
g. Sample retention time-frames are specified.

6. Non-compliant E85. If test results for E85 shipped from a facility indicate that the E85 does not comply with the requirements of this Chapter, the producer of the E85 shall immediately:
a. Notify the Director of the test results,
b. Take all reasonable steps to stop the sale of the non-compliant E85, and
c. Take steps reasonably calculated to determine the cause of the noncompliance and to prevent future occurrences of noncompliance.

C. Specific requirements for producers or suppliers of biodiesel and biodiesel blends.

1. A person shall not sell or offer or expose for sale:
a. Neat biodiesel unless the neat biodiesel meets all specifications established by ASTM D6751,
b. Diesel fuel containing up to five percent by volume biodiesel unless the diesel fuel meets all specifications established by ASTM D975, and
c. A blend containing six percent through 20 percent biodiesel and diesel fuel unless the blend meets all specifications established by ASTM D7467.

2. The owner or operator of a motor fuel dispensing site shall ensure that:
a. Any motor fuel dispenser from which a biodiesel or biodiesel blend is dispensed:
i. Meets the labeling requirements established by A.R.S. § 41-2083(L),
ii. Is compatible with biodiesel or biodiesel blend, and
iii. Meets all requirements in this Chapter and A.R.S. § 41-2083; and
b. Any biodiesel or biodiesel blend sold, offered for sale, or dispensed was received from or traceable to a person registered with the Department under subsection (A)(1).

3. Additional requirement for producing biodiesel or biodiesel blend for sale in the CBG-covered area. A producer of biodiesel or biodiesel blend for sale in the CBG-covered area shall ensure that the diesel fuel used contains no more than 15 ppm of sulfur.

4. Reporting requirement for a producer of a biodiesel or biodiesel blend. A producer of a biodiesel or biodiesel blend intended as a final product for the fueling of motor vehicles shall submit the report required under subsection (A)(2) and ensure that the report includes the following information regarding the biodiesel or biodiesel blend produced:

a. The total amount of biodiesel or biodiesel blend produced in the previous month;
b. The amount of biodiesel used to produce a biodiesel blend in the previous month;
c. The following fuel quality properties, established by ASTM D6751, for the finished biodiesel:
   i. Flash point;
   ii. Water sediment;
   iii. Sulfur content,
   iv. Cold soak filterability;
   v. Cloud point;
   vi. Acid number;
   vii. Free glycerin;
   viii. Total glycerin; and
   ix. Distillation, 90 percent; and
d. The following fuel quality properties, established by ASTM D7467, for the finished biodiesel blend that contains six percent through 20 percent biodiesel:
   i. Sulfur content,
   ii. Aromatic hydrocarbon content,
   iii. Cetane index,
   iv. Acid number,
   v. Distillation, and
   vi. American Petroleum Institute gravity.

5. Reporting requirement for a supplier of a biodiesel or biodiesel blend. A supplier of a biodiesel or biodiesel blend intended as a final product for the fueling of motor vehicles shall submit the report required under subsection (A)(2) and ensure that the report includes the following:
   a. The amount of biodiesel or biodiesel blend sold during the previous month; and
   b. A certification by the supplier of biodiesel or biodiesel blend that the biodiesel or biodiesel blend sold, offered for sale, or dispensed was received from or traceable to a person registered with the Department under subsection (A)(1).
6. Quality Assurance and Quality Control (QA/QC) program for a producer of biodiesel or a biodiesel blend. Except as specified in subsection (C)(7), a producer of biodiesel or a biodiesel blend shall comply with the QA/QC requirements specified in subsection (A)(3). Additionally, the producer shall ensure that the manual submitted to the Director under subsection (A)(3)(b) contains a description of a QA/QC sampling and testing protocol to be implemented at each facility within the person's operation at which biodiesel or a biodiesel blend is produced. The producer shall ensure that that sampling and testing protocol meets the following minimum standards:
   a. All samples of biodiesel or biodiesel blend are collected after any applicable blend component is added;
   b. All samples of biodiesel or biodiesel blend are collected using approved ASTM methods;
   c. Sampling is done at one of the following rates:
      i. If biodiesel or a biodiesel blend is produced in a single storage tank by batch, a rate of at least one sample per tank. For the purpose of this subsection, a storage tank is a stationary tank and does not include a transport trailer;
      ii. If biodiesel or a biodiesel blend is blended or transferred into a delivery truck through the use of computer-controlled in-line blending equipment, a rate of at least one sample for every 20 times biodiesel or biodiesel blend is blended or transferred or one sample every two weeks, whichever is more frequent;
      iii. If biodiesel or a biodiesel blend is blended or transferred into a delivery truck without the use of computer-controlled in-line blending equipment, a rate of at least one sample every 10 times biodiesel or biodiesel blend is blended or transferred or one sample per week, whichever is more frequent;
   d. All testing of biodiesel or biodiesel blend is conducted using the appropriate ASTM test method outlined in ASTM D6751, D975, or D7467;
   e. Test results are used to certify the quality of the biodiesel or biodiesel blend produced;
   f. Sample handling and storage procedures are specified; and
   g. Sample retention time-frames are specified.
7. A producer of biodiesel or a biodiesel blend that is accredited under the BQ9000 program shall, at least three months before planning to produce or supply a biodiesel or biodiesel blend, submit to the Director the quality manual developed and implemented under the BQ9000 program instead of the QA/QC manual required under subsection (C)(6). A producer of biodiesel or a biodiesel blend that is BQ9000 accredited shall not produce or supply a biodiesel or biodiesel blend until the quality manual developed under the BQ9000 program is approved by the Director. A producer of biodiesel or a biodiesel blend that is BQ9000 accredited shall, upon request, provide the Director with access to records relating to the accreditation and documentation relating to the precision and accuracy of any alternative test method used to meet the requirements of this Section. The Director has authority under A.R.S. §§ 41-2065(A)(4) and 41-2083(N) to audit the quality manual submitted under this subsection.

8. Non-compliant biodiesel or biodiesel blend. If test results for biodiesel or a biodiesel blend shipped from a facility indicate that the biodiesel or biodiesel blend does not comply with the requirements of this Chapter, the producer of the biodiesel or biodiesel blend shall immediately:
   a. Notify the Director of the test results,
   b. Take all reasonable steps to stop the sale of the non-compliant biodiesel or biodiesel blend, and
   c. Take steps reasonably calculated to determine the cause of the noncompliance and to prevent future occurrences of noncompliance.

D. Specific requirements for producers or suppliers of petroleum-based renewable diesel. A producer or supplier of petroleum-based renewable diesel that is intended as a final product for the fueling of motor vehicles shall ensure that the petroleum-based renewable diesel:
1. Meets the standards in ASTM D975, and
2. Is identified as specified in R20-2-701.

R20-2-719. ~~Requirements for the Sale of Biodiesel~~ Repealed

~~**A.** A person shall not sell or offer or expose for sale:~~
~~1. Biodiesel that is not tested or does not meet the specifications established by ASTM D 6751,~~
~~2. A blend of biodiesel and diesel fuel that is not tested or does not meet the specifications established by ASTM D 975-04c, or~~
~~3. Biodiesel or a blend of biodiesel and diesel fuel for use in Area A that contains sulfur in excess of 15 ppm.~~

~~**B.** A person who blends biodiesel that is intended as a final product for the fueling of motor vehicles shall report to the director by the fifteenth day of each month the quantity and quality of biodiesel shipped to or produced in this state during the preceding month. A person who supplies biodiesel subject to this subsection shall report the following by batch:~~
~~1. The percentage of biodiesel in a final blend.~~
~~2. The volume of the finished product.~~
~~3. For neat biodiesel, the results of analysis for those parameters established by ASTM D6751.~~
~~4. For biodiesel blended with any diesel fuel, the results of the analysis of the following motor fuel parameters as established by ASTM D975:~~
~~a. Sulfur content.~~
~~b. Aromatic hydrocarbon content.~~
~~c. Cetane number.~~
~~d. Specific gravity.~~
~~e. American petroleum institute gravity.~~
~~f. The temperatures at which ten per cent, fifty per cent and ninety per cent of the diesel fuel boiled off during distillation. A.R.S. § 41-2083(L).~~

~~**C.** A person required to submit a report under subsection (B) shall use a form prescribed by the Director, certify the truthfulness and accuracy of the data submitted, and consent to the Department or its authorized agent collecting samples and accessing records as provided in this Article. A corporate officer who is responsible for operations at the facility that produces or ships the final product shall sign the report.~~

~~**D.** A person shall label a dispenser at which biodiesel is dispensed in a manner that notifies other persons of the volume percentage of biodiesel in the finished product and with the statement: "This fuel contains biodiesel. Check the owner's manual or with your engine manufacturer before using."~~

R20-2-749. Definitions Applicable to Arizona CBG and AZRBOB

The following definitions apply only to R20-2-750 through R20-2-762, including Tables A, 1, and 2:

"Designated alternative limit" means a motor fuel property specification, expressed in the nearest part per million by weight for sulfur content, nearest 10th percent by volume for aromatic hydrocarbon content, nearest 10th percent by volume for olefin content, and nearest degree Fahrenheit for T90 and T50, that is assigned by a registered supplier to a final blend of Type 2 Arizona CBG or AZRBOB for purposes of compliance with the Predictive Model Procedures.

"Downstream oxygenate blending" means combining AZRBOB and fuel ethanol to produce fungible Arizona CBG.

"Importer" means any person that assumes title or ownership of Arizona CBG or AZRBOB produced by an unregistered supplier.

"Oxygenate-blending facility" means any location (including a truck) where fuel ethanol is added to Arizona CBG or AZRBOB and the resulting quality or quantity of Arizona CBG is not altered in any other manner except for the addition of a deposit-control or similar additive registered under 40 CFR 79.

"Oxygenated Arizona CBG" means Arizona CBG with a maximum oxygen content of 4.0 wt. percent or another oxygen content approved by the Director under A.R.S. § 41-2124, that is produced and shipped to or within Arizona and sold or offered for sale for use in motor vehicles in the CBG-covered area from November 1 through March 31 of each year.

"Performance standard" means the VOC and NOx emission reduction percentages in R20-2-751(A)(8) and Table 1.

"PM" or "Predictive Model Procedures" means the California Predictive Model and CARB's "California Procedures for Evaluating Alternative Specifications for Phase 2 Reformulated Gasoline Using the California Predictive Model," as adopted April 20, 1995, which is incorporated by reference in R20-2-702.

"PM alternative gasoline formulation" means a final blend of Arizona CBG or AZRBOB that is subject to a set of PM alternative specifications.

"PM alternative specifications" means the specifications for the following fuel properties, as determined using a testing methodology in R20-2-759:

Maximum vapor pressure, expressed in the nearest 100th of a pound per square inch;

Maximum sulfur content, expressed in the nearest part per million by weight;

Maximum olefin content, expressed in the nearest 10th of a percent by volume;

Minimum and maximum oxygen content, expressed in the nearest 10th of a percent by weight;

Maximum T50, expressed in the nearest degree Fahrenheit;

Maximum T90, expressed in the nearest degree Fahrenheit; and

Maximum aromatic hydrocarbon content, expressed in the nearest 10th of a percent by volume.

"PM averaging compliance option" means, with reference to a specific fuel property, the compliance option for PM alternative gasoline formulations by which final blends of Arizona CBG and AZRBOB are assigned designated alternative limits under R20-2-751(G), (H), and (I).

"PM averaging limit" means a PM alternative specification that is subject to the PM averaging compliance option.

"PM flat limit" means a PM alternative specification that is subject to the PM flat limit compliance option.

"PM flat limit compliance option" means, with reference to a specific fuel property, the compliance option that each gallon of gasoline must meet for that specified fuel property as contained in the PM alternative specifications.

"Produce" means:

Except as otherwise provided, to convert a liquid compound that is not Arizona CBG or AZRBOB into Arizona CBG or AZRBOB.

If a person blends a blendstock that is not Arizona CBG or AZRBOB with Arizona CBG or AZRBOB acquired from another person, and the resulting blend is Arizona CBG or AZRBOB, the person conducting the blending produces only the portion of the blend not previously Arizona CBG or AZRBOB. If a person blends Arizona CBG or AZRBOB with other Arizona CBG or AZRBOB in accordance with this Article, without the addition of a blendstock that is not Arizona CBG or AZRBOB, that person is not a producer of Arizona CBG or AZRBOB.

If a person supplies Arizona CBG or AZRBOB to a refiner that agrees in writing to further process the Arizona CBG or AZRBOB at the refiner's refinery and be treated as the producer of Arizona CBG or AZRBOB, the refiner is the producer of the Arizona CBG or AZRBOB.

If an oxygenate blender blends oxygenates into AZRBOB supplied from a gasoline production or import facility, and does not alter the quality or quantity of the AZRBOB or the quality or quantity of the resulting Arizona CBG certified by a registered supplier in any other manner except for the addition of a deposit-control or similar additive, the producer or importer of the AZRBOB, rather than the oxygenate blender, is considered the producer or importer of the full volume of the resulting Arizona CBG.

"Registered supplier" means a producer or importer that supplies Arizona CBG or AZRBOB and is registered with the Director under R20-2-750.

"Third-party terminal" means an owner or operator of a gasoline storage tank facility that accepts custody, but not ownership, of Arizona CBG or AZRBOB from a registered supplier, oxygenate blender, pipeline, or other third-party terminal and relinquishes custody of the Arizona CBG or AZRBOB to a transporter.

"Type 1 Arizona CBG" means a gasoline that meets the standards contained in R20-2-751(A) and Table 1.

"Type 2 Arizona CBG" means a gasoline that meets the standards contained in Table 2 or is certified using the PM according to the requirements of R20-2-751(G), (H), and (I), and meets the requirements in:

R20-2-751(A) beginning April 1 through October 31 of each year; and

R20-2-751(B) beginning November 1 through March 31 of each year.

"Winter" means November 1 through March 31.

R20-2-751. Arizona CBG Requirements

A. General fuel property and performance requirements. In addition to the other requirements of this Article and except as provided in subsection (B), all Arizona CBG shall meet the following requirements and for any fuel property not specified, shall meet the requirements in ASTM ~~D 4814-04a~~ D4814. The dates in this subsection are compliance dates for the

owner or operator of a motor fuel dispensing site or a fleet vehicle fueling facility.

1. Sulfur: ~~80~~ 500 ppm by weight (max);
2. Aromatics: 50 percent by volume (max);
3. Olefins: 25 percent by volume (max);
4. E200: 70-30 percent volume;
5. E300: 100-70 percent volume;
6. Maximum ~~Vapor Pressure~~ vapor pressure.
   a. October ~~1 - January 31~~: 9.0 ~~pounds per square inch (psi)~~ psi;
   b. ~~February: 13.5~~ November 1 - March 31: 9.0 psi;
   ~~c. March: 11.5 psi~~
   ~~d.~~c. April: 10.0 psi;
   ~~e.~~d. May: 9.0 psi;
   ~~f.~~e. June 1 - September 30: 7.0 psi; ~~for CARB Phase 2 gasoline and 7.2 psi for CARB Phase 3 gasoline~~
   f. A gasoline ethanol blend in the CBG-covered area is subject to the one pound psi vapor pressure waiver, as described in R20-2-708(B), during April and October only.
7. Oxygen and ~~Oxygenates~~ oxygenates.
   a. Minimum ~~Content~~ content:
      i. November 1 - ~~January~~ March 31: 10 percent fuel ethanol by volume. If A.R.S. § 41-2124(E) petition in effect: 2.7 percent oxygen by weight as approved by the Director.
      ii. ~~February~~ April 1 - October 31: 0 percent by weight (any oxygenate).
   b. The maximum oxygen content shall not exceed ~~3.7~~ 4.0 percent by weight for fuel ethanol and as specified in A.R.S. § 41-2122 for other oxygenates, and shall comply with the requirements of A.R.S. § 41-2123.
   c. No change
8. Type 1 Arizona CBG shall meet the Federal Complex Model VOC emissions reduction percentage May 1 through September 15: 27.5 percent (Federal Complex Model settings: Summer, Area Class B, Phase 2). Type 2 Arizona CBG shall meet CARB Phase 2 ~~or Phase 3 PM~~ requirements.

B. Wintertime requirements. In addition to the other requirements of this Article, the owner or operator of a motor fuel dispensing site or a fleet vehicle fueling facility shall ensure that beginning November 1 through ~~January~~ March 31 of each year, all Arizona CBG meets the following fuel property requirements.

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
   a. No change
   b. Maximum oxygen content - ~~3.7~~ 4.0 percent oxygen by weight, and shall comply with the requirements of A.R.S. § 41-2123; and
   c. No change

C. Fuel ethanol specifications. A person that uses fuel ethanol as a blending component with AZRBOB or Arizona CBG shall ensure that the fuel ethanol meets the requirements in ASTM ~~D 4806-04a~~ D4806 and the following:

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

D. No change

1. Whether the registered supplier (at each point where the Arizona CBG or AZRBOB is certified) will supply Arizona CBG or AZRBOB that complies with Type 1 Arizona CBG, Type 2 Arizona CBG, or the PM alternative gasoline formulation requirements and, if the registered supplier will supply Arizona CBG or AZRBOB that complies with the PM alternative gasoline formulation requirements, whether the registered supplier will certify using the CARB Phase 2 ~~or Phase 3~~ model; and
2. No change

E. Winter elections. Beginning November 1 through ~~January~~ March 31 of each year, a registered supplier shall ensure that all Arizona CBG or AZRBOB complies with Type 2 Arizona CBG requirements or the PM alternative gasoline formulation requirements under Table 2. A registered supplier shall make an initial election, and a subsequent election each time a change occurs, before beginning to transport Arizona CBG or AZRBOB. A registered supplier shall make the election with the Director on a form or in a format prescribed by the Director. The election shall state:

1. No change
2. No change

F. A registered supplier may elect and produce Type 1 Arizona CBG from December 1 through March 31 but the registered supplier shall not distribute the Arizona CBG to a motor fuel dispensing site within the CBG-covered area before April 1.

~~F.~~G. Certification as Type 1 Arizona CBG or Type 2 Arizona CBG. A registered supplier shall certify Arizona CBG or AZRBOB under R20-2-752 as meeting all requirements of the election made in subsection (D) or (E). For each fuel property, Type 1 Arizona CBG shall comply with the requirements in either column A or columns B through D of Table 1, and shall be certified using the Federal Complex Model, which is incorporated by reference in R20-2-702. For each fuel property, Type 2 Arizona CBG shall comply with the requirements of columns A and B (averaging option), or column C in Table 2. The PM alternative gasoline formulation shall meet the requirements of subsections ~~(G),~~ (H), ~~and~~ (I), and (J), and column A of Table 2. A registered supplier may certify Arizona CBG or AZRBOB using an equivalent test method that the Department approves using the criteria stated in R20-2-759.

~~G.~~H. Certification and use of Predictive Model for alternative PM gasoline formulations.

1. Except as provided in subsections ~~(G)(4)~~ (H)(4) and ~~(I)~~ (J), a registered supplier shall use the PM as provided in the Predictive Model Procedures.
2. No change
   a. Submitting to the Director a complete copy of the documentation provided to the executive officer of CARB according to 13 California Code of Regulations, Section 2264 and subsection ~~(I)~~ (J); or
   b. No change
      i. No change
      ii. No change
3. A registered supplier shall deliver the certification required under subsection ~~(G)(2)~~ (H)(2) to the Director before transporting the PM alternative gasoline formulation.
4. No change
   a. A registered supplier shall not make a new election to sell or supply from its production or import facility a final blend of Arizona CBG as a PM alternative gasoline formulation if the registered supplier has an outstanding requirement under subsection ~~(J)~~ (K) to provide offsets for fuel properties at the same production or import facility.
   b. If a registered supplier elects to sell or supply from its production or import facility a final blend of Arizona CBG as a PM alternative gasoline formulation subject to a PM averaging compliance option for one or more fuel properties, the registered supplier shall not elect any other compliance option, including another PM alternative gasoline formulation, if an outstanding requirement to provide offsets for fuel properties exists under the provisions of subsection ~~(J)~~ (K). This subsection does not preclude a registered supplier from electing another PM alternative gasoline formulation if:
      i. No change
      ii. No change
      iii. No change
   c. If a registered supplier elects to sell or supply from the registered supplier's production or import facility a final blend of Arizona CBG as a PM alternative gasoline formulation, the registered supplier shall not use a previously assigned designated alternative limit for a fuel property to provide offsets under subsection ~~(J)~~ (K).
   d. No change
      i. No change
      ii. No change

~~H.~~I. No change

1. No change
2. The registered supplier is prohibited by subsection ~~(G)(4)(a)~~ (H)(4)(a) from electing to sell or supply the gasoline as a PM alternative gasoline formulation,
3. No change
4. No change
   a. The gasoline exceeds the applicable PM average limit in Table 2, column B, and no designated alternative limit for the fuel property is established for the gasoline in accordance with subsection ~~(G)(2)~~ (H)(2); or
   b. A designated alternative limit for the fuel property is established for the gasoline in accordance with subsection ~~(G)(2)~~ (H)(2), and either the gasoline exceeds the designated alternative limit for the fuel property or the designated alternative limit for the fuel property exceeds the PM averaging limit and the exceedance is not fully offset in accordance with subsection ~~(J)~~ (K).

~~I.~~J. Oxygen content requirements for PM alternative gasoline formulations. A registered supplier shall ensure that from November 1 through ~~January~~ March 31, all alternative PM gasoline formulations comply with oxygen content requirements for the CBG-covered area. Regardless of the oxygen content, a registered supplier shall certify the final alternative PM gasoline formulation using the PM with a minimum oxygen content of 2.0~~%~~ percent by weight. A registered supplier may use the CARBOB Model as a substitute for the preparation of a fuel ethanol hand blend and use the fuel qualities calculated under the CARBOB Model for compliance and reporting purposes.

~~J.~~K. No change
1. No change
2. No change
3. No change

~~K.~~L. No change
1. In addition to a penalty under R20-2-762, if any, a registered supplier that fails to comply with a requirement of subsection ~~(J)~~ (K) shall meet the applicable per-gallon standards contained in Table 1, Table 2, or an alternative PM gasoline formulation, for a probationary period as follows:
   a. For a registered supplier that elects to comply with the standards contained in Table 1, the probationary period begins on the first day of the next averaging season and ends on the last day of that averaging season if the conditions of subsection ~~(K)(2)~~ (L)(2) are met;
   b. For a registered supplier that elects to comply with the standards contained in Table 2 or the PM, the probationary period begins no later than 90 days after the registered supplier determines, or receives a notice from the Director, that the registered supplier did not comply with the requirements of subsection ~~(J)~~ (K). Before the probationary period begins, the registered supplier shall notify the Director in writing of the beginning date of the probationary period. The probationary period ends 90 days after its beginning date.
2. No change
   a. No change
      i. No change
      ii. No change
   b. No change
   c. No change
   d. No change
3. If a registered supplier fails to comply with the requirements of subsection ~~(J)~~ (K) within one year of the end of a probationary period under subsection ~~(K)(1)~~ (L)(1), the registered supplier shall comply with applicable per-gallon standards for a subsequent probationary period of two years, or until the conditions in subsection ~~(K)(2)~~ (L)(2) are satisfied, whichever is later.
   a. No change
   b. If a registered supplier elects to comply with the Table 2 standards or the PM, the probationary period begins no later than 90 days after the registered supplier determines, or receives notice from the Director, that the registered supplier did not comply with the requirements of subsection ~~(J)~~ (K). Before the probationary period begins, the registered supplier shall notify the Director in writing of the beginning date of the probationary period.
4. If a registered supplier fails to comply with the requirements of subsection ~~(J)~~ (K) within one year after the end of a probationary period provided under subsection ~~(K)(3)~~ (L)(3), the registered supplier shall permanently comply with applicable per-gallon standards.

~~L.~~M. No change

~~M.~~N. No change

~~N.~~O. Subsequent survey compliance. If the minimum VOC or average NOx emissions reduction percentage has been made more stringent according to subsection ~~(L)~~ (M) or ~~(M)~~ (N) and all emissions reduction surveys for VOC or NOx for two consecutive years show emissions within the applicable adjusted reduction percentage in the CBG-covered area, the applicable VOC or NOx emissions adjusted reduction percentage shall be reduced by an absolute 1.0 percent beginning in the year following the year in which the second compliant survey is conducted. Each emissions reduction percentage adjusted under this subsection shall not be decreased below the following:
1. No change
2. No change

~~O.~~P. Subsequent survey failures. If a VOC or NOx emissions reduction percentage is made less stringent under subsection ~~(N)~~ (O) and a subsequent VOC or NOx survey shows excess VOC or NOx emissions in the CBG-covered area:
1. No change
2. No change
3. If the VOC or NOx emission reduction percentage is increased under subsection ~~(O)(1)~~ (P)(1) or ~~(O)(2)~~ (P)(2), the VOC or NOx emission reduction percentage shall not be made less stringent regardless of the result of subsequent surveys for VOC or NOx emissions.

~~P.~~Q. Effective date for adjusted standards. If a performance standard is adjusted by operation of subsection ~~(L),~~ (M), (N), (O), or ~~(O)~~ (P), the effective date for the change is the beginning of the next averaging season for which the standard is applicable.

~~Q. Subsections (A)(6)(a), (b), (c), and (f), (A)(7)(a)(i) and (ii), (A)(8), (B), (D)(2), (E), and (I) will not become effective until Arizona's revised State Implementation Plan regarding CARB 3 and shortening the winter season is approved by EPA.~~

R20-2-752. General Requirements for Registered Suppliers

A. No change

B. No change
C. No change
1. No change
   a. No change
   b. No change
   c. No change
   d. No change
   e. The test results for sulfur, aromatic hydrocarbon, olefin, oxygen, ~~RVP~~ vapor pressure, and as applicable, T50, T90, E200, and E300 as determined under R20-2-759.
2. If Arizona CBG or AZRBOB produced or imported by a registered supplier is not tested and documented as required by this Section, the Director shall deem the Arizona CBG or AZRBOB to have a ~~RVP~~ vapor pressure, sulfur, aromatic hydrocarbon, olefin, oxygen, T50, and T90 that exceeds the standards specified in R20-2-751 or the comparable PM averaging limits, unless the registered supplier demonstrates to the Director that the Arizona CBG or AZRBOB meets all applicable fuel property limits and performance standards.
3. No change

D. No change
E. No change
F. No change
1. No change
   a. No change
   b. No change
      i. No change
      ii. No change
      iii. No change
2. No change
3. No change
   a. No change
   b. No change
   c. No change
      i. No change
      ii. No change
      iii. No change
   d. No change
   e. No change
4. No change
   a. No change
      i. No change
      ii. No change
      iii. No change
      iv. No change
      v. No change
      vi. No change
      vii. No change
   b. No change
   c. No change
      i. No change
      ii. No change
   d. No change

G. No change
H. No change
1. No change
   a. No change
   b. No change
   c. No change
   d. No change
   e. ~~RVP~~ Vapor pressure: 0.3 psi;
   f. No change
   g. No change
   h. No change

i. No change
j. No change
2. No change
a. No change
b. No change

R20-2-754. Downstream Blending Exceptions for Transmix

A. ~~Pipelines~~ A pipeline or third-party terminal may blend transmix into Arizona CBG or AZRBOB at a rate not to exceed 1/4 of 1 percent by volume. Each pipeline or third-party terminal shall document the transmix blending (recording each batch and volume of transmix blended) and maintain the records at the third-party terminal for two years from the date of blending.

B. No change
1. No change
2. Tank gauge as per API Manual of Petroleum Measurement Standards, Chapters 3.1A (1st edition, December 1994) and 3.1B (1st edition, April 1992), incorporated by reference and on file with the Department ~~and the Office of the Secretary of State~~. A copy may also be obtained at American Petroleum Institute, 1220 L St., N.W., Washington, D.C. ~~20045-4070~~ 20005-4070. This incorporation by reference contains no future editions or amendments.

R20-2-755. Additional Requirements for AZRBOB and Downstream Oxygenate Blending

A. No change
1. No change
a. If a registered supplier designates a final blend as AZRBOB and complies with the provisions of this Section, the fuel properties and performance standards of the AZRBOB, for purposes of compliance with Table 2, are determined by adding the specified amount of fuel ethanol to a representative sample of the AZRBOB and testing the resulting gasoline using the test methods in R20-2-759 or certifying the ARZBOB using the CARBOB model. If the registered supplier designates a range of amounts of fuel ethanol to be added to the AZRBOB, the minimum designated amount of fuel ethanol shall be added to the AZRBOB to determine the fuel properties and performance standards of the resulting Arizona CBG. If a registered supplier does not comply with this subsection, the Department shall determine whether the AZRBOB complies with applicable fuel properties and performance standards, excluding requirements for ~~RVP~~ vapor pressure, without adding fuel ethanol to the AZRBOB.
b. No change
2. No change

B. No change
1. No change
a. No change
b. No change
2. No change

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

D. Quality assurance sampling and testing requirements for a registered supplier supplying AZRBOB from a production or import facility. A registered supplier supplying AZRBOB from a production or import facility shall use an independent third-party quality assurance sampling and testing program as described in subsection (E) or conduct a quality assurance sampling and testing program that meets the requirements of 40 CFR 80.69(a)(7), as it existed on July 1, 1996, except for the changes listed in subsections (D)(1) through (D)(3). 40 CFR 80.69(a)(7), July 1, 1996, is incorporated by reference and on file with the Department. A copy may be obtained at the ~~U.S.~~ Government Printing Office, ~~Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328~~ P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov. The material incorporated includes no future editions or amendments.
1. No change
2. No change
3. No change

E. No change
1. No change
a. No change
b. No change
c. No change
2. Is conducted from November 1 through ~~January~~ March 31 on all samples collected under the program design previously approved by the Director under subsection (G);
3. No change
4. No change

5. No change
6. No change
7. No change
8. No change
9. No change
10. No change
    a. No change
    b. No change
    c. No change
    d. No change
    e. No change
    f. No change
    g. Results of the analysis of the samples for oxygenate type and oxygen weight percent, aromatic hydrocarbon, and olefin content, E200, E300, and ~~RVP~~ vapor pressure, and the calculated VOC or NOx emissions reduction percentage, as applicable;
    h. No change
    i. No change
    j. No change
    k. No change

F. No change

G. No change

1. Submit the plan to the Director no later than January 1 to cover the sampling and testing period from November 1 through ~~January~~ March 31 of each year, and
2. No change

H. No later than September 1 of each year, a registered supplier that intends to meet the requirements in subsection (D) by contracting with an independent third party to conduct quality assurance sampling and testing from November 1 through ~~January~~ March 31 shall enter into the contract and pay all of the money necessary to conduct the sampling and testing program. The registered supplier may pay the money necessary to conduct the sampling and testing program to the third party or to an escrow account with instructions to the escrow agent to release the money to the third party as the testing program is implemented. No later than September 15, the registered supplier shall submit to the Director a copy of the contract with the third party, proof that the money necessary to conduct the sampling and testing program has been paid, and, if applicable, a copy of the escrow agreement.

I. No change

1. No change
2. No change
3. Additional requirements for oxygenate blending in trucks. An oxygenate blender that blends AZRBOB in a motor fuel delivery truck shall conduct quality assurance sampling and testing that meets the requirements in 40 CFR 80.69(e)(2), as it existed on July 1, 1996, except for the changes listed in subsections (I)(3)(a) through ~~(I)(3)(c)~~ (c). 40 CFR 80.69(e)(2), July 1, 1996, is incorporated by reference and on file with the Department. A copy may be obtained at the ~~U.S.~~ Government Printing Office, ~~Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328~~ P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov. The material incorporated includes no future editions or amendments.
    a. No change
    b. No change
    c. No change
4. No change
    a. No change
        i. No change
        ii. No change
        iii. No change
    b. No change
        i. No change
        ii. No change
        iii. No change
        iv. No change
    c. No change
5. No change
    a. No change
        i. No change

ii. No change
iii. No change
iv. No change
v. No change
vi. No change
b. No change
c. No change
6. No change
7. No change
8. No change
9. No change

J. Subsection (A)(1)(a) will not become effective until Arizona's revised State Implementation Plan ~~regarding CARB 3~~ is approved by EPA.

R20-2-756. Downstream Blending of Arizona CBG with Nonoxygenate Blendstocks

A. No change
1. The blendstock added to the Arizona CBG meets all of the Arizona CBG standards regardless of the fuel properties and performance standards of the Arizona CBG to which the blendstock is added; ~~and~~
2. The person meets the requirements in this Article applicable to producers of Arizona CBG; and
3. The resulting fuel blend is not used within the CBG-covered area.

B. No change

R20-2-757. Product Transfer Documentation; Records Retention

A. No change
~~1. Name and address of the transferor;~~
~~2. Name and address of the transferee;~~
~~3.~~1. Volume of Arizona CBG or AZRBOB being transferred;
~~4.~~2. Location of the Arizona CBG or AZRBOB at the time of transfer;
~~5.~~3. Date of the transfer;
~~6.~~4. Product transfer document number;
~~7.~~5. Identification of the gasoline as Arizona CBG or AZRBOB;
~~8.~~6. Minimum octane rating of the Arizona CBG or AZRBOB;
~~9.~~7. For oxygenated Arizona CBG designated for sale for use in motor vehicles from November 1 through ~~January~~ March 31, the minimum quantity of fuel ethanol contained in the Arizona CBG; ~~and~~
~~10.~~8. If the product transferred is AZRBOB for which fuel ethanol blending is intended:
a. Identification of the fuel as AZRBOB and a statement that the "AZRBOB does not comply with the standards for Arizona CBG without the addition of fuel ethanol;"
b. Designation of the AZRBOB as suitable for blending with fuel ethanol;
c. Fuel ethanol amount or range of amounts that the AZRBOB requires to meet the fuel properties or performance standards claimed by the registered supplier of the AZRBOB, and the applicable specifications for volume percent fuel ethanol and weight percent oxygen content; and
d. Instructions to the transferee that the AZRBOB may not be combined with any other AZRBOB unless the other AZRBOB has the same requirements for fuel ethanol amount or range of amounts~~.~~; and
9. The final destination:
a. When a terminal is the transferor, the owner or operator of the terminal shall include on the product transfer document the terminal name and address, the transporter name and address, and the final destination, which may be a final distribution facility, jobber, marketer, or motor fuel dispensing site;
b. When a transporter is the transferor, the transporter shall include on the product transfer document the name and address of the transporter and the final destination, which is the location at which the motor fuel will be delivered and off loaded from the truck; and
c. When a jobber or marketer is the transferor, the jobber or marketer shall include on the product transfer document the name and address of the jobber or marketer and the final destination, which may be a final distribution facility or a motor fuel dispensing site.

B. To enable a transferor to comply fully with the requirement in subsection (A)(9), the transferee shall supply to the transferor information regarding the final destination.

~~**B.**~~**C.** No change
~~**C.**~~**D.** No change
~~**D.**~~**E.** No change
~~**E.**~~**F.** No change
~~**F.**~~**G.** No change

~~G.~~**H.** No change

R20-2-759. Testing Methodologies

A. Except as provided in subsection (C), a registered supplier or importer certifying Arizona CBG or AZRBOB as meeting the requirements of this Article shall use one of the methods listed in Table A. A copy of the EPA- or CARB-approved ASTM methods may be obtained at: ASTM International (formerly American Society for Testing and Materials), 100 Bar Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org. A copy of the CARB methods may be obtained at: California Air Resources Board, P.O. Box 2815, Sacramento, CA 95812 or www.arb.ca.gov.

B. No change

C. No change

D. A test method that the Department determines is equivalent to those listed in Table A may be used to certify Arizona CBG or AZRBOB. The Department has determined that test methods approved by either the EPA or CARB are equivalent test methods. To determine whether a proposed test method is equivalent to those listed in Table A, the Department shall thoroughly review data from both the proposed and designated test methods and assess whether the accuracy and precision of the proposed method is equal to or better than the accuracy and precision of the designated method and whether there is significant bias between the two methods. The Department shall approve a proposed test method only if the Department determines that the accuracy and precision of the proposed test method is equal to or better than the accuracy and precision of the designated method and receives the concurrence of the EPA Regional Administrator. A correlation equation may be required to align the two methods. If a correlation equation is required to align the two methods, the correlation equation becomes part of the equivalent method.

E. Subsections (C) and (D) will not become effective until Arizona's revised State Implementation Plan ~~regarding CARB 3~~ is approved by EPA.

Table A. Arizona Department of Weights and Measures Test Methods for Arizona CBG and AZRBOB

Fuel Parameter	Units	EPA-approved Test Method	EPA-approved Reproducibility	CARB-approved Test Method	CARB-approved Reproducibility
Aromatics	V%	~~D 5769-98~~ D5769-04			
	V%	~~D 1319-02a A~~ D1319-02a (2003) A	1.65	D 5580-00	1.4
Benzene	V%	~~D 3606-99~~ D3606-99 (2007)	0.21	D 5580-00	0.1409 (X) $^{1.133}$
Olefins	V%	~~D 1319-02a~~ D1319-02a (2003)	0.32 (x)$^{0.5}$	~~D 6550-00~~ D6550-00 (2005) if correlated to D1319	0.32 (X) $^{0.5}$; Footnote 1
Oxygenates	W%	D 5599-00	See test method	~~D 4815-99~~ D4815-99 (2004)	See test method
	W%	~~D 4815-99B~~ D4815-99(2004)B	See test method		
Vapor Pressure (Correlation Equation) Footnote 2	psi	~~D 5191-01~~ D5191-01 (2007)	0.3	13 CCR Section 2297	0.21
Sulfur	wppm	~~D 2622-98~~ D2622-98 (2005)		~~D 5453-93~~ D5453-93	0.2217 (x)$^{0.92}$ wppm
				~~D 2622-94~~ D2622-94 (modified)	10-30 wppm R=0.405 (x) > 30 wppm R =0.192 (x)
Distillation T50	deg F	~~D 86-01~~ D86-01 (2007b)	See test method	~~D 86-99ae1~~ D86-99ae1	See test method
Distillation T90	deg F	~~D 86-01~~ D86-01 (2007b)	See test method	~~D 86-99ae1~~ D86-99ae1	See test method

[A] A refinery or importer may determine aromatics content using ASTM ~~D 1319-02a~~ D1319-02a (2003) if the result is correlated to ASTM ~~D 5769-98~~ D5769-98 (2004).
[B] A refinery or importer may determine oxygenate content using ASTM ~~D 4815-99~~ D4815-99 (20 04) if the result is correlated to ASTM ~~D 5599-00~~ D5599-00 (2005).
Footnotes:
1. Replace the last sentence in ASTM ~~D 6550-00~~ D6550-00 (2005) Section 1.1 with the following: "The application range is from 0.3 to 25 mass percent total olefin, as defined in Section 2263(b), Title 13, California Code of Regulations. If olefin concentrations are not detected, substitute one-half of the detection limit."
2. When determining ~~RVP~~ vapor pressure, the only correlation equation to be used is the CARB (~~RVP~~ vapor pressure= (0.972 X Ptot) - 0.715).

R20-2-760. Compliance Surveys

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

B. No change

C. No change
1. No change
2. No change
3. Analyzes each sample included in the compliance survey for oxygenate type and content, olefins, sulfur, aromatic hydrocarbons, E200, E300, and ~~RVP~~ vapor pressure according to the test methods in R20-2-759. ~~RVP~~ Vapor pressure is required to be analyzed only from May 1 through September 15;
4. No change
5. No change

D. No change

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

F. No change
1. No change
2. No change

G. No change
1. No change
   a. No change
   b. No change
   c. No change
2. Includes enough samples to ensure that the average levels of oxygen, ~~RVP~~ vapor pressure, aromatic hydrocarbons, olefins, T50, T90, and sulfur are determined with a 95~~%~~ percent confidence level, with error of less than 0.1 psi for ~~RVP~~ vapor pressure, 0.1~~%~~ percent for oxygen (by weight), 0.5~~%~~ percent for aromatic hydrocarbons (by volume), 0.5~~%~~ percent for olefins (by volume), 5°F. for T50 and T90, and 10 wppm for sulfur;
3. No change
4. No change
5. No change
6. No change
   a. No change
   b. No change
   c. No change
   d. No change
   e. No change
   f. No change
   g. Results of the analysis of samples for oxygenate type and oxygen weight percent, aromatic hydrocarbon, and olefin content, E200, E300, and ~~RVP~~ vapor pressure, and the calculated VOC or NOx emissions reduction percentage, as applicable, for each survey conducted during the period identified in subsection (A)(1);
   h. No change
   i. No change
   j. No change
   k. No change
   l. No change

H. No change

I. No change
1. No change
2. No change

J. No change

Table 1. Type 1 Arizona CBG Standards

~~Table 1 will not become effective until Arizona's revised State Implementation Plan regarding CARB 3 and shortening the winter season is approved by EPA.~~

	Non-averaging Option	Averaging Option		
	A	B	C	D
Performance Standard/Fuel Property**	Per-Gallon (minimum)	Average	Minimum (per-gallon)	Maximum (per-gallon)
VOC Emission Reduction (%) May 1 - Sept. 15	≥27.5	≥29.0	≥25.0	N/A
NOx Emission Reduction (%) May 1 - Sept. 15	≥5.5	≥6.8	N/A	N/A
NOx Emission Reduction (%) Sept. 16 - October 31 and February 1 - April 30***	≥0.0	N/A	N/A	N/A
Oxygen content: fuel ethanol, (% by weight unless otherwise noted) Nov. 1 - ~~January~~ March 31*** ~~February~~ April 1 - October 31	 N/A 0.0*	 N/A N/A	 N/A 0.0	 N/A ~~3.7~~ 4.0
Oxygen content: other than fuel ethanol, (% by weight) Nov. 1 - ~~January~~ March 31*** ~~February~~ April 1 - October 31	 N/A 0.0	 N/A N/A	 N/A 0.0	 N/A ****
* Maximum oxygen content shall comply with the EPA oxygenate waiver requirements and with A.R.S. § 41-2122. ** Dates represent compliance dates for the owner of a motor fuel dispensing site or a fleet vehicle fueling facility. *** A registered supplier shall certify all Arizona CBG as Type 2 Arizona CBG meeting the standards in Table 2 beginning November 1 through ~~January~~ March 31. **** As specified in A.R.S. § 41-2122.				

Table 2. Type 2 Arizona CBG Standards

~~Table 2 will not become effective until Arizona's revised State Implementation Plan regarding CARB 3 and shortening the winter season is approved by EPA.~~

	Averaging Option		Non-averaging Option	
	A	B	C	
Fuel Property	Maximum Standard (per gallon)	Averaging Standard*	Flat Standard * (per gallon maximum)	Units of Standard
Sulfur Content	80~~/30~~	30~~/15~~	40~~/20~~	Parts per million by weight
Olefin Content	10.0	4.0	6.0	% by volume
90% Distillation Temperature (T90)	330	290~~/295~~	300~~/305~~	Degrees Fahrenheit
50% Distillation Temperature (T50)	220	200~~/203~~	210~~/213~~	Degrees Fahrenheit
Aromatic Hydrocarbon Content	30.0~~/35~~	22.0	25.0	% by volume
Oxygen content: fuel ethanol** Nov. 1 - ~~January~~ March 31 ~~February~~ April 1 - October 31 The maximum oxygen content EtOH year around	10% fuel ethanol**	– –	10% fuel ethanol** ~~3.7~~ 4.0	% by vol. % by weight

* Instead of the standards in columns B and C, a registered supplier may comply with the standards contained in column A, and R20-2-751~~(F),~~ (G), ~~and~~ (H)<u>, and (I)</u> for the use of the PM.
** Maximum oxygen content shall comply with the EPA oxygenate waiver requirements.
A registered supplier shall certify all Arizona CBG using fuel ethanol as the oxygenate beginning November 1 through ~~January~~ <u>March</u> 31. Alternative fuel ethanol contents not less than 2.7% total oxygen may be used if approved by the Director under A.R.S. § 41-2124(D).
~~NOTES~~ <u>NOTE</u>: Dates represent compliance dates for the owner of a motor fuel dispensing site or fleet vehicle fuel facility.
~~Standards shown in the form of x/y denote standards for CARB Phase 2/Phase 3 gasolines.~~

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Volume 19, Issue 43 **October 25, 2013**

Contents of this Issue

General Information **3307**
Public Participation in the Rulemaking Process **3308**
Notices of Final Rulemaking **3309**
9 A.A.C. 22 .... Arizona Health Care Cost Containment System - Administration 3309
9 A.A.C. 22 .... Arizona Health Care Cost Containment System - Administration 3315
9 A.A.C. 28 .... Arizona Health Care Cost Containment System - Arizona Long-term Care System 3320
9 A.A.C. 29 .... Arizona Health Care Cost Containment System - Medicare Cost Sharing Program 3323
20 A.A.C. 2 .... Department of Weights and Measures 3325
Notices of Exempt Rulemaking **3334**
9 A.A.C. 10 .... Department of Health Services - Health Care Institutions: Licensing 3334
Notices of Agency Guidance Documents **3355**
Department of Health Services 3355
Governor's Regulatory Review Council **3357**
Notice of Action Taken at the October 1, 2013 Meeting 3357
Governor's Executive Orders/Proclamations **3359**
Domestic Violence Awareness Month 3359
Heroes Day 3360
International Education Week 3360
School Psychology Awareness Week 3361
Valley Fever Awareness Week 3362
E.O. 2012-03: State Regulatory Review, Moratorium and Streamlining To Promote Job Creation and Retention 3362
Index **3365**
Effective Date Schedule and *Register* Deadlines **3377**
Governor's Regulatory Review Council Deadlines **3380**

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Arizona Administrative Register

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:
Federal law regarding the SIP is at 40 CFR Part 51. This rulemaking ensures that the rules are consistent with the state's EPA-approved SIP. The rules are no more stringent than federal law.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:
No analysis was submitted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:
No materials are incorporated by reference.

14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:
None of the rules was previously made by emergency rulemaking.

15. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 2. DEPARTMENT OF WEIGHTS AND MEASURES

ARTICLE 7. MOTOR FUELS AND PETROLEUM PRODUCTS

Section
R20-2-708. Gasoline Ethanol Blends
R20-2-709. Retail Oxygenated Fuel Labeling
R20-2-718. Requirements for Production, Transport, Distribution, and Sale of Biofuels
R20-2-751. Arizona CBG Requirements
R20-2-752. General Requirements for Registered Suppliers
Table A. Arizona Department of Weights and Measures Test Methods for Arizona CBG and AZRBOB

ARTICLE 7. MOTOR FUELS AND PETROLEUM PRODUCTS

R20-2-708. Gasoline Ethanol Blends

A. No change
B. No change
1. No change
   a. No change
      i. No change
      ii. No change
   b. No change
      i. No change
      ii. No change
2. No change
   a. No change
   b. Within the CBG-covered area during April ~~and October~~.
3. No change
   a. No change
      i. No change
      ii. The minimum test temperature at which the vapor/liquid ~~ration~~ ratio is equal to 20 is waived;
   b. No change
   c. No change
      i. No change
      ii. The minimum test temperature at which the vapor/liquid ~~ration~~ ratio is equal to 20 is waived.
4. No change

C. No change

R20-2-709. Retail Oxygenated Fuel Labeling

A. No change

B. No change
C. In the CBG-covered area and area B, the owner or operator of a motor fuel dispensing site shall ensure that a label displayed on each face of each motor fuel dispenser contains the following statement: "This gasoline is oxygenated with fuel ethanol and will reduce carbon monoxide emissions from motor vehicles ~~in the winter~~." The statement may be printed on the label required in subsection (B) or on a separate label. If the statement is printed on a separate label, the label shall be displayed next to the label required in subsection (B).
D. No change
1. No change
2. No change
3. No change

R20-2-718. Requirements for Production, Transport, Distribution, and Sale of Biofuels
A. No change
1. No change
   a. A producer, supplier, or person required to register with the EPA under 40 CFR 80, Subpart K <u>or M</u>, shall register with the Director, using a form prescribed by the Director, before producing or supplying biofuel or biofuel blend in Arizona.
   b. No change
   c. No change
      i. No change
      ii. No change
   d. No change
2. No change
   a. No change
      i. No change
      ii. No change
      iii. No change
      iv. No change
      v. No change
   b. No change
3. No change
   a. No change
   b. No change
      i. No change
      ii. No change
      iii. No change
      iv. No change
   c. No change
   d. No change

B. No change
1. No change
   a. No change
      i. No change
      ii. No change
      iii. No change
   b. No change
2. No change
   a. No change
   b. No change
3. No change
   a. No change
   b. No change
   c. No change
   d. No change
      i. No change
      ii. No change
      iii. No change
      iv. No change
      v. No change
      vi. No change

4. No change
   a. No change
   b. No change
5. No change
   a. No change
   b. No change
   c. No change
      i. No change
      ii. No change
      iii. No change
   d. No change
   e. No change
   f. No change
   g. No change
6. No change
   a. No change
   b. No change
   c. No change

C. No change
1. No change
   a. No change
   b. No change
   c. No change
2. No change
   a. No change
      i. No change
      ii. No change
      iii. No change
   b. No change
3. No change
4. 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
      vii. No change
      viii. No change
      ix. No change
   d. No change
      i. No change
      ii. No change
      iii. No change
      iv. No change
      v. No change
      vi. No change
5. No change
   a. No change
   b. No change
6. No change
   a. No change
   b. No change
   c. No change
      i. No change
      ii. No change

iii. No change
d. No change
e. No change
f. No change
g. No change
7. No change
8. No change
a. No change
b. No change
c. No change

D. No change
1. No change
2. No change

R20-2-751. Arizona CBG Requirements

A. No change
1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
a. No change
b. No change
c. No change
d. No change
e. No change
f. A gasoline ethanol blend in the CBG-covered area is subject to the 1 psi vapor pressure waiver, as described in R20-2-708(B), during April ~~and October~~ only.
7. No change
a. No change
i. No change
ii. No change
b. No change
c. No change
8. No change

B. No change
1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
a. No change
b. No change
c. No change

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

D. No change
1. No change
2. No change

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

F. No change

G. No change

H. No change

1. No change
2. No change
   a. No change
   b. No change
      i. No change
      ii. No change
3. No change
4. No change
   a. No change
   b. No change
      i. No change
      ii. No change
      iii. No change
   c. No change
   d. No change
      i. No change
      ii. No change

I. No change
1. No change
2. No change
3. No change
4. No change
   a. No change
   b. No change

J. No change

K. No change
1. No change
2. No change
3. No change

L. No change
1. No change
   a. No change
   b. No change
2. No change
   a. No change
      i. No change
      ii. No change
   b. No change
   c. No change
   d. No change
3. No change
   a. No change
   b. No change
4. No change

M. No change

N. No change

O. No change
1. No change
2. No change

P. No change
1. No change
2. No change
3. No change

Q. No change

R20-2-752. General Requirements for Registered Suppliers

A. No change

B. No change

C. No change
1. No change

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

D. No change
E. No change
F. No change
1. No change
a. No change
b. No change
i. No change
ii. No change
iii. No change
2. No change
3. No change
a. No change
b. No change
c. No change
i. No change
ii. No change
iii. No change
d. No change
e. No change
4. No change
a. No change
i. No change
ii. No change
iii. No change
iv. No change
v. No change
vi. No change
vii. No change
b. No change
c. Submits to the Director a quarterly report on or before the 15th day of January, April, July, and October of each year that includes, for each sample of Arizona CBG or AZRBOB analyzed under subsection (F):
i. No change
ii. No change
d. No change

G. No change
H. No change
1. No change
a. No change
b. No change
c. No change
d. No change
e. No change
f. No change
g. No change
h. No change
i. No change
j. No change
2. No change
a. No change
b. No change

Table A. Arizona Department of Weights and Measures Test Methods for Arizona CBG and AZRBOB

Fuel Parameter	Units	EPA-approved Test Method	EPA-approved Reproducibility	CARB-approved Test Method	CARB-approved Reproducibility
Aromatics	V%	D5769-04			
	V%	D1319-02a (2003)[A]	1.65	D5580-00	1.4
Benzene	V%	D3606-99 (2007)	0.21	D5580-00	0.1409 (X) $^{1.133}$
Olefins	V%	D1319-02a (2003)	0.32 (x)$^{0.5}$	D6550-00 (2005) if correlated to D1319	0.32 (X) $^{0.5;}$ Footnote 1
Oxygenates	W%	D5599-00	See test method	D4815-99 (2004)	See test method
	W%	D4815-99 (2004)[B]	See test method		
Vapor Pressure (Correlation Equation) Footnote 2	psi	D5191-01 (2007)	0.3	13 CCR Section 2297	0.21
Sulfur	wppm	D2622-98 (2005)		D5453-93	0.2217 (x)$^{0.92}$ wppm
				D2622-94 (modified)	10-30 wppm R=0.405 (x) > 30 wppm R =0.192 (x)
Distillation T50	deg F	D86-01 (2007b)	See test method	D86-99ae1	See test method
Distillation T90	deg F	D86-01 (2007b)	See test method	D86-99ae1	See test method

[A] A refinery or importer may determine aromatics content using ASTM D1319-02a (2003) if the result is correlated to ASTM D5769-98 (2004).

[B] A refinery or importer may determine oxygenate content using ASTM D4815-99 (2004) if the result is correlated to ASTM D5599-00 (2005).

Footnotes:

1. Replace the last sentence in ASTM D6550-00 (2005) Section 1.1 with the following: "The application range is from 0.3 to 25 mass percent total olefin, as defined in Section 2263(b), Title 13, California Code of Regulations. If olefin concentrations are not detected, substitute one-half of the detection limit."

2. When determining vapor pressure, the only correlation equation to be used is ~~the CARB (vapor pressure = (0.972 X Ptot) – 0.715)~~ equation 1 in ASTM D5191-07, Section 14.2, ASTM equation ((.965X)-A).

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Vol. 22, Issue 40 **~ Administrative Register Contents ~** **September 30, 2016**

Information **2680**
Rulemaking Guide **2681**

RULES AND RULEMAKING

Final Rulemaking, Notices of
9 A.A.C. 14 Department of Health Services - Laboratories 2683
20 A.A.C. 5 Industrial Commission of Arizona 2782

Recodification, Notices of
20 A.A.C. 2 Department of Weights and Measures 2786

OTHER AGENCY NOTICES

Public Information, Notices of
Department of Environmental Quality 2823
Department of Real Estate 2844

Substantive Policy Statement, Notices of Agency
Department of Real Estate 2845

GOVERNOR'S OFFICE

Governor's Executive Orders
E.O. 2016-03: Internal Review of Administrative Rules; Moratorium to Promote Job Creation and Customer-Service-Oriented Agencies 2847

INDEXES
Register Index Ledger 2849
Rulemaking Activity, Cumulative Index for 2016 2850
Other Notices and Public Records, Cumulative Index for 2016 2855

CALENDAR/DEADLINES
Rules Effective Dates Calendar 2858
Register Publishing Deadlines 2860

GOVERNOR'S REGULATORY REVIEW COUNCIL
Governor's Regulatory Review Council Deadlines 2861

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From the Publisher

ABOUT THIS PUBLICATION

The paper copy of the *Administrative Register* (A.A.R.) is the official publication for rules and rulemaking activity in the state of Arizona.

Rulemaking is defined in Arizona Revised Statues known as the Arizona Administrative Procedure Act (APA), A.R.S. Title 41, Chapter 6, Articles 1 through 10.

The Office of the Secretary of State does not interpret or enforce rules published in the *Arizona Administrative Register* or *Code*. Questions should be directed to the state agency responsible for the promulgation of the rule as provided in its published filing.

The *Register* is cited by volume and page number. Volumes are published by calendar year with issues published weekly. Page numbering continues in each weekly issue.

In addition, the *Register* contains the full text of the Governor's Executive Orders and Proclamations of general applicability, summaries of Attorney General opinions, notices of rules terminated by the agency, and the Governor's appointments of state officials and members of state boards and commissions.

ABOUT RULES

Rules can be: made (all new text); amended (rules on file, changing text); repealed (removing text); or renumbered (moving rules to a different Section number). Rules activity published in the *Register* includes: proposed, final, emergency, expedited, and exempt rules as defined in the APA.

Rulemakings initiated under the APA as effective on and after January 1, 1995, include the full text of the rule in the *Register.* New rules in this publication (whether proposed or made) are denoted with underlining; repealed text is stricken.

WHERE IS A "CLEAN" COPY OF THE FINAL OR EXEMPT RULE PUBLISHED IN THE *REGISTER*?

The *Arizona Administrative Code* (A.A.C) contains the codified text of rules. The A.A.C. contains rules promulgated and filed by state agencies that have been approved by the Attorney General or the Governor's Regulatory Review Council. The *Code* also contains rules exempt from the rulemaking process.

The printed *Code* is the official publication of a rule in the A.A.C. is prima facie evidence of the making, amendment, or repeal of that rule as provided by A.R.S. § 41-1012. Paper copies of rules are available by full Chapter or by subscription. The *Code* is posted online for free.

LEGAL CITATIONS AND FILING NUMBERS

On the cover: Each agency is assigned a Chapter in the *Arizona Administrative Code* under a specific Title. Titles represent broad subject areas. The Title number is listed first; with the acronym A.A.C., which stands for the *Arizona Administrative Code*; following the Chapter number and Agency name, then program name. For example, the Secretary of State has rules on rulemaking in Title 1, Chapter 1 of the *Arizona Administrative Code*. The citation for this chapter is 1 A.A.C. 1, Secretary of State, Rules and Rulemaking

Every document filed in the office is assigned a file number. This number, enclosed in brackets, is located at the top right of the published documents in the *Register*. The original filed document is available for 10 cents a copy.

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A price list for the *Arizona Administrative Code* is available online. You may also request a paper price list by mail. To purchase a paper Chapter, contact us at (602) 364-3223.

PUBLICATION DEADLINES
Publication dates are published in the back of the *Register.* These dates include file submittal dates with a three-week turnaround from filing to published document.

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Participate in the Process

Look for the Agency Notice

Review (inspect) notices published in the *Arizona Administrative Register*. Many agencies maintain stakeholder lists and would be glad to inform you when they proposed changes to rules. Check an agency's website and its newsletters for news about notices and meetings.

Feel like a change should be made to a rule and an agency has not proposed changes? You can petition an agency to make, amend, or repeal a rule. The agency must respond to the petition. (See A.R.S. § 41-1033)

Attend a public hearing/meeting

Attend a public meeting that is being conducted by the agency on a Notice of Proposed Rulemaking. Public meetings may be listed in the Preamble of a Notice of Proposed Rulemaking or they may be published separately in the *Register*. Be prepared to speak, attend the meeting, and make an oral comment.

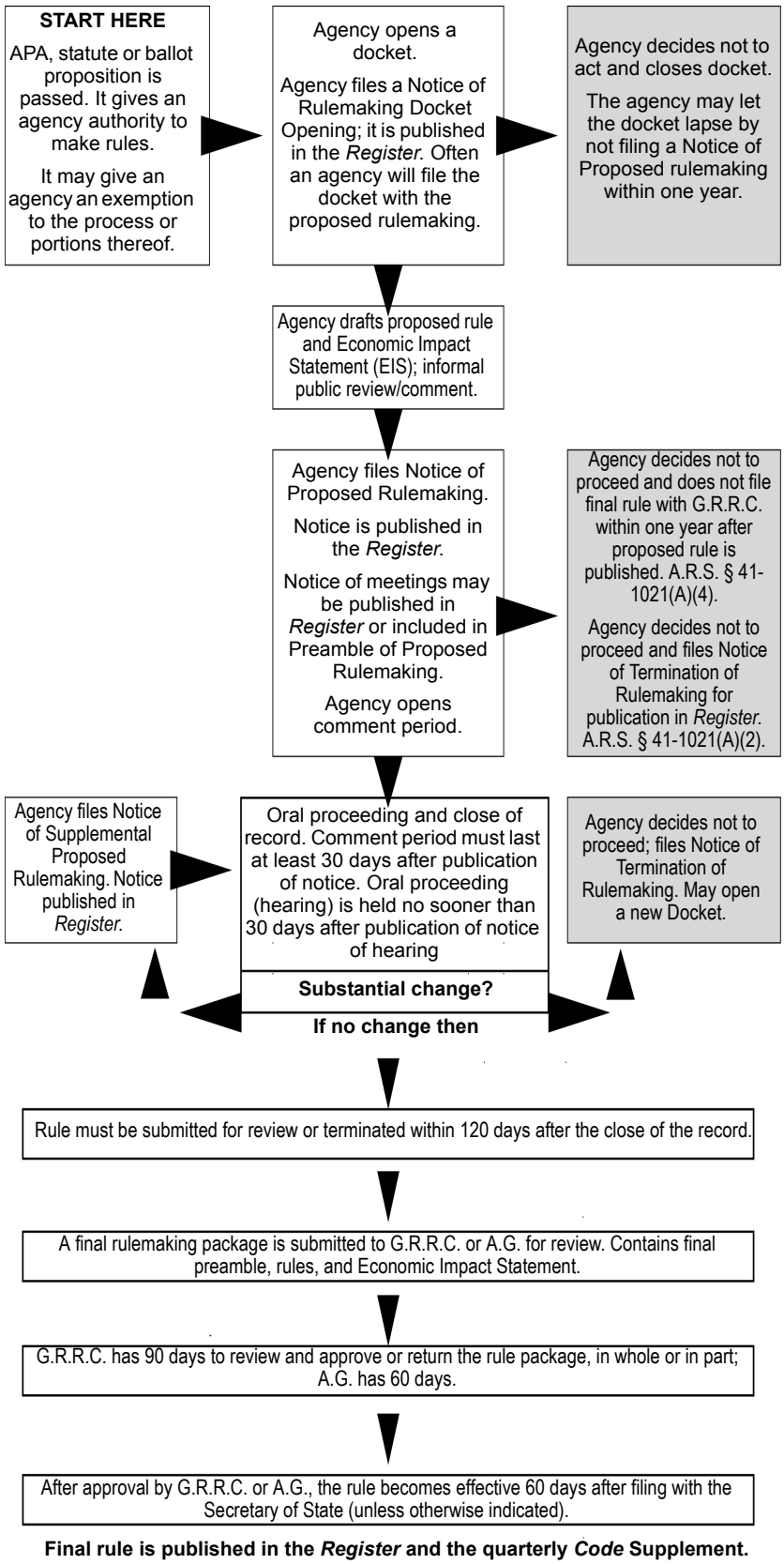
An agency may not have a public meeting scheduled on the Notice of Proposed Rulemaking. If not, you may request that the agency schedule a proceeding. This request must be put in writing within 30 days after the published Notice of Proposed Rulemaking.

Write the agency

Put your comments in writing to the agency. In order for the agency to consider your comments, the agency must receive them by the close of record. The comment must be received within the 30-day comment timeframe following the *Register* publication of the Notice of Proposed Rulemaking.

You can also submit to the Governor's Regulatory Review Council written comments that are relevant to the Council's power to review a given rule (A.R.S. § 41-1052). The Council reviews the rule at the end of the rulemaking process and before the rules are filed with the Secretary of State.

Arizona Regular Rulemaking Process



Definitions

***Arizona Administrative Code* (A.A.C.):** Official rules codified and published by the Secretary of State's Office. Available online at www.azsos.gov.

***Arizona Administrative Register* (A.A.R.)**: The official publication that includes filed documents pertaining to Arizona rulemaking. Available online at www.azsos.gov.

Administrative Procedure Act (APA): A.R.S. Title 41, Chapter 6, Articles 1 through 10. Available online at www.azleg.gov.

Arizona Revised Statutes (A.R.S.): The statutes are made by the Arizona State Legislature during a legislative session. They are complied by Legislative Council, with the official publication codified by Thomson West. Citations to statutes include Titles which represent broad subject areas. The Title number is followed by the Section number. For example, A.R.S. § 41-1001 is the definitions Section of Title 41 of the Arizona Administrative Procedures Act. The "§" symbol simply means "section." Available online at www.azleg.gov.

Chapter: A division in the codification of the *Code* designating a state agency or, for a large agency, a major program.

Close of Record: The close of the public record for a proposed rulemaking is the date an agency chooses as the last date it will accept public comments, either written or oral.

Code of Federal Regulations (CFR): The *Code of Federal Regulations* is a codification of the general and permanent rules published in the *Federal Register* by the executive departments and agencies of the federal government.

Docket: A public file for each rulemaking containing materials related to the proceedings of that rulemaking. The docket file is established and maintained by an agency from the time it begins to consider making a rule until the rulemaking is finished. The agency provides public notice of the docket by filing a Notice of Rulemaking Docket Opening with the Office for publication in the *Register*.

Economic, Small Business, and Consumer Impact Statement (EIS): The EIS identifies the impact of the rule on private and public employment, on small businesses, and on consumers. It includes an analysis of the probable costs and benefits of the rule. An agency includes a brief summary of the EIS in its preamble. The EIS is not published in the *Register* but is available from the agency promulgating the rule. The EIS is also filed with the rulemaking package.

Governor's Regulatory Review (G.R.R.C.): Reviews and approves rules to ensure that they are necessary and to avoid unnecessary duplication and adverse impact on the public. G.R.R.C. also assesses whether the rules are clear, concise, understandable, legal, consistent with legislative intent, and whether the benefits of a rule outweigh the cost.

Incorporated by Reference: An agency may incorporate by reference standards or other publications. These standards are available from the state agency with references on where to order the standard or review it online.

Federal Register (FR): The *Federal Register* is a legal newspaper published every business day by the National Archives and Records Administration (NARA). It contains federal agency regulations; proposed rules and notices; and executive orders, proclamations, and other presidential documents.

Session Laws or "Laws": When an agency references a law that has not yet been codified into the Arizona Revised Statutes, use the word "Laws" is followed by the year the law was passed by the Legislature, followed by the Chapter number using the abbreviation "Ch.", and the specific Section number using the Section symbol (§). For example, Laws 1995, Ch. 6, § 2. Session laws are available at www.azleg.gov.

United States Code (U.S.C.): The Code is a consolidation and codification by subject matter of the general and permanent laws of the United States. The Code does not include regulations issued by executive branch agencies, decisions of the federal courts, treaties, or laws enacted by state or local governments.

Acronyms

A.A.C. – *Arizona Administrative Code*

A.A.R. – *Arizona Administrative Register*

APA – Administrative Procedure Act

A.R.S. – Arizona Revised Statutes

CFR – *Code of Federal Regulations*

EIS – Economic, Small Business, and Consumer Impact Statement

FR – *Federal Register*

G.R.R.C. – Governor's Regulatory Review Council

U.S.C. – *United States Code*

About Preambles

The Preamble is the part of a rulemaking package that contains information about the rulemaking and provides agency justification and regulatory intent.

It includes reference to the specific statutes authorizing the agency to make the rule, an explanation of the rule, reasons for proposing the rule, and the preliminary Economic Impact Statement.

The information in the Preamble differs between rulemaking notices used and the stage of the rulemaking.

NOTICES OF RECODIFICATION

The Office of the Secretary of State will publish a Notice of Recodification in the *Register* when the Office finds it necessary to recodify a Chapter in order to maintain the integrity of the codification system or whenever an agency requests, in writing, that an entire Chapter or portion of a Chapter be recodified.

NOTICE OF RECODIFICATION

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 2. DEPARTMENT OF WEIGHTS AND MEASURES

[R16-165]

1. A list of the Subchapters (if applicable), Articles, Parts (if applicable), and Sections being recodified along with their respective headings:

20 A.A.C. 2, Article 1. Administration and Procedures
R20-2-101. Definitions
R20-2-102. Metrology Laboratory Testing and Calibration Fees
R20-2-103. Licensing and Fees
R20-2-104. Administrative Enforcement Action
R20-2-105. Repealed
R20-2-106. Repealed
R20-2-107. Repealed
R20-2-108. Time-frames for Licenses, Renewals, and Authorities to Construct
R20-2-109. Administrative Hearing Procedures
R20-2-110. Motion for Rehearing or Review
R20-2-111. Repealed
R20-2-112. Repealed
R20-2-113. Renumbered
R20-2-114. Repealed
R20-2-115. Renumbered
R20-2-116. Renumbered
R20-2-117. Renumbered
Table 1. Time-frames (in days)
20 A.A.C. 2, Article 2. Commercial Devices
R20-2201. Licensing Process
R20-2-202. Repealed
R20-2-203. Approval, Installation, and Sale of Devices
R20-2-204. Livestock and Vehicle Scale Installation
20 A.A.C. 2, Article 3. Packaging, Labeling and Method of Sale
R20-2-301. Repealed
R20-2302. Handbook 130 and Handbook 133
R20-2-303. Repealed
R20-2-304. Repealed
R20-2-305. Repealed
R20-2-306. Repealed
R20-2-307. Repealed
R20-2-308. Repealed
R20-2-309. Repealed
R20-2-310. Repealed
R20-2-311. Repealed
R20-2-312. Repealed
R20-2-313. Repealed
20 A.A.C. 2, Article 4. Price Verification and Price Posting
R20-2-401. Repealed
R20-2-402. Price-posting Inspection Procedure and Violation Exceptions
R20-2-403. Repealed
R20-2-404. Repealed
R20-2-405. Repealed
R20-2-406. Repealed
R20-2-407. Repealed
R20-2-408. Repealed
R20-2-409. Repealed
R20-2-410. Repealed
R20-2-411. Repealed
R20-2-412. Repealed
20 A.A.C. 2, Article 5. Public Weighmasters

R20-2-501. Qualifications; License and Renewal Application Process
R20-2-502. Duties
R20-2-503. Grounds for Denying License or Renewal; and Disciplinary Action
R20-2-504. Scales and Vehicle Weighing
R20-2-505. Weight Certificates
R20-2-506. Seal of Authority
R20-2-507. Prohibited Acts
20 A.A.C. 2, Article 6. Registered Service Agencies and Representatives
R20-2601. Qualifications; License and Renewal Application Process
R20-2602. Duties
R20-2603. Grounds for Denying License or Renewal; Disciplinary Action; and Certification of Standards and Testing Equipment
R20-2604. Prohibited Acts
R20-2-605. Material Incorporated by Reference
20 A.A.C. 2, Article 7. Motor Fuels and Petroleum Products
R20-2-701. Definitions
R20-2-702. Material Incorporated by Reference
R20-2-703. Volumetric Inspection of Motor Fuels and Motor Fuel Dispensers
R20-2-704. Price and Grade Posting on External Signs
R20-2-705. Price, Octane, and Lead Substitute Notification on Dispensers
R20-2-706. Unattended Retail Dispensers
R20-2-707. Product Transfer Documentation and Record Retention for Motor Fuel other than Arizona CBG and AZRBOB
R20-2-708. Gasoline Ethanol Blends
R20-2-709. Retail Oxygenated Fuel Labeling
R20-2-710. Blending Requirements
R20-2-711. Alcohol-oxygenated Gasoline Storage Tank Requirements
R20-2-712. Water in Service Station Motor Fuel Storage Tanks
R20-2-713. Motor Fuel Storage Tank Labeling
R20-2-714. Requirements for Motor Fuels Other than Arizona CBG
R20-2-715. Motor Fuel Quality Testing Methods and Requirements
R20-2-716. Sampling and Access to Records
R20-2-717. Hold-open Latch Exception
R20-2-718. Requirements for the Production, Transport, Distribution, and Sale of Biofuels
R20-2-719. Repealed
R20-2-720. Renumbered
R20-2-721. Renumbered
R20-2-722. Reserved
through
R20-2-748. Reserved
R20-2-749. Definitions Applicable to Arizona CBG and AZRBOB
R20-2-750. Registration Relating to Arizona CBG or AZRBOB
R20-2-751. Arizona CBG Requirements
R20-2-751.01. Repealed
R20-2-752. General Requirements for Registered Suppliers
R20-2-753. General Requirements for Pipelines and Third-party Terminals
R20-2-754. Downstream Blending Exceptions for Transmix
R20-2-755. Additional Requirements for AZRBOB and Downstream Oxygenate Blending
R20-2-756. Downstream Blending of Arizona CBG with Nonoxygenate Blendstocks
R20-2-757. Product Transfer Documentation; Records Retention
R20-2-758. Repealed
R20-2-759. Testing Methodologies
Table A. Arizona Department of Weights and Measures Test Methods for Arizona CBG and AZRBOB
R20-2-760. Compliance Surveys
R20-2-761. Liability for Noncompliant Arizona CBG or AZRBOB
R20-2-762. Penalties
Table 1. Type 1 Arizona CBG Standards
Table 2. Type 2 Arizona CBG Standards
Table 3. Repealed
20 A.A.C. 2, Article 8. Repealed
20 A.A.C. 2, Article 9. Gasoline Vapor Control for Sites with both Stage I and Stage II Vapor Recovery Systems
R20-2-901. Material Incorporated by Reference
R20-2-902. Exemptions
R20-2-903. Equipment and Installation
R20-2-904. Application Requirements and Process for Authority to Construct Plan Approval
R20-2-905. Initial Inspection and Testing
R20-2-906. Fee
R20-2-907. Operation
R20-2-908. Training and Public Education
R20-2-909. Recordkeeping and Reporting
R20-2-910. Annual Inspection and Testing
R20-2-911. Compliance Inspections
R20-2-912. Enforcement
R20-2-913. Stage II Decommissioning
20 A.A.C. 2, Article 10. Stage I Vapor Recovery Systems

R20-2-1001. Material Incorporated by Reference
R20-2-1002. Exemptions
R20-2-1003. Equipment and Installation
R20-2-1004. Application Requirements and Process for Authority to Construct Plan Approval
R20-2-1005. Initial Inspection and Testing
R20-2-1006. Fee
R20-2-1007. Operation
R20-2-1008. Training and Public Education
R20-2-1009. Recordkeeping and Reporting
R20-2-1010. Annual Testing and Inspection
R20-2-1011. Compliance Inspection and Additional Test methods
R20-2-1012. Enforcement
R20-2-1013. Stage II Vapor Recovery
Table 1. Acceptability of Final System Pressure Results for Systems Tested Using TP-201.3

2. A list of the Subchapters (if applicable), Articles, Parts (if applicable), and Sections as recodified along with their respective headings:

3 A.A.C. 7, Article 1. Administration and Procedures
R3-7-101. Definitions
R3-7-102. Metrology Laboratory Testing and Calibration Fees
R3-7-103. Licensing and Fees
R3-7-104. Administrative Enforcement Action
R3-7-105. Repealed
R3-7-106. Repealed
R3-7-107. Repealed
R3-7-108. Time-frames for Licenses, Renewals, and Authorities to Construct
R3-7-109. Administrative Hearing Procedures
R3-7-110. Motion for Rehearing or Review
R3-7-111. Repealed
R3-7-112. Repealed
R3-7-113. Renumbered
R3-7-114. Repealed
R3-7-115. Renumbered
R3-7-116. Renumbered
R3-7-117. Renumbered
Table 1. Time-frames (in days)
3 A.A.C. 7, Article 2. Commercial Devices
R3-7201. Licensing Process
R3-7-202. Repealed
R3-7-203. Approval, Installation, and Sale of Devices
R3-7-204. Livestock and Vehicle Scale Installation
3 A.A.C. 7, Article 3. Packaging, Labeling, and Method of Sale
R3-7-301. Repealed
R3-7302. Handbook 130 and Handbook 133
R3-7-303. Repealed
R3-7-304. Repealed
R3-7-305. Repealed
R3-7-306. Repealed
R3-7-307. Repealed
R3-7-308. Repealed
R3-7-309. Repealed
R3-7-310. Repealed
R3-7-311. Repealed
R3-7-312. Repealed
R3-7-313. Repealed
3 A.A.C. 7, Article 4. Price Verification and Price Posting
R3-7-401. Repealed
R3-7-402. Price-posting Inspection Procedure and Violation Exceptions
R3-7-403. Repealed
R3-7-404. Repealed
R3-7-405. Repealed
R3-7-406. Repealed
R3-7-407. Repealed
R3-7-408. Repealed
R3-7-409. Repealed
R3-7-410. Repealed
R3-7-411. Repealed
R3-7-412. Repealed
3 A.A.C. 7, Article 5. Public Weighmasters
R3-7-501. Qualifications; License and Renewal Application Process
R3-7-502. Duties
R3-7-503. Grounds for Denying License or Renewal; and Disciplinary Action
R3-7-504. Scales and Vehicle Weighing
R3-7-505. Weight Certificates

R3-7-506. Seal of Authority
R3-7-507. Prohibited Acts
3 A.A.C. 7, Article 6. Registered Service Agencies and Representatives
R3-7601. Qualifications; License and Renewal Application Process
R3-7602. Duties
R3-7603. Grounds for Denying License or Renewal; Disciplinary Action; and Certification of Standards and Testing Equipment
R3-7604. Prohibited Acts
R3-7-605. Material Incorporated by Reference
3 A.A.C. 7, Article 7. Motor Fuels and Petroleum Products
R3-7-701. Definitions
R3-7-702. Material Incorporated by Reference
R3-7-703. Volumetric Inspection of Motor Fuels and Motor Fuel Dispensers
R3-7-704. Price and Grade Posting on External Signs
R3-7-705. Price, Octane, and Lead Substitute Notification on Dispensers
R3-7-706. Unattended Retail Dispensers
R3-7-707. Product Transfer Documentation and Record Retention for Motor Fuel other than Arizona CBG and AZRBOB
R3-7-708. Gasoline Ethanol Blends
R3-7-709. Retail Oxygenated Fuel Labeling
R3-7-710. Blending Requirements
R3-7-711. Alcohol-oxygenated Gasoline Storage Tank Requirements
R3-7-712. Water in Service Station Motor Fuel Storage Tanks
R3-7-713. Motor Fuel Storage Tank Labeling
R3-7-714. Requirements for Motor Fuels Other than Arizona CBG
R3-7-715. Motor Fuel Quality Testing Methods and Requirements
R3-7-716. Sampling and Access to Records
R3-7-717. Hold-open Latch Exception
R3-7-718. Requirements for the Production, Transport, Distribution, and Sale of Biofuels
R3-7-719. Repealed
R3-7-720. Renumbered
R3-7-721. Renumbered
R3-7-722. Reserved
through
R3-7-748. Reserved
R3-7-749. Definitions Applicable to Arizona CBG and AZRBOB
R3-7-750. Registration Relating to Arizona CBG or AZRBOB
R3-7-751. Arizona CBG Requirements
R3-7-751.01. Repealed
R3-7-752. General Requirements for Registered Suppliers
R3-7-753. General Requirements for Pipelines and Third-party Terminals
R3-7-754. Downstream Blending Exceptions for Transmix
R3-7-755. Additional Requirements for AZRBOB and Downstream Oxygenate Blending
R3-7-756. Downstream Blending of Arizona CBG with Nonoxygenate Blendstocks
R3-7-757. Product Transfer Documentation; Records Retention
R3-7-758. Repealed
R3-7-759. Testing Methodologies
Table A. Arizona Department of Weights and Measures Test Methods for Arizona CBG and AZRBOB
R3-7-760. Compliance Surveys
R3-7-761. Liability for Noncompliant Arizona CBG or AZRBOB
R3-7-762. Penalties
Table 1. Type 1 Arizona CBG Standards
Table 2. Type 2 Arizona CBG Standards
Table 3. Repealed
3 A.A.C. 7, Article 8. Repealed
3 A.A.C. 7, Article 9. Gasoline Vapor Control for Sites with both Stage I and Stage II Vapor Recovery Systems
R3-7-901. Material Incorporated by Reference
R3-7-902. Exemptions
R3-7-903. Equipment and Installation
R3-7-904. Application Requirements and Process for Authority to Construct Plan Approval
R3-7-905. Initial Inspection and Testing
R3-7-906. Fee
R3-7-907. Operation
R3-7-908. Training and Public Education
R3-7-909. Recordkeeping and Reporting
R3-7-910. Annual Inspection and Testing
R3-7-911. Compliance Inspections
R3-7-912. Enforcement
R3-7-913. Stage II Decommissioning
3 A.A.C. 7, Article 10. Stage I Vapor Recovery Systems
R3-7-1001. Material Incorporated by Reference
R3-7-1002. Exemptions
R3-7-1003. Equipment and Installation
R3-7-1004. Application Requirements and Process for Authority to Construct Plan Approval
R3-7-1005. Initial Inspection and Testing
R3-7-1006. Fee

R3-7-1007. Operation
R3-7-1008. Training and Public Education
R3-7-1009. Recordkeeping and Reporting
R3-7-1010. Annual Testing and Inspection
R3-7-1011. Compliance Inspection and Additional Test Methods
R3-7-1012. Enforcement
R3-7-1013. Stage II Vapor Recovery
Table 1. Acceptability of Final System Pressure Results for Systems Tested Using TP-201.3

3. A conversion table between the two numbering schemes:

Old Numbering Scheme	New Numbering Scheme
Title 20, Chapter 2. Department of Weights and Measures	Title 3, Chapter 7. Department of Agriculture – Weights and Measures Services Division
Title 20, Chapter 2, Article 1. Administration and Procedures	Title 3, Chapter 7, Article 1. Administration and Procedures
R20-2-101	R3-7-101
R20-2-102	R3-7-102
R20-2-103	R3-7-103
R20-2-104	R3-7-104
R20-2-105	R3-7-105
R20-2-106	R3-7-106
R20-2-107	R3-7-107
R20-2-108	R3-7-108
R20-2-109	R3-7-109
R20-2-110	R3-7-110
R20-2-111	R3-7-111
R20-2-112	R3-7-112
R20-2-113	R3-7-113
R20-2-114	R3-7-114
R20-2-115	R3-7-115
R20-2-116	R3-7-116
R20-2-117	R3-7-117
Table 1	Table 1
Title 20, Chapter 2, Article 2. Commercial Devices	Title 3, Chapter 7, Article 2. Commercial Devices
R20-2201	R3-7-201
R20-2-202	R3-7-202
R20-2-203	R3-7-203
R20-2-204	R3-7-204
Title 20, Chapter 2, Article 3. Packaging, Labeling and Method of Sale	Title 3, Chapter 7, Article 3. Packaging, Labeling, and Method of Sale
R20-2-301	R3-7-301
R20-2302	R3-7302
R20-2-303	R3-7-303
R20-2-304	R3-7-304
R20-2-305	R3-7-305
R20-2-306	R3-7-306
R20-2-307	R3-7-307
R20-2-308	R3-7-308
R20-2-309	R3-7-309
R20-2-310	R3-7-310
R20-2-311	R3-7-311
R20-2-312	R3-7-312
R20-2-313	R3-7-313
Title 20, Chapter 2, Article 4. Price Verification and Price Posting	Title 3, Chapter 7, Article 4. Price Verification and Price Posting
R20-2-401	R3-7-401
R20-2-402	R3-7-402
R20-2-403	R3-7-403

R20-2-404	R3-7-404
R20-2-405	R3-7-405
R20-2-406	R3-7-406
R20-2-407	R3-7-407
R20-2-408	R3-7-408
R20-2-409	R3-7-409
R20-2-410	R3-7-410
R20-2-411	R3-7-411
R20-2-412	R3-7-412
Title 20, Chapter 2, Article 5. Public Weighmasters	Title 3, Chapter 7, Article 5. Public Weighmasters
R20-2-501	R3-7-501
R20-2-502	R3-7-502
R20-2-503	R3-7-503
R20-2-504	R3-7-504
R20-2-505	R3-7-505
R20-2-506	R3-7-506
R20-2-507	R3-7-507
Title 20, Chapter 2, Article 6. Registered Service Agencies and Representatives	Title 3, Chapter 7, Article 6. Registered Service Agencies and Representatives
R20-2-601	R3-7-601
R20-2-602	R3-7-602
R20-2-603	R3-7-603
R20-2-604	R3-7-604
R20-2-605	R3-7-605
Title 20, Chapter 2, Article 7. Motor Fuels and Petroleum Products	Title 3, Chapter 7, Article 7. Motor Fuels and Petroleum Products
R20-2-701	R3-7-701
R20-2-702	R3-7-702
R20-2-703	R3-7-703
R20-2-704	R3-7-704
R20-2-705	R3-7-705
R20-2-706	R3-7-706
R20-2-707	R3-7-707
R20-2-708	R3-7-708
R20-2-709	R3-7-709
R20-2-710	R3-7-710
R20-2-711	R3-7-711
R20-2-712	R3-7-712
R20-2-713	R3-7-713
R20-2-714	R3-7-714
R20-2-715	R3-7-715
R20-2-716	R3-7-716
R20-2-717	R3-7-717
R20-2-718	R3-7-718
R20-2-719	R3-7-719
R20-2-720	R3-7-720
R20-2-721	R3-7-721
R20-2-722 Reserved	R3-7-722 Reserved
through	through
R20-2-748	R3-7-748
R20-2-749	R3-7-749
R20-2-750	R3-7-750
R20-2-751	R3-7-751
R20-2-751.01	R3-7-751.01
R20-2-752	R3-7-752

R20-2-753	R3-7-753
R20-2-754	R3-7-754
R20-2-755	R3-7-755
R20-2-756	R3-7-756
R20-2-757	R3-7-757
R20-2-758	R3-7-758
R20-2-759	R3-7-759
Table A	Table A
R20-2-760	R3-7-760
R20-2-761	R3-7-761
R20-2-762	R3-7-762
Table 1	Table 1
Table 2	Table 2
Table 3	Table 3
Title 20, Chapter 2, Article 8. Repealed	Title 3, Chapter 7, Article 8. Repealed
Title 20, Chapter 2, Article 9. Gasoline Vapor Control for Sites with both Stage I and Stage II Vapor Recovery Systems	Title 3, Chapter 7, Article 9. Gasoline Vapor Control for Sites with both Stage I and Stage II Vapor Recovery Systems
R20-2-901	R3-7-901
R20-2-902	R3-7-902
R20-2-903	R3-7-903
R20-2-904	R3-7-904
R20-2-905	R3-7-905
R20-2-906	R3-7-906
R20-2-907	R3-7-907
R20-2-908	R3-7-908
R20-2-909	R3-7-909
R20-2-910	R3-7-910
R20-2-911	R3-7-911
R20-2-912	R3-7-912
R20-2-913	R3-7-913
Title 20, Chapter 2, Article 10. Stage I Vapor Recovery Systems	Title 3, Chapter 7, Article 10. Stage I Vapor Recovery Systems
R20-2-1001	R3-7-1001
R20-2-1002	R3-7-1002
R20-2-1003	R3-7-1003
R20-2-1004	R3-7-1004
R20-2-1005	R3-7-1005
R20-2-1006	R3-7-1006
R20-2-1007	R3-7-1007
R20-2-1008	R3-7-1008
R20-2-1009	R3-7-1009
R20-2-1010	R3-7-1010
R20-2-1011	R3-7-1011
R20-2-1012	R3-7-1012
R20-2-1013	R3-7-1013
Table 1	Table 1

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

Name: Michelle Wilson
Address: Department of Agriculture
1688 W. Adams St.
Phoenix, AZ 85007
Telephone: (602) 771-4933
E-mail: mwilson@azda.gov

5. Changes to Section References under A.A.C. R-1-1001(C):

ARTICLE 1. ADMINISTRATION AND PROCEDURES

~~R20-2-101~~ R3-7-101. Definitions

The definitions in A.R.S. §§ 41-2051, 41-2065, 41-2085, 41-2121, and 41-2131 and the following definitions apply to this Chapter:

1. "ADEQ" means the Arizona Department of Environmental Quality.
2. "Administrative order" means a corrective action notice that the Department issues for a violation of A.R.S. Title 41, Chapter 15, or this Chapter, that orders a person to:
   a. Remove from use or sale, or dispose of, a commercial device, commodity, or liquid fuel;
   b. Stop selling a commodity or liquid fuel until the person provides documentation to the Department that the weight, measure, fuel quality, or price posting complies with the requirements of A.R.S. Title 41, Chapter 15, and this Chapter;
   c. Stop using a commercial device, commodity, liquid fuel, vapor recovery system, or vapor recovery system component, until the person provides documentation to the Department that the weight, measure, fuel, vapor recovery system, or component complies with the requirements of A.R.S. Title 41, Chapter 15, and this Chapter;
   d. Stop performing weighmaster, deputy weighmaster, registered service agency, or registered service representative licensed duties until the person provides documentation to the Department that the person is complying with the requirements of A.R.S. Title 41, Chapter 15, and this Chapter;
   e. Maintain labeling, policies, and cash register indicator displays according to A.R.S. Title 41, Chapter 15, and this Chapter;
   f. Stop constructing or modifying a vapor recovery system until the person complies with A.R.S. Title 41, Chapter 15, and this Chapter;
   g. Excavate a vapor recovery site according to ~~R20-2-104(L)~~ R3-7-104(L);
   h. Comply with scheduling a test according to ~~R20-2-104(L)~~ R3-7-104(L); or
   i. Retake a competency examination under A.R.S. § 41-2094.
3. "Application" means, for purposes of ~~R20-2-108~~ R3-7-108, forms designated as applications and all documents and additional information the Department requires an applicant to submit with an application.
4. "ASTM" means American Society for Testing and Materials.
5. "Area A" has the same meaning as in A.R.S. § 49-541.
6. "Area B" has the same meaning as in A.R.S. § 49-541.
7. "CARB" means the California Air Resources Board.
8. "CARB certified" means, with respect to a vapor recovery system, that the system has been certified in an executive order of the CARB.
9. "Certified prover" means a calibrated device, traceable to the National Institute of Standards and Technology, used for measuring liquid volume.
10. "Completion of construction" means the point when a gasoline dispensing site is placed into or returned into service following installation or modification of an approved vapor recovery system.
11. "Construction commenced" means the point in time when construction of a gasoline dispensing site begins:
    a. At a location where there was not one previously;
    b. To replace all gasoline storage tanks; or
    c. To replace, repair, or modify at least 75% of the facility's gasoline dispensing equipment.
12. "EPA" means the United States Environmental Protection Agency.
13. "Gasoline vapors" means volatile organic compounds in a gaseous state.
14. "Handbook 44" means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 44, *Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices*, Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov (2010 edition), incorporated by reference and on file with the Department. This incorporation by reference contains no future editions or amendments.
15. "Handbook 112" means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 112, *Examination Procedure Outlines for Commercial Weighing and Measuring Devices*, Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov (2002 edition), incorporated by reference and on file with the Department. This incorporation by reference contains no future editions or amendments.
16. "Handbook 130" means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 130, *Uniform Laws and Regulations*, Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov (2009 edition), incorporated by reference and on file with the Department. This incorporation by reference contains no future editions or amendments.
17. "Handbook 133" means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 133, *Checking The Net Contents of Packaged Goods*, Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov (January 2005 edition), incorporated by reference and on file with the Department. This incorporation by reference contains no future editions and amendments.
18. "NCWM" means the National Conference on Weights and Measures.
19. "Malfunction" means any failure of gasoline vapor recovery equipment to operate in the normal and usual manner.
20. "Modification" means adding to, replacing, or upgrading a site's stage II vapor recovery system, but does not include the repair or replacement of like parts.
21. "Monthly throughput" means the total amount of gasoline transferred into or dispensed from a gasoline dispensing site during one calendar month.
22. "Motor vehicle" means any vehicle equipped with a spark-ignited internal combustion engine, except vehicles that run on or are guided by rails, and vehicles that are designed primarily for travel through air or water.
23. "NIST" means the National Institute of Standards and Technology.
24. "Operator" means a person in control of, or having responsibility for, the daily operation of a gasoline dispensing site.
25. "Out-of-service tag" means a red rejection tag that signifies that a commercial device does not meet the requirements of A.R.S. Title 41, Chapter 15, Handbook 44, or this Chapter.
26. "Person" as defined in A.R.S. § 41-2051, means an owner or operator of a commercial device or vapor recovery system, retail seller, wholesaler, registered supplier, pipeline distributor, packer, manufacturer, licensee, transporter, or consignee.
27. "Placed in service" means the certification by a registered service agency or representative that a commercial device may be used, unless the Department orders otherwise.
28. "Placed-in-service report" means the form that a registered service representative completes and submits to the Department after placing a commercial device in service.
29. "Product transfer document" means the bill of lading, loading ticket, manifest, delivery receipt, invoice, or other customarily used documentation to denote delivery information for motor fuel.

30. "Retail" means the sale of a commodity to a consumer for profit by someone in the business of selling the commodity.
31. "Seal of authority" means a stamp or press of the Department's official mark, issued to a public weighmaster, certifying the weighmaster's authority to issue weight certificates.
32. "Seizure" means taking into physical possession, or otherwise securing for evidence, a commodity, liquid fuel, weight, measure, commercial device, or component of a device by the Department.
33. "Stop-sale, stop-use tag" means a blue tag or blue tape that signifies that a commercial device, including a vapor recovery system or vapor recovery component, or a commodity or liquid fuel, does not meet the requirements of A.R.S. Title 41, Chapter 15, Handbook 44, Handbook 130, Handbook 133, CARB Executive Orders, or this Chapter.
34. "Third-party registered service agency" means a registered service agency that performs work under contract for any business or company.
35. "Underground storage tank" means a tank as described in A.R.S. § 491001(18).
36. "Unit" means a quantity adopted as a standard of measurement.
37. "Vapor recovery registered service representative No. 1" means an individual to whom the Department has issued a license authorizing the individual to conduct all vapor-recovery tests required under A.R.S. Title 41, Chapter 15 or this Chapter including annual vapor-recovery tests.
38. "Vapor recovery registered service representative No. 2" means an individual to whom the Department has issued a license authorizing the individual to conduct the specific vapor-recovery tests necessary to determine whether equipment on which the individual performed maintenance or repairs is operating properly.
39. "Warning tag" means a yellow tag that signifies a commercial device, vapor recovery system, or vapor recovery component does not comply with A.R.S. Title 41, Chapter 15, Handbook 44, CARB Executive Orders, or this Chapter.
40. "Weight certificate" means a document, issued by a public weighmaster in a form approved by the Department, that certifies the accuracy of the weight of the commodity measured.

~~R20-2-104~~ R3-7-104. Administrative Enforcement Action

A. The Department shall take progressive enforcement action for a violation of A.R.S. Title 41, Chapter 15, CARB Executive Orders, Handbook 44, Handbook 130, Handbook 133, or this Chapter.

B. The Department shall provide a copy of its inspection report to the person who owns or operates a location that the Department inspects. The report shall include the inspection results, violations, and enforcement action.

C. The person who owns or operates a location inspected by the Department may request a hearing under ~~R20-2-109~~ R3-7-109 to dispute the inspection results, violation, or enforcement action.

D. The Department shall suspend, revoke, or refuse to renew any license if the licensee does not comply with an enforcement action imposed under this Section.

E. A maximum civil penalty may be doubled as stated in A.R.S. § 41-2115(B).

F. Commercial device.

1. The Department shall place out of service an unlicensed commercial device that it determines has been in use for more than 30 days.
2. The Department shall confiscate a commercial device when a person violates an administrative order related to that commercial device, or removes a warning tag, out-of-service tag, or stop-sale, stop-use tag issued to that commercial device without Department authority.
3. The Department shall issue an out-of-service tag or a stop-sale, stop-use tag if a commercial device is not in compliance with the requirements in Handbook 44 and the lack of compliance creates a situation favorable to the person who owns or operates the commercial device.
   a. A person shall not use a commercial device that has an out-of-service tag until the person repairs the commercial device.
   b. A person shall not sell or use a commercial device that has a stop-sale, stop-use tag until the commercial device meets the requirements of A.R.S. Title 41, Chapter 15, Handbook 44, and this Chapter.
4. The Department shall issue a warning tag when a commercial device is not in compliance with the requirements in Handbook 44 and the lack of compliance creates a situation favorable to the public. The Department shall issue an out-of-service tag if the commercial device is not repaired by the deadline on the warning tag. A person shall not use a commercial device after the period specified on the warning tag for repair unless the commercial device complies with A.R.S. Title 41, Chapter 15, Handbook 44, and this Chapter.
5. The Department shall issue an out-of-service tag if a commercial device does not have a non-tampering seal affixed.
6. The Department shall issue an out-of-service tag if a Department inspector cannot conduct an inspection of a commercial device because of a potential safety risk that the person who owns or operates the commercial device does not correct within 30 minutes of the attempted inspection.
7. The Department shall issue an out-of-service tag if a commercial device cannot begin weighing, measuring, metering, or counting at zero.
8. The Department shall issue a warning tag if the manufacturer's plate on a commercial device does not contain the information required by Handbook 44, is missing, or is unreadable. The Department shall issue an out-of-service tag if the person who owns or operates a commercial device does not obtain a compliant manufacturer's plate by the 30-day deadline imposed on the warning tag.
9. The Department shall issue a warning tag to a person who did not construct a large-scale approach according to Handbook 44. The Department shall issue a stop-sale, stop-use tag if the large-scale approach is not made compliant by the deadline imposed on the warning tag.
10. In addition to any enforcement action under subsections (F)(1) through (9):
    a. If the Department finds during an inspection that a commercial device does not comply with the requirements of A.R.S. Title 41, Chapter 15, or this Chapter and the lack of compliance favors the owner or operator of the commercial device:
       i. The Department shall impose a $300 civil penalty on the person who owns or operates the commercial device; and
       ii. The Department shall impose a $500 civil penalty on the person who owns or operates the commercial device for each reinspection until the commercial device is in compliance.
    b. If the Department finds during an inspection that a person who weighs a product on a commercial device violates Handbook 44 or does not post rates according to Handbook 44 or this Chapter:
       i. The Department shall issue an administrative order to the person at the conclusion of the inspection and impose a $300 civil penalty; and

ii. The Department shall issue an administrative order to the person and impose a $500 civil penalty at each reinspection until the person complies with Handbook 44 and this Chapter.

G. Public and deputy weighmaster.
1. The Department shall issue an administrative order if a public weighmaster's:
   a. Weigh tickets are not in numbered sequence or are missing,
   b. Seal or press is not readable, or
   c. Records are not maintained according to ~~R20-2-505~~ R3-7-505.
2. The Department shall issue an administrative order and impose a $500 civil penalty on a public weighmaster if:
   a. The public weighmaster's weigh tickets contain inaccurate information,
   b. The public weighmaster violates an administrative order, or
   c. The public weighmaster misuses a seal or press or has an unauthorized seal or press.
3. The Department shall confiscate a seal or press if a public weighmaster violates an administrative order issued to the public weighmaster.
4. The Department shall suspend, revoke, or refuse to renew a license if a public weighmaster does not comply with an enforcement action under this Section.
5. The Department shall issue an administrative order to a person who performs public weighmaster duties without a license.
6. If a public weighmaster permits an unlicensed person to perform deputy weighmaster duties, the Department shall:
   a. Impose a $300 civil penalty on the public weighmaster for the first time the public weighmaster permits an unlicensed person to perform deputy weighmaster duties;
   b. Impose a $500 civil penalty on a public weighmaster for the second time the public weighmaster permits an unlicensed person to perform deputy weighmaster duties; and
   c. Confiscate the public weighmaster's records, equipment, and devices if the public weighmaster permits an unlicensed person to perform deputy weighmaster duties more than twice.

H. Package.
1. The Department shall issue an administrative order to an owner or an employee of the owner where a package inspection is held if a package is not in compliance with a requirement in Handbook 130 or Handbook 133. The person to whom the administrative order is issued shall correct the package violation by:
   a. Returning the package to the packer or manufacturer,
   b. Labeling the package to reflect its correct quantity,
   c. Placing a notice on the package that states the violation and pricing the package to reflect its correct quantity, or
   d. Repackaging the commodity so the package contains the quantity represented.
2. In addition to an administrative order, the Department shall impose a $500 civil penalty per lot on a person who violates a requirement in Handbook 130 or Handbook 133.

I. Price verification.
1. The initial inspection of a retail location for price verification is for educational purposes and an enforcement action will not be imposed for a violation identified during the initial inspection.
2. The Department shall issue a stop-sale, stop-use tag to a person who fails a price verification reinspection if the violation cannot be corrected within 30 minutes of the Department completing the reinspection.
   a. The Department shall impose a $100 civil penalty per violation on a person who fails a reinspection if the Department finds more than one item at more than its posted price.
   b. The Department shall impose a $200 civil penalty per violation on a person who fails a second reinspection. The Department shall increase the per violation civil penalty imposed by $100 for each subsequent reinspection until the violation is corrected.
3. If the Department receives and substantiates a complaint about a person against whom the Department took an administrative enforcement action under subsection (I)(2) within the 60 days before the date of the complaint, the Department shall issue a stop-sale, stop-use tag and impose a civil penalty that is $100 more than the civil penalty that the Department previously imposed against this person.
4. The Department shall issue a warning to a person who does not have a written price-error policy. The Department shall impose a $500 civil penalty if the person does not have a written price-error policy upon reinspection.
5. The Department shall issue a warning to a person who does not have a price display visible to the public at a check-out location. The Department shall issue an out-of-service tag if the person does not have a price display visible to the public at a check-out location upon reinspection.

J. Price posting.
1. The initial inspection of a retail location for price posting is for educational purposes and an enforcement action will not be imposed for a violation identified during the initial inspection.
2. The Department shall issue a stop-sale, stop-use tag to a person who fails a price posting reinspection if the violation cannot be corrected within 30 minutes of the Department completing the reinspection.
3. The Department shall impose a $50 civil penalty for each inspected lot not priced if a person fails a reinspection with a score of less than 96 percent.
4. The Department shall impose a $100 civil penalty for each inspected lot not priced if a person fails a second reinspection.
5. If the Department receives and substantiates a complaint about a person against whom the Department took an administrative enforcement action under subsection (J)(2) within the 60 days before the date of the complaint, the Department shall issue a stop-sale, stop-use tag and impose a civil penalty that is $100 more than the civil penalty that the Department previously imposed against this person.

K. Fuel quality and labeling.
1. The Department shall issue a warning tag to a person whose fuel dispenser labeling violates A.R.S. Title 41, Chapter 15, or this Chapter. The Department shall issue an out-of-service tag to the person if the person does not correct the fuel dispenser labeling violation within the time specified on the warning tag.
2. The Department shall issue an administrative order to a person whose fuel storage tank labeling or external street signage violates A.R.S. Title 41, Chapter 15, or this Chapter. The Department shall impose a $300 civil penalty if the person does not correct the labeling or signage violation within the time specified in the administrative order.
3. The Department shall issue an administrative order and impose a $500 per octane level civil penalty to a person who violates a fuel-quality requirement under A.R.S. Title 41, Chapter 15, or this Chapter. The person shall correct the violation by:
   a. Removing non-compliant motor fuel from the storage tank and replacing it with compliant motor fuel,

b. Selling the motor fuel at the correct octane level,
c. Adding sufficient compliant motor fuel to the storage tank to bring the motor fuel in the storage tank into compliance,
d. Removing all water from the storage tank, or
e. Removing the non-compliant motor fuel to another area within the state if the motor fuel complies with specifications of that area.

4. The Department shall issue an administrative order to a person who does not provide requested product transfer documentation within 24 hours of the Department's request. The Department shall impose a $300 civil penalty on a person who provides the requested documentation between 24 and 72 hours. The Department shall impose a $500 civil penalty on a person who does not provide the requested documentation within 72 hours.

L. Vapor recovery.

1. The Department shall issue an administrative order to stop construction at a vapor recovery site and impose a $500 civil penalty on a person who:
   a. Begins construction or makes a major modification without an authority to construct plan approval,
   b. Does not comply with the authority to construct plan approval, or
   c. Does not obtain an approved change order for construction or major modification of the vapor recovery site unless:
      i. The vapor recovery system and its components comply with A.R.S. Title 41, Chapter 15, and this Chapter; and
      ii. The vapor recovery system passes the required vapor recovery tests according to A.R.S. Title 41, Chapter 15, and this Chapter.
2. The Department shall issue an administrative order requiring a person to excavate a vapor recovery site if the person covers a vapor recovery component before a Department pre-burial inspection and shall impose a $500 civil penalty if the excavated system does not pass required vapor recovery tests according to A.R.S. Title 41, Chapter 15, and this Chapter.
3. The Department shall issue an administrative order if a person fails to ensure that a vapor recovery site passes an initial test within 90 days of being opened or passes an annual test within the designated test month. The Department shall issue a stop-sale, stop-use tag if the person does not comply with the administrative order.
4. The Department shall impose a $100 civil penalty on a person who does not have an authority to construct plan approval available for inspection at the construction site during normal business hours.
5. The Department shall issue a warning tag to a person whose vapor recovery system labeling does not comply with the authority to construct plan approval. The Department shall issue a stop-sale, stop-use tag and impose a $500 civil penalty on a person who does not correct a labeling violation within the time specified on a warning tag.
6. The Department shall issue a stop-sale, stop-use tag to a person whose vapor recovery system fails a test under ~~R20-2-905~~ R3-7-905 or ~~R20-2-910~~ R3-7-910. If the test failure is isolated to a system component, the Department's stop-sale, stop-use tag shall pertain to that component so the rest of the system may operate.
7. The Department shall impose a $500 civil penalty and issue another stop-sale, stop-use tag to a person who violates a stop-sale, stop-use tag. The Department shall impose a $500 civil penalty and revoke, suspend, or refuse to renew a commercial device license if a person removes a stop-sale, stop-use tag without approval.

M. Registered service agency and registered service representative.

1. If a registered service agency submits to the Department an inaccurate or incomplete placed-in-service or test report, the Department shall:
   a. Return the inaccurate or incomplete placed-in-service or test report to the agency for correction, and
   b. Impose a $50 civil penalty on the agency each time the agency resubmits a placed-in-service or test report without making all needed corrections.
2. The Department shall impose a $300 civil penalty on a registered service representative who incorrectly:
   a. Installs a commercial device,
   b. Repairs a commercial device,
   c. Tests a vapor recovery system, or
   d. Repairs a vapor recovery system.
3. If an unlicensed person represents itself as a registered service agency, the Department shall:
   a. Issue an administrative order,
   b. Impose a $500 civil penalty and confiscate the unlicensed person's calibration standards if the unlicensed person violates the administrative order, and
   c. Deny a registered service agency license to the unlicensed person if the unlicensed person fails to comply with the enforcement action under this subsection.
4. The Department shall issue an administrative order to an unlicensed person who performs the duties of a registered service representative. The Department shall impose a $300 civil penalty on the registered service agency for which the unlicensed individual works.
5. The Department shall issue an administrative order if a registered service representative places a commercial device into service without Department authorization. The Department shall impose a $500 civil penalty on the registered service agency whose representative places a commercial device into service without Department authorization.
6. The Department shall impose a $500 civil penalty on a registered service agency whose registered service representative uses a metrology standard or vapor recovery air-to-liquid (A/L) ratio testing equipment that is not certified according to this Chapter. The Department shall confiscate a metrology standard or A/L ratio testing equipment if a registered service representative uses the uncertified standard or equipment after the registered service agency is penalized. The Department shall return the standard or equipment when it is properly certified.
7. The Department shall issue an administrative order to a vapor recovery registered service agency or person who owns a vapor recovery system that does not, according to A.R.S. Title 41, Chapter 15, and this Chapter:
   a. Notify the Department of a test date and time,
   b. Begin a test at the approved time,
   c. Appear for a witnessed test,
   d. Close a vapor recovery system for repairs if the system fails, or
   e. Perform a test.
8. The Department shall impose a $300 civil penalty on a vapor recovery registered service agency that violates subsection (M)(7) twice in 12 months.
9. If a registered service agency's registered service representative does not attach a non-tampering seal on a commercial device that is equipped for a seal, the Department shall:

a. Impose a $300 civil penalty on the registered service agency for the first violation, and
b. Impose a $500 civil penalty on the registered service agency for each subsequent violation by the registered service representative.

10. If a registered service representative determines that a vapor recovery system or component is not in compliance with A.R.S. Title 41, Chapter 15, or this Chapter, the registered service representative shall:
    a. Secure the non-compliant vapor recovery system or component from use before the registered service representative leaves the vapor recovery site or until the system or component passes the tests required by ~~R20-2-910~~ R3-7-910;
    b. Notify the Department of the secured, non-compliant vapor recovery system or component before leaving the vapor recovery site; and
    c. Notify the Department of the time of the test required by ~~R20-2-910~~ R3-7-910 by 6:00 a.m. of the day after the non-compliant vapor recovery system or component is secured or one hour before the test, whichever is sooner.
11. If a registered service representative fails to comply with subsection (M)(10)(b) or (c), the Department shall:
    a. Impose a $300 civil penalty on the registered service representative;
    b. Issue an administrative order, if the registered service representative is penalized under this subsection three times in 12 months, requiring the registered service representative to take and pass the licensing competency examination; and
    c. Suspend or revoke the license of the registered service agency employing the registered service representative if the registered service representative does not comply with an order issued under subsection (M)(11)(b).

Table 1. Time-frames (in days)

Type of License	Administrative Review Time-frame	Time to Respond to Deficiency Notice	Substantive Review Time-frame	Time to Respond to Request for Additional Information	Overall Time-frame
Commercial Device ~~R20-2-201~~ R3-7-201	10	20	30	20	40
Public Weighmaster ~~R20-2-501~~ R3-7-501	10	20	30	20	40
Registered Service Agency/Representative ~~R20-2-601~~ R3-7-601	10	20	30	20	40
Authority to Construct ~~R20-2-904~~ R3-7-904	10	20	30	20	40

ARTICLE 6. REGISTERED SERVICE AGENCIES AND REPRESENTATIVES

~~R20-2-601~~ R3-7-601. Qualifications; License and Renewal Application Process

A. Registered service agency.
1. To obtain a license as a registered service agency, an applicant shall provide evidence that:
    a. The applicant's registered service representative has a thorough knowledge of all appropriate laws within A.R.S. Title 41, Chapter 15, Handbook 44, Handbook 112, CARB Executive Orders, and this Chapter;
    b. The applicant provided its representative with a copy of the portions of A.R.S. Title 41, Chapter 15, Handbook 44, Handbook 112, CARB Executive Orders, and this Chapter relating to registered service representative duties;
    c. The applicant:
        i. Possesses the necessary certified standards and testing equipment to service commercial devices; and
        ii. Possesses the necessary test equipment calibrated annually by the equipment manufacturer to perform an air to liquid (A/L) test of a vapor recovery system or vapor recovery component properly; or
        iii. Has access to the necessary standards and testing equipment belonging to another registered service agency and has written approval from that agency to use its standards and testing equipment; and
    d. The applicant shall ensure that its registered service representative operates the equipment according to A.R.S. Title 41, Chapter 15, Handbook 44, Handbook 112, CARB Executive Orders, and this Chapter.
2. The Department shall not issue a registered service agency license until at least one of the applicant's employees passes a registered service representative competency exam.
3. An applicant for a registered service agency license shall submit an application form, obtained from the Department that provides:
    a. Name, address, telephone number, electronic mail address, and facsimile number;
    b. License information from other states;
    c. Types of devices serviced, repaired, or installed, or vapor recovery systems or components repaired or tested;
    d. A list of all of the applicant's devices and testing equipment with corresponding serial or identification numbers;
    e. Branch office information;
    f. Names of registered service representatives and their experience with other registered service agencies or states;
    g. License and disciplinary history; and
    h. Applicant's signature.

B. Third-party registered service agency. In addition to complying with the requirements in subsection (A), a third-party registered service agency shall provide the Department with evidence that the third-party registered service agency:
1. Holds a valid license issued by the Arizona Registrar of Contractors,
2. Complies with workers' compensation insurance laws, and
3. Maintains liability insurance sufficient to cover the value of work to be performed.

C. Registered service representative.
1. To obtain a license as a registered service representative, an applicant shall provide evidence that:
    a. The applicant has a thorough knowledge of all appropriate laws within A.R.S. Title 41, Chapter 15, Handbook 44, Handbook 112, CARB Executive Orders, and this Chapter;

b. The applicant possesses the necessary training or experience regarding appropriate standards and testing equipment to service the specific commercial device, vapor recovery system, or vapor recovery system component indicated on the application;
c. The applicant will operate according to appropriate laws within A.R.S. Title 41, Chapter 15, Handbook 44, Handbook 112, CARB Executive Orders; and this Chapter; and
d. The applicant has passed the competency examination specified in subsection (D).

2. An applicant for a registered service representative license shall submit an application on a form obtained from the Department that provides:
a. Name, address, telephone number, and facsimile number;
b. License information from other states;
c. An indication of whether the applicant is applying to be a registered service representative, vapor recovery service representative No. 1, or vapor recovery service representative No. 2;
d. Types of devices serviced, repaired, or installed, or vapor recovery systems or components repaired or tested;
e. Work experience with other registered service agencies in Arizona or other states;
f. License and disciplinary history; and
g. Applicant's signature.

3. An applicant for a vapor recovery registered service representative No. 1 license shall maintain and make available to the Department upon request evidence of being:
a. Certified by the manufacturer to test or repair all vapor recovery systems and components, or
b. Determined qualified by the Department to test or repair all vapor recovery systems and components.

D. Competency examination. Before being issued a registered service representative license, an applicant shall pass a Department-administered competency examination.
1. An applicant for a vapor recovery registered service representative license shall complete the Department's training class before taking the competency examination.
2. An applicant shall bring a copy of Handbook 44 and Handbook 112 to the examination site.
3. An applicant shall complete the competency examination within the time specified by the Department.
4. The Department shall not allow an applicant to take the competency examination more than two times in six months.

E. As required under A.R.S. § 41-2094(G), the Department shall specify on a registered service representative license the devices that the registered service representative may service, repair, or install or the vapor recovery systems or components that the vapor recovery registered service representative may test or repair. A registered service representative shall perform only the services approved by the Department for the registered service representative.

F. Renewal of a registered service representative license. Under A.R.S. § 41-2094(D), a registered service representative license is valid for 12 months and expires unless renewed. To renew a registered service representative license, the registered service agency employing the registered service representative shall comply with ~~R20-2-603(E)~~ R3-7-603(E). Before complying with ~~R20-2-603(E)~~ R3-7-603(E), the registered service agency shall ensure that:
1. A vapor recovery registered service representative No. 1 or 2 completes the Department's training class, and
2. A vapor recovery registered service representative takes and passes the Department's written vapor recovery competency examination as follows:
a. A vapor recovery service representative No. 1 shall pass the vapor recovery competency examination annually, and
b. A vapor recovery service representative No. 2 shall pass the vapor recovery competency examination biennially.

G. The Department does not charge a fee to process a change in business name or address.

~~R20-2-602~~ R3-7-602. Duties

A. Registered service agency.
1. A registered service agency shall:
a. Maintain all equipment used for commercial device certification according to standards traceable to NIST, and
b. Maintain and use equipment for testing vapor recovery systems and vapor recovery system components according to this Chapter and manufacturer specifications.
2. When a registered service agency restores or newly places in service a commercial device, the registered service agency shall complete a placed-in-service report form prescribed by the Department.
a. The registered service agency shall complete the placed-in-service report in triplicate;
b. Within seven calendar days after the commercial device is restored to service or newly placed in service, the registered service agency shall mail the original of the properly completed and signed placed-in-service report to the Department;
c. The registered service agency shall give a copy of the placed-in-service report to the person who owns or operates the commercial device;
d. The registered service agency shall retain a copy of the placed-in-service report or any required vapor recovery report for one year;
e. The registered service agency shall ensure that the placed-in-service report contains the assigned license number of the registered service representative who completes the report;
f. The registered service agency shall ensure that the placed-in-service report is completed and signed by the registered service representative noting each rejected commercial device restored to service and each newly installed commercial device placed in service;
g. The registered service agency shall ensure that the placed-in-service report includes the serial or identification number of each standard used by the registered service representative to calibrate the commercial device for each rejected device restored to service and for each newly installed device placed in service; and
h. The registered service agency shall ensure that the placed-in-service report includes the license number of the registered service representative who installs or repairs the commercial device.
3. A registered service agency shall have all equipment used for commercial device certification and A/L testing certified annually by the manufacturer.
4. A registered service agency shall not use new equipment for commercial device certification until it is certified by a NIST-traceable laboratory.
5. A registered service agency shall ensure that employees do not perform registered service representative duties until licensed. A registered service agency may train an employee in registered service representative duties only if the employee is within the direct line of sight and hearing of a supervising licensed registered service representative.

6. A registered service agency shall use a form approved by the Department to record vapor recovery test results and violations. The registered service agency shall submit to the Department the summary test report within 24 hours following the test. All other forms relating to the test shall be mailed within seven days after completion of the test.
7. A registered service agency shall ensure that its registered service representative provides a copy of the Regulatory Bill of Rights, defined in A.R.S. § 41-1001.01, to the owner or operator of a vapor recovery system before beginning a vapor recovery test that is not witnessed by the Department.
8. A registered service agency shall ensure that its registered service representative provides a vapor recovery system owner or operator with written test preparation instructions, approved by the Department, at least 10 business days before an initial or annual test.

B. Registered service representative.

1. A registered service representative shall:
   a. Install only commercial devices that meet the requirements of this Chapter;
   b. Perform all vapor recovery tests according to this Chapter;
   c. Perform all appropriate tests when repairing a commercial device or repairing or replacing a vapor recovery system or component to ensure that the requirements of A.R.S. Title 41, Chapter 15, this Chapter, Handbook 44, Handbook 112, and CARB Executive Orders are met;
   d. Report to the user equipment or commercial devices that do not conform to NIST standards; and
   e. Complete placed-in-service reports accurately.
2. If a vapor recovery registered service representative cannot correct a violation and has to leave the vapor recovery site, the registered service representative shall secure the non-compliant vapor recovery system or component from commercial use. The non-compliant system or component shall not be used for commercial purposes until it is repaired and passes the test required by ~~R20-2-910~~ R3-7-910. The registered service representative shall notify the Department of the stop-sale, stop-use by 6:00 a.m. of the day after the non-compliant vapor recovery system or component is secured or one hour before the test, whichever is sooner, so that the Department can witness the test.

ARTICLE 7. MOTOR FUELS AND PETROLEUM PRODUCTS

~~R20-2-701~~ R3-7-701. Definitions

In addition to the definitions in ~~R20-2-101~~ R3-7-101, the following definitions apply to this Article unless the context otherwise requires:

"Address" means a street number, street name, city, state, and zip code.
"Area A" has the same meaning as in A.R.S. § 49-541.
"Area B" has the same meaning as in A.R.S. § 49-541.
"Arizona Cleaner Burning Gasoline" or "Arizona CBG" means a gasoline blend that meets the requirements of this Article for gasoline produced and shipped to or within Arizona and sold or offered for sale for use in motor vehicles within the CBG-covered area, except as provided under A.R.S. § 41-2124(J).
"AST" means aboveground storage tank.
"AZRBOB" or "Arizona Reformulated Blendstock for Oxygenate Blending" means a combination of gasoline blendstocks that is intended to be or represented to constitute Arizona CBG upon the addition of a specified amount (or range of amounts) of fuel ethanol after the blendstock is supplied from the facility at which it was produced or imported.
"Batch" means a quantity of motor fuel or AZRBOB that is homogeneous for motor fuel properties specific for the motor fuel standards applicable to that motor fuel or AZRBOB.
"Beginning of transport" means the point at which:
A registered supplier relinquishes custody of Arizona CBG or AZRBOB to a transporter or third-party terminal; or
A registered supplier that retains custody of Arizona CBG or AZRBOB begins transfer of the Arizona CBG or AZRBOB into a vessel, tanker, or other container for transport to the CBG-covered area.
"Biodiesel" means a diesel fuel substitute that is produced from nonpetroleum renewable resources as defined by the United States environmental protection agency and meets the registration requirements for fuels and fuel additives established by the United States environmental protection agency pursuant to § 211 of the clean air act as defined in section 49-401.01. A.R.S. § 41-2051
"Biodiesel blend" means a motor fuel that is comprised of biodiesel and diesel fuel and that is designated by the letter "B," followed by the numeric value of the volume percentage of biodiesel in the blend. A.R.S. § 41-2051
"Biodiesel (mono-alkyl ester)" means a biodiesel or fuel additive that:
Is registered as a motor vehicle fuel or fuel additive under 40 CFR 79,
Is a mono-alkyl ester,
Meets the standards in ASTM D6751,
Is intended for use in some engines designed to run on conventional diesel fuel, and
Is derived from nonpetroleum renewable resources.
"Biodiesel (mono-alkyl ester) blend" means a motor fuel composed of biodiesel (mono-alkyl ester) and diesel fuel and identified by the letter "B" and a numeric value indicating the volume percentage of biodiesel (mono-alkyl ester) in the blend.
"Biofuel" means a solid, liquid, or gaseous fuel that is derived from biomass or nonpetroleum renewable resources and can be used directly for heating or power or as a motor fuel.
"Biofuel blend" means a motor fuel composed of biofuel and petroleum-based motor fuel and identified by the letter "C" and a numeric value indicating the volume percentage of biofuel in the blend.
"Biomass" means biological material, such as animal or plant matter, that can be transformed into biofuel, excluding biological material that has been transformed by geological processes into a substance such as coal petroleum or a derivative of a substance resulting from geological processes.
"Blendstock" means any liquid compound that is blended with another liquid compound to produce a motor fuel, including Arizona CBG. A deposit-control or similar additive registered under 40 CFR 79 is not a blendstock.
"BQ9000" means the cooperative and voluntary program, implemented by the National Biodiesel Accreditation Commission, to accredit producers and marketers of biodiesel fuel using a combination of the ASTM standard for biodiesel (ASTM D6751) and a quality systems program of fuel management practices regarding storing, sampling, testing, blending, shipping, and distributing biodiesel fuel.
"CARB" means the California Air Resources Board.
"CARBOB Model" means the procedures incorporated by reference in ~~R20-2-702(11)~~ R3-7-702(11).
"CARB Phase 2 gasoline" means gasoline that meets the specifications incorporated by reference in ~~R20-2-702(8)~~ R3-7-702(8).

"CBG-covered area" means a county with a population of 1,200,000 or more persons according to the most recent United States decennial census and any portion of a county within area A.
"Conventional gasoline" means gasoline that conforms to the requirements of this Chapter for sale or use in Arizona, but does not meet the requirements of Arizona CBG or AZRBOB.
"Diesel" or "diesel fuel" *means a refined middle distillate that is used as a fuel in a compression-ignition internal combustion engine and that meets the specifications of ASTM D975.* A.R.S. § 41-2051
"Duplicate" means a portion of a sample that is treated the same as the original sample to determine the accuracy and precision of an analytical method.
"E85" means a fuel ethanol gasoline blend that meets the specifications in ASTM D5798, which is incorporated by reference in ~~R20-2-702~~ R3-7-702.
"EPA" means the United States Environmental Protection Agency.
"EPA waiver" means a waiver granted by the Environmental Protection Agency as described in "Waiver Requests under Section 211(f) of the Clean Air Act," which is incorporated by reference in ~~R20-2-702~~ R3-7-702.
"Final destination" means the name and address of the location to which a transferee will deliver motor fuel for further distribution or final consumption.
"Final distribution facility" means a stationary motor-fuel transfer point at which motor fuel or AZRBOB is transferred into a cargo tank truck, pipeline, or other delivery vessel from which the motor fuel or AZRBOB will be delivered to a motor-fuel dispensing site. A cargo tank truck is a final distribution facility if the cargo tank truck transports motor fuel or AZRBOB and carries documentation that the type and amount or range of amounts of oxygenates designated by the registered supplier will be or have been blended directly into the cargo tank truck before delivery of the resulting motor fuel to a motor-fuel dispensing site.
"Fleet" means at least 25 motor vehicles owned or leased by the same person.
"Fleet vehicle fueling facility" means a facility or location where a motor fuel is dispensed for final use by a fleet.
"Fuel ethanol" means denatured ethanol that meets the specifications in ASTM D4806, which is incorporated by reference in ~~R20-2-702~~ R3-7-702.
"Gasoline" means a volatile, highly flammable liquid mixture of hydrocarbons that does not contain more than .05 grams of lead for each United States gallon, is produced, refined, manufactured, blended, distilled, or compounded from petroleum, natural gas, oil, shale oils or coal, and other flammable liquids free from undissolved water, sediment, or suspended matter, with or without additives, and is commonly used as a fuel for spark-ignition internal-combustion engines. Gasoline does not include diesel fuel or E85.
"Jobber" means a person that distributes a motor fuel from a bulk storage plant to the owner or operator of a UST or AST or purchases a motor fuel from a terminal for distribution to the owner or operator of a UST or AST.
"Manufacturer's proving ground" means a facility used only to develop complete motor vehicles, which are not currently available on the retail market, for an automotive manufacturer.
"Marketer" means a person engaged in selling or offering for sale motor fuels.
"Motor fuel" means a petroleum or a petroleum based substance that is motor gasoline, aviation gasoline, number one or number two diesel fuel or any grade of oxygenated gasoline typically used in the operation of a motor engine, including biodiesel blends, biofuel blends and the ethanol blend E85 as defined in ASTM D5798. A.R.S. § 41-2051
"Motor fuel dispensing site" means a facility or location where a motor fuel is dispensed into commerce for final use.
"Motor fuel property" means any characteristic listed in ~~R20-2-751(A)(1)~~ R3-7-751(A)(1) through (7), ~~R20-2-751(B)(1)~~ R3-7-751(B)(1) through (7), Table 1, Table 2, or any other motor fuel standard referenced in this Article.
"Motor vehicle" means a vehicle equipped with a spark-ignited or compression-ignition internal combustion engine except:
A vehicle that runs on or is guided by rails, or
A vehicle designed primarily for travel through air or water.
"Motor vehicle racing event" means a competition, including related practice and qualifying and demonstration laps that uses unlicensed motor vehicles designed and manufactured specifically for racing and is conducted on a public or private racecourse for the entertainment of the general public.
"MTBE" means methyl tertiary butyl ether.
"Neat" means pure or 100 percent; not blended with motor fuel.
"NOx" means oxides of nitrogen.
"Octane," "octane number," or "octane rating" mean the anti-knock characteristic of gasoline as determined by the resultant arithmetic test average of ASTM D2699 and ASTM D2700.
"Oxygenate" means any oxygen-containing ashless, organic compound, including aliphatic alcohols and aliphatic ethers, that may be used as a fuel or as a gasoline blending component and is approved as a blending agent under the provisions of a waiver issued by the United State environmental protection agency pursuant to 42 United States Code §7545(f). A.R.S. § 41-2121
"Oxygenate blender" means a person that owns, leases, operates, controls, or supervises an oxygenate-blending facility, or that owns or controls the blendstock or gasoline used, or the gasoline produced, at an oxygenate-blending facility.
"Oxygen content" means the percentage by weight of oxygen contained in a gasoline oxygenate blend as determined under ASTM D4815.
"Petroleum-based renewable diesel" means diesel fuel or fuel additive that meets all of the following:
Is registered as a motor vehicle fuel or fuel additive under 40 CFR 79,
Is not a mono-alkyl ester,
Is intended for use in engines designed to run on diesel fuel,
Is derived from petroleum and nonpetroleum renewable resources,
Meets the requirements of ASTM D975, and
Is identified by the letter "R" and a numeric value indicating the volume percentage of the nonpetroleum renewable resources component in the blend.
"Pipeline" means a transporter that owns or operates an interstate common-carrier pipe or is subject to Federal Energy Regulatory Commission tariffs to transport motor fuels into Arizona.
"Pressurant" means a blendstock component of an E85 blend for sale within the CBG-covered area added specifically to ensure that the vapor pressure meets ASTM D5798 requirements.
"Producer" means a refiner, blender, or other person that produces a motor fuel, including Arizona CBG or AZRBOB.
"Production facility" means a facility at which a motor fuel, including Arizona CBG or AZRBOB, is produced. Upon request of a producer, the Director may designate, as part of the producer's production facility, a physically separate bulk storage facility that:

Is owned or leased by the producer;
Is operated by or at the direction of the producer; and
Is used to store or distribute motor fuels, including Arizona CBG or AZRBOB, that are supplied only from the production facility.

"Product transfer document" means a bill of lading, loading ticket, manifest, delivery receipt, invoice, or other paper that is provided by the transferor at the time motor fuel is delivered and evidences that custody or title of the motor fuel is transferred to the transferee. A product transfer document is not required when motor fuel is sold or dispensed at a motor fuel dispensing site or fleet vehicle fueling facility.
"Refiner" means a person that owns, leases, operates, controls, or supervises a refinery in the United States, including its trust territories.
"Refinery" means a facility that produces a liquid fuel, including Arizona CBG or AZRBOB, by distilling petroleum, or a transmix facility that produces a motor fuel offered for sale or sold into commerce as a finished motor fuel.
"Reproducibility" means the testing method margin of error as provided in the ASTM specification or other testing method required under this Article.
"Supplier" means a marketer or jobber of a biofuel or biofuel blend.
"Supply" means to provide or transfer motor fuel to a physically separate facility, vehicle, or transportation system.
"Terminal" means an owner or operator of a motor fuel storage tank facility that accepts custody, but not ownership, of a motor fuel from a registered supplier, oxygenate blender, pipeline, or other terminal and relinquishes custody of the motor fuel to a transporter.
"Test result" means any document that contains a result of testing including all original test measures, all subsequent test measures that are not identical to the original test measure, and all worksheets on which calculations are performed.
"Transferee" means a person that receives title to or custody of a motor fuel.
"Transferor" means a person that relinquishes title to or custody of a motor fuel to a transporter, marketer, jobber, or motor fuel dispensing site.
"Transmix" means a mixture of petroleum distillate fuel and gasoline that does not meet the Arizona standards for either petroleum distillate fuels or gasoline.
"Transmix facility" means a facility at which transmix is processed into its components and then the components either are combined with a finished product or further processed to produce a finished motor fuel.
"Transporter" means a person that causes motor fuels, including Arizona CBG or AZRBOB, to be transported into or within Arizona.
"UST" means underground storage tank.
"Vapor pressure" means dry vapor pressure equivalent of gasoline or blendstock as measured according to ASTM D5191.
"Vehicle emissions control area" has the same meaning as in A.R.S. § 49-541 except that a vehicle emissions control area does not include a manufacturer's proving ground that is located in the vehicle emissions control area.
"VOC" means volatile organic compound.

~~R20-2-705~~ R3-7-705. Price, Octane, and Lead-substitute Notification on Dispensers

A. A service station owner or operator shall ensure that information regarding pricing, motor fuel grade, octane rating, and lead-substitute addition displayed on a service station motor fuel dispenser:
1. Is clean, legible, and visible at all times;
2. Is displayed electronically or with a sign or label on the upper 60 percent of each face of the dispenser;
3. Lists the full price of the motor fuel including fractions of a cent and all federal and state taxes;
4. Displays the highest price of motor fuel sold from the dispenser if the dispenser is capable of dispensing and computing the price of multiple grades of motor fuel;
5. Displays a discount, if offered, in letters at least 1/4" in height on each face of the dispenser and next to the undiscounted price;
6. Displays both a cash and credit price on a dispenser that is capable of electronically displaying both cash and credit prices;
7. Posts both a cash and credit price on each face of a dispenser that is preset by the cashier if the dispenser is unable to display electronically and simultaneously both cash and credit prices;
8. Posts a price-per-gallon sign next to or on a non-price computing dispenser for a retail-only sale of liquefied petroleum gas used as an alternative motor fuel; and
9. Complies with the requirements of ~~R20-2-704(A)(1)~~ R3-7-704(A)(1) (A)(1), (A)(2), (A)(3), (A)(5), (A)(6), and (A)(7).

B. A person who owns or operates a service station shall ensure that:
1. The octane rating of each grade of gasoline is displayed on the upper 60 percent of each face of each dispenser, as prescribed by 16 CFR 306; and
2. The signs required by Handbook 130, for gasoline dispensers that dispense gasoline with lead substitute, are displayed on the upper 60 percent of each face of each dispenser in letters at least 1/4" in height.

~~R20-2-707~~ R3-7-707. Product Transfer Documentation and Record Retention for Motor Fuel other than Arizona CBG and AZRBOB

A. When a transferor transfers custody or title to a motor fuel that is not Arizona CBG or AZRBOB, and the motor fuel is not sold or dispensed at a motor fuel dispensing site or fleet vehicle fueling facility, the transferor shall provide to the transferee documents that include the following information:
1. The grade of the motor fuel;
2. The volume of each grade of motor fuel being transferred;
3. The date of the transfer;
4. Product transfer document number;
5. For conventional gasoline, the minimum octane rating of each grade;
6. For conventional gasoline, the type and maximum volume of oxygenate contained in each grade;
7. For conventional gasoline transported in or through the CBG-covered area, the statement, "This gasoline is not intended for use inside the CBG-covered area";
8. Whether a lead substitute is present in the gasoline and the type of lead substitute present;
9. For a biofuel or biofuel blend, the percentage of biofuel in the finished product; and
10. The final destination:

a. When a terminal is the transferor, the owner or operator of the terminal shall include on the product transfer document the terminal name and address, the transporter name and address, and the final destination, which may be a final distribution facility, jobber, marketer, or motor fuel dispensing site;
b. When a transporter is the transferor, the transporter shall include on the product transfer document the name and address of the transporter and the final destination, which is the location at which the motor fuel will be delivered and off loaded from the truck; and
c. When a jobber or marketer is the transferor, the jobber or marketer shall include on the product transfer document the name and address of the jobber or marketer and the final destination, which may be a final distribution facility or a motor fuel dispensing site.

B. To enable a transferor to comply fully with the requirement in subsection (A)(10), the transferee shall supply to the transferor information regarding the final destination.
C. A registered supplier, third-party terminal, or pipeline may use standardized product codes on pipeline tickets as the product transfer documentation.
D. A person identified in subsection (A) shall retain product transfer documentation for each shipment delivered for 12 months. This documentation shall be available within two working days from the time of the Department's request.
E. A person identified in subsection (A) shall maintain product transfer documentation for a transfer or delivery during the preceding 30 days at that person's address listed on the product transfer documentation.
F. An owner or operator of a motor fuel dispensing site or fleet owner shall maintain product transfer documentation for the three most recent deliveries of each grade of motor fuel on the premises of the motor fuel dispensing site owner or operator or fleet owner. This documentation shall be available for Department review.
G. The Department shall accept a legible photocopy of a product transfer document instead of the original.
H. A person transferring custody or title of Arizona CBG or AZRBOB shall comply with ~~R20-2-757~~ R3-7-757.

~~R20-2-708~~ R3-7-708. Gasoline Ethanol Blends
A. A person that has custody of gasoline blended with an oxygenate shall ensure that the amount of oxygenate does not exceed the amount allowed by EPA waivers, Section 211(f) of the Clean Air Act, and A.R.S. § 41-2122. The maximum oxygen content of gasoline oxygenate blends shall not exceed 4.0 percent by weight for fuel ethanol oxygenate and as specified in A.R.S. § 41-2122 for other oxygenates.
B. Special provisions for gasoline ethanol blends.
1. A gasoline ethanol blend that meets the requirements in subsections (B)(1)(a) and (b) shall not exceed the vapor pressure specified in ASTM D4814 by more than 1 psi:
   a. The gasoline ethanol blend shall contain fuel ethanol. The concentration of the fuel ethanol, excluding the required denaturing agent, shall be:
      i. From May 1 through September 15, at least nine percent and no more than 10 percent by volume of the gasoline ethanol blend; and
      ii. From September 16 through April 30, at least 1.5 percent by weight and no more than 10 percent by volume of the gasoline ethanol blend; and
   b. The fuel ethanol content of the gasoline ethanol blend shall:
      i. Be determined using the appropriate test method listed in ASTM D4814, and
      ii. Not exceed any applicable waiver condition under Section 211(f) of the Clean Air Act.
2. The provision in subsection (B)(1) is effective for gasoline ethanol blends sold:
   a. Outside the CBG-covered area year around, and
   b. Within the CBG-covered area during April.
3. Gasoline blended with no more than 10 percent by volume of fuel ethanol shall be blended using one of the following alternatives:
   a. The base gasoline complies with the standards in ASTM D4814, the fuel ethanol complies with the standards in ASTM D4806, and the finished blend complies with the standards in ASTM D4814 with the following permissible exceptions:
      i. The distillation minimum temperature at the 50 volume percent evaporated point is not less than 66°C (150°F), and
      ii. The minimum test temperature at which the vapor/liquid ratio is equal to 20 is waived;
   b. The finished blend complies with the standards in ASTM D4814; or
   c. The base gasoline complies with the standards in ASTM D4814 except distillation and the finished blend complies with the standards in ASTM D4814 with the following permissible exceptions:
      i. The distillation minimum temperature at the 50 volume percent evaporated point is not less than 66°C (150°F), and
      ii. The minimum test temperature at which the vapor/liquid ration is equal to 20 is waived.
4. A gasoline ethanol blend shall meet the standards specified in ASTM D4814.

C. In addition to complying with the requirements in ~~R20-2-707~~ R3-7-707, the transferor of a gasoline ethanol blend shall ensure that the product transfer document contains a legible and conspicuous statement that the gasoline being transferred contains fuel ethanol and the percentage concentration of fuel ethanol.

~~R20-2-710~~ R3-7-710. Blending Requirements
A. A person that has custody of or transports an oxygenated gasoline blend shall ensure that no neat oxygenate blending occurs at a motor fuel dispensing site or fleet vehicle fueling facility.
B. If a motor fuel dispensing site storage tank contains an oxygenated gasoline blend that does not contain the amount of oxygen required by A.R.S. §§ 41-2122, 41-2123, 41-2125, or ~~R20-2-751~~ R3-7-751, the owner or operator of the motor fuel dispensing site shall do one of the following:
1. Add gasoline that contains no more than 20 percent by volume of the same oxygenate to the non-compliant oxygenated gasoline blend;
2. Add a gasoline blend that dilutes the non-compliant oxygenated gasoline blend to the level of oxygen content required by A.R.S. §§ 41-2122, 41-2123, 41-2125, or ~~R20-2-751~~ R3-7-751; or
3. Empty the storage tank and replace the non-compliant oxygenated gasoline blend with a required oxygenate blend.

~~R20-2-714~~ R3-7-714. Requirements for Motor Fuels Other than Arizona CBG
A. A person that owns or operates a motor fuel dispensing site or transmix or production facility outside the CBG-covered area shall ensure that a motor fuel offered for sale at the motor fuel dispensing site or transmix or production facility meets all the appropriate specifications in ~~R20-2-702~~ R3-7-702 except that from May 1 through September 30, gasoline shall meet the specifications in ASTM

D4814 except maximum vapor pressure shall be 9.0 pounds per square inch.

B. The owner or operator of a motor fuel dispensing site shall ensure that the finished gasoline is visually free of water, sediment, and suspended matter and is clear and bright at ambient temperature or 70° F (21° C), whichever is greater.

C. The owner or operator of a motor fuel dispensing site or transmix or production facility shall ensure that the minimum octane rating determined by the test average of ASTM D 2699 and ASTM D 2700, also known as the (R+M)/2 method, is:
1. 87 for unleaded or regular;
2. 88 for mid-grade, extra, or any other gasoline with an octane rating of 88 or higher; and
3. 90 for super, high performance, premium, or any other gasoline with an octane rating of 90 or higher.

D. Prohibited activities regarding a motor fuel sold or offered for sale outside the CBG-covered area.
1. The owner or operator of a motor fuel dispensing site shall not sell or offer for sale from the motor fuel dispensing site storage tank a product that is not a motor fuel;
2. The owner or operator of a motor fuel dispensing site or transmix or production facility shall not sell or offer for sale a motor fuel that contains more than 0.3 volume percent MTBE or more than 0.1 weight percent oxygen from all other ethers or alcohols as listed in A.R.S. § 41-2122.
3. A transporter shall not deliver to a motor fuel dispensing site or place in a motor fuel dispensing site storage tank a product that is not motor fuel.

~~R20-2-715~~ R3-7-715. Motor Fuel Quality Testing Methods and Requirements

A. Unless otherwise required in A.R.S. Title 41, Chapter 15, or this Chapter, the producer of a motor fuel shall test the motor fuel for its motor fuel properties using the methodologies in ~~R20-2-702~~ R3-7-702 and ensure that the motor fuel meets the applicable specifications in the material incorporated by reference in ~~R20-2-702~~ R3-7-702.

B. Unless otherwise required in A.R.S. Title 41, Chapter 15, or this Chapter, a person testing #1 or #2 diesel fuel shall use the methodologies and meet the specifications of ASTM D975.

C. The owner or operator of a transmix or production facility shall ensure that all gasoline sold or offered for sale outside the CBG-covered area has its octane rating determined and certified in accordance with 16 CFR 306 using the average of ASTM D2699 and ASTM D2700, also known as the (R+M)/2 method. The owner or operator of a motor fuel dispensing site shall ensure that all gasoline sold or offered for sale outside the CBG-covered area has its octane rating posted in accordance with 16 CFR 306.

~~R20-2-718~~ R3-7-718. Requirements for Production, Transport, Distribution, and Sale of Biofuels

A. General requirements for producers and suppliers of biofuel or biofuel blends in Arizona.
1. Registration requirement.
   a. A producer, supplier, or person required to register with the EPA under 40 CFR 80, Subpart K or M, shall register with the Director, using a form prescribed by the Director, before producing or supplying biofuel or biofuel blend in Arizona.
   b. A person required to register under subsection (A)(1)(a) shall notify the Director within 10 days after the effective date of a change in any of the information provided under subsection (A)(1)(a).
   c. Consequences of failing to register under subsection (A)(1)(a).
      i. If a producer fails to register, the Department shall presume that all biofuel or biofuel blend produced is noncompliant with the requirements of this Chapter from the date that registration should have occurred; and
      ii. If a supplier or person required to register with the EPA fails to register, the Director shall take action as allowed under A.R.S. § 41-2115 and ~~R20-2-762~~ R3-7-762.
   d. The Department shall maintain and make available to the public a list of all persons registered under this Section.
2. Reporting requirement.
   a. A person required to register under subsection (A)(1)(a) shall report to the Department by the 15th of the month after producing or supplying biofuel or biofuel blend. The person shall:
      i. Report on a form prescribed by the Director;
      ii. Provide the information specified in subsections (B) and (C), as applicable;
      iii. Attest to the truthfulness and accuracy of the information submitted;
      iv. Consent to the Department or its authorized agent collecting samples and accessing records as provided in this Article; and
      v. Ensure that the report form is signed by a corporate officer responsible for operations at the facility at or from which the biofuel or biofuel blend was produced or supplied.
   b. The Department shall classify the information submitted under subsection (A)(2)(a) as confidential and protected under A.R.S. § 44-1374 if the person that submits the information expressly designates the information as confidential.
3. Quality Assurance and Quality Control (QA/QC) program requirement.
   a. A person required to register under subsection (A)(1)(a) shall develop a QA/QC program to ensure the quality of a biofuel or biofuel blend produced in or supplied in or into Arizona.
   b. A person required to develop a QA/QC program under subsection (A)(3)(a) shall summarize the QA/QC program in a manual and submit the manual to the Director for approval at least three months before the person plans to produce or supply a biofuel or biofuel blend. The person shall ensure that the manual:
      i. Documents the manner in which the QA/QC program ensures that a biofuel or biofuel blend produced or supplied conforms to applicable ASTM specifications, is appropriately blended, and meets all customer-specific requirements;
      ii. Contains a policy and objectives that expressly commit the producer or supplier to ensure the quality of the biofuel or biofuel blend produced or supplied;
      iii. Contains procedures that will be used to determine and document that operational quality requirements are met; and
      iv. Contains a provision for making, maintaining, and controlling documents and records regarding the QA/QC program.
   c. A person that submits a manual under subsection (A)(3)(b) shall not produce or supply a biofuel or biofuel blend until the manual is approved by the Director.
   d. The Director shall approve a manual submitted under subsection (A)(3)(b) only if the Director determines that the QA/QC program sufficiently ensures the quality of a biofuel or biofuel blend produced or supplied.

B. Specific requirements for producers or suppliers of E85.
1. The owner or operator of a motor fuel dispensing site at which E85 is dispensed shall ensure that:
   a. Both the motor fuel dispenser and nozzle from which E85 is dispensed have labels affixed that:
      i. Indicate E85 is not gasoline,
      ii. Indicate E85 is intended for use only in a flexible-fuel vehicle, and
      iii. State "Check your owner's manual to ensure that this fuel can be used in your vehicle," and

b. Any motor fuel dispenser from which E85 is dispensed is compatible with E85 and meets the requirements of this Chapter and A.R.S. § 41-2083.

2. Additional requirement for producing E85 for sale in the CBG-covered area. A producer of E85 for sale in the CBG-covered area shall:
   a. Use Arizona CBG or AZRBOB and pressurant as needed to meet the hydrocarbon requirement of ASTM D5798; and
   b. Ensure that the fuel ethanol used meets the standards in this Chapter.
3. Reporting requirement for a producer of E85. A producer of E85 intended as a final product for the fueling of motor vehicles shall submit the report required under subsection (A)(2) and ensure that the report includes the following information regarding the E85 produced:
   a. The amount of fuel ethanol used to produce E85 in the previous month,
   b. The amount of gasoline used to produce E85 in the previous month,
   c. The total amount of E85 produced during the previous month,
   d. The following fuel quality properties for the finished E85:
      i. Appearance,
      ii. American Petroleum Institute gravity,
      iii. Organic chloride,
      iv. Water content,
      v. Vapor pressure, and
      vi. Sulfur content.
4. Reporting requirement for a supplier of E85. A supplier of E85 intended as a final product for the fueling of motor vehicles shall submit the report required under subsection (A)(2) and ensure that the report includes the following:
   a. The amount of E85 sold during the previous month; and
   b. A certification by the supplier of E85 that the E85 sold, offered for sale, or dispensed was received from or traceable to a person registered with the Department under subsection (A)(1).
5. Quality Assurance and Quality Control (QA/QC) program for a producer of E85. A producer of E85 shall comply with the QA/QC requirements specified in subsection (A)(3). Additionally, the producer shall ensure that the manual submitted to the Director under subsection (A)(3)(b) contains a description of a QA/QC sampling and testing protocol to be implemented at each facility within the person's operation at which E85 is produced. The producer shall ensure that the sampling and testing protocol meets the following minimum standards:
   a. All samples of E85 are collected after any applicable blend component is added,
   b. All samples of E85 are collected using approved ASTM methods,
   c. Sampling is done at one of the following rates:
      i. If E85 is produced in a single storage tank by batch, a rate of at least one sample per tank. For the purpose of this subsection, a storage tank is a stationary tank and does not include a transport trailer;
      ii. If E85 is blended or transferred into a delivery truck through the use of computer-controlled in-line blending equipment, a rate of at least one sample for every 500 times E85 is blended or transferred or one sample per week, whichever is more frequent;
      iii. If E85 is blended or transferred into a delivery truck without the use of computer-controlled in-line blending equipment, a rate of at least one sample every 250 times E85 is blended or transferred or two samples per week, whichever is more frequent;
   d. All testing of E85 is conducted using the appropriate ASTM test method outlined in ASTM D5798,
   e. Test results are used to certify the quality of the E85 produced,
   f. Sample handling and storage procedures are specified, and
   g. Sample retention time-frames are specified.
6. Non-compliant E85. If test results for E85 shipped from a facility indicate that the E85 does not comply with the requirements of this Chapter, the producer of the E85 shall immediately:
   a. Notify the Director of the test results,
   b. Take all reasonable steps to stop the sale of the non-compliant E85, and
   c. Take steps reasonably calculated to determine the cause of the noncompliance and to prevent future occurrences of noncompliance.

C. Specific requirements for producers or suppliers of biodiesel and biodiesel blends.

1. A person shall not sell or offer or expose for sale:
   a. Neat biodiesel unless the neat biodiesel meets all specifications established by ASTM D6751,
   b. Diesel fuel containing up to five percent by volume biodiesel unless the diesel fuel meets all specifications established by ASTM D975, and
   c. A blend containing six percent through 20 percent biodiesel and diesel fuel unless the blend meets all specifications established by ASTM D7467.
2. The owner or operator of a motor fuel dispensing site shall ensure that:
   a. Any motor fuel dispenser from which a biodiesel or biodiesel blend is dispensed:
      i. Meets the labeling requirements established by A.R.S. § 41-2083(L),
      ii. Is compatible with biodiesel or biodiesel blend, and
      iii. Meets all requirements in this Chapter and A.R.S. § 41-2083; and
   b. Any biodiesel or biodiesel blend sold, offered for sale, or dispensed was received from or traceable to a person registered with the Department under subsection (A)(1).
3. Additional requirement for producing biodiesel or biodiesel blend for sale in the CBG-covered area. A producer of biodiesel or biodiesel blend for sale in the CBG-covered area shall ensure that the diesel fuel used contains no more than 15 ppm of sulfur.
4. Reporting requirement for a producer of a biodiesel or biodiesel blend. A producer of a biodiesel or biodiesel blend intended as a final product for the fueling of motor vehicles shall submit the report required under subsection (A)(2) and ensure that the report includes the following information regarding the biodiesel or biodiesel blend produced:
   a. The total amount of biodiesel or biodiesel blend produced in the previous month;
   b. The amount of biodiesel used to produce a biodiesel blend in the previous month;
   c. The following fuel quality properties, established by ASTM D6751, for the finished biodiesel:
      i. Flash point;
      ii. Water sediment;

iii. Sulfur content,
iv. Cold soak filterability;
v. Cloud point;
vi. Acid number;
vii. Free glycerin;
viii. Total glycerin; and
ix. Distillation, 90 percent; and

d. The following fuel quality properties, established by ASTM D7467, for the finished biodiesel blend that contains six percent through 20 percent biodiesel:
i. Sulfur content,
ii. Aromatic hydrocarbon content,
iii. Cetane index,
iv. Acid number,
v. Distillation, and
vi. American Petroleum Institute gravity.

5. Reporting requirement for a supplier of a biodiesel or biodiesel blend. A supplier of a biodiesel or biodiesel blend intended as a final product for the fueling of motor vehicles shall submit the report required under subsection (A)(2) and ensure that the report includes the following:
a. The amount of biodiesel or biodiesel blend sold during the previous month; and
b. A certification by the supplier of biodiesel or biodiesel blend that the biodiesel or biodiesel blend sold, offered for sale, or dispensed was received from or traceable to a person registered with the Department under subsection (A)(1).
6. Quality Assurance and Quality Control (QA/QC) program for a producer of biodiesel or a biodiesel blend. Except as specified in subsection (C)(7), a producer of biodiesel or a biodiesel blend shall comply with the QA/QC requirements specified in subsection (A)(3). Additionally, the producer shall ensure that the manual submitted to the Director under subsection (A)(3)(b) contains a description of a QA/QC sampling and testing protocol to be implemented at each facility within the person's operation at which biodiesel or a biodiesel blend is produced. The producer shall ensure that the sampling and testing protocol meets the following minimum standards:
a. All samples of biodiesel or biodiesel blend are collected after any applicable blend component is added;
b. All samples of biodiesel or biodiesel blend are collected using approved ASTM methods;
c. Sampling is done at one of the following rates:
i. If biodiesel or a biodiesel blend is produced in a single storage tank by batch, a rate of at least one sample per tank. For the purpose of this subsection, a storage tank is a stationary tank and does not include a transport trailer;
ii. If biodiesel or a biodiesel blend is blended or transferred into a delivery truck through the use of computer-controlled in-line blending equipment, a rate of at least one sample for every 20 times biodiesel or biodiesel blend is blended or transferred or one sample every two weeks, whichever is more frequent;
iii. If biodiesel or a biodiesel blend is blended or transferred into a delivery truck without the use of computer-controlled in-line blending equipment, a rate of at least one sample every 10 times biodiesel or biodiesel blend is blended or transferred or one sample per week, whichever is more frequent;
d. All testing of biodiesel or biodiesel blend is conducted using the appropriate ASTM test method outlined in ASTM D6751, D975, or D7467;
e. Test results are used to certify the quality of the biodiesel or biodiesel blend produced;
f. Sample handling and storage procedures are specified; and
g. Sample retention time-frames are specified.
7. A producer of biodiesel or a biodiesel blend that is accredited under the BQ9000 program shall, at least three months before planning to produce or supply a biodiesel or biodiesel blend, submit to the Director the quality manual developed and implemented under the BQ9000 program instead of the QA/QC manual required under subsection (C)(6). A producer of biodiesel or a biodiesel blend that is BQ9000 accredited shall not produce or supply a biodiesel or biodiesel blend until the quality manual developed under the BQ9000 program is approved by the Director. A producer of biodiesel or a biodiesel blend that is BQ9000 accredited shall, upon request, provide the Director with access to records relating to the accreditation and documentation relating to the precision and accuracy of any alternative test method used to meet the requirements of this Section. The Director has authority under A.R.S. §§ 41-2065(A)(4) and 41-2083(N) to audit the quality manual submitted under this subsection.
8. Non-compliant biodiesel or biodiesel blend. If test results for biodiesel or a biodiesel blend shipped from a facility indicate that the biodiesel or biodiesel blend does not comply with the requirements of this Chapter, the producer of the biodiesel or biodiesel blend shall immediately:
a. Notify the Director of the test results,
b. Take all reasonable steps to stop the sale of the non-compliant biodiesel or biodiesel blend, and
c. Take steps reasonably calculated to determine the cause of the noncompliance and to prevent future occurrences of noncompliance.

D. Specific requirements for producers or suppliers of petroleum-based renewable diesel. A producer or supplier of petroleum-based renewable diesel that is intended as a final product for the fueling of motor vehicles shall ensure that the petroleum-based renewable diesel:
1. Meets the standards in ASTM D975, and
2. Is identified as specified in ~~R20-2-701~~ R3-7-701.

~~R20-2-749~~ R3-7-749. Definitions Applicable to Arizona CBG and AZRBOB

The following definitions apply only to ~~R20-2-750~~ R3-7-750 through ~~R20-2-762~~ R3-7-762, including Tables A, 1, and 2:

"Designated alternative limit" means a motor fuel property specification, expressed in the nearest part per million by weight for sulfur content, nearest 10th percent by volume for aromatic hydrocarbon content, nearest 10th percent by volume for olefin content, and nearest degree Fahrenheit for T90 and T50, that is assigned by a registered supplier to a final blend of Type 2 Arizona CBG or AZRBOB for purposes of compliance with the Predictive Model Procedures.

"Downstream oxygenate blending" means combining AZRBOB and fuel ethanol to produce fungible Arizona CBG.

"Importer" means any person that assumes title or ownership of Arizona CBG or AZRBOB produced by an unregistered supplier.

"Oxygenate-blending facility" means any location (including a truck) where fuel ethanol is added to Arizona CBG or AZRBOB and the resulting quality or quantity of Arizona CBG is not altered in any other manner except for the addition of a deposit-control or similar additive registered under 40 CFR 79.
"Oxygenated Arizona CBG" means Arizona CBG with a maximum oxygen content of 4.0 wt. percent or another oxygen content approved by the Director under A.R.S. § 41-2124, that is produced and shipped to or within Arizona and sold or offered for sale for use in motor vehicles in the CBG-covered area from November 1 through March 31 of each year.
"Performance standard" means the VOC and NOx emission reduction percentages in ~~R20-2-751(A)(8)~~ R3-7-751(A)(8) and Table 1.
"PM" or "Predictive Model Procedures" means the California Predictive Model and CARB's "California Procedures for Evaluating Alternative Specifications for Phase 2 Reformulated Gasoline Using the California Predictive Model," as adopted April 20, 1995, which is incorporated by reference in ~~R20-2-702~~ R3-7-702.
"PM alternative gasoline formulation" means a final blend of Arizona CBG or AZRBOB that is subject to a set of PM alternative specifications.
"PM alternative specifications" means the specifications for the following fuel properties, as determined using a testing methodology in ~~R20-2-759~~ R3-7-759:
Maximum vapor pressure, expressed in the nearest 100th of a pound per square inch;
Maximum sulfur content, expressed in the nearest part per million by weight;
Maximum olefin content, expressed in the nearest 10th of a percent by volume;
Minimum and maximum oxygen content, expressed in the nearest 10th of a percent by weight;
Maximum T50, expressed in the nearest degree Fahrenheit;
Maximum T90, expressed in the nearest degree Fahrenheit; and
Maximum aromatic hydrocarbon content, expressed in the nearest 10th of a percent by volume.
"PM averaging compliance option" means, with reference to a specific fuel property, the compliance option for PM alternative gasoline formulations by which final blends of Arizona CBG and AZRBOB are assigned designated alternative limits under ~~R20-2-751(G)~~ R3-7-751(G), (H), and (I).
"PM averaging limit" means a PM alternative specification that is subject to the PM averaging compliance option.
"PM flat limit" means a PM alternative specification that is subject to the PM flat limit compliance option.
"PM flat limit compliance option" means, with reference to a specific fuel property, the compliance option that each gallon of gasoline must meet for that specified fuel property as contained in the PM alternative specifications.
"Produce" means:
Except as otherwise provided, to convert a liquid compound that is not Arizona CBG or AZRBOB into Arizona CBG or AZRBOB.
If a person blends a blendstock that is not Arizona CBG or AZRBOB with Arizona CBG or AZRBOB acquired from another person, and the resulting blend is Arizona CBG or AZRBOB, the person conducting the blending produces only the portion of the blend not previously Arizona CBG or AZRBOB. If a person blends Arizona CBG or AZRBOB with other Arizona CBG or AZRBOB in accordance with this Article, without the addition of a blendstock that is not Arizona CBG or AZRBOB, that person is not a producer of Arizona CBG or AZRBOB.
If a person supplies Arizona CBG or AZRBOB to a refiner that agrees in writing to further process the Arizona CBG or AZRBOB at the refiner's refinery and be treated as the producer of Arizona CBG or AZRBOB, the refiner is the producer of the Arizona CBG or AZRBOB.
If an oxygenate blender blends oxygenates into AZRBOB supplied from a gasoline production or import facility, and does not alter the quality or quantity of the AZRBOB or the quality or quantity of the resulting Arizona CBG certified by a registered supplier in any other manner except for the addition of a deposit-control or similar additive, the producer or importer of the AZRBOB, rather than the oxygenate blender, is considered the producer or importer of the full volume of the resulting Arizona CBG.
"Registered supplier" means a producer or importer that supplies Arizona CBG or AZRBOB and is registered with the Director under ~~R20-2-750~~ R3-7-750.
"Third-party terminal" means an owner or operator of a gasoline storage tank facility that accepts custody, but not ownership, of Arizona CBG or AZRBOB from a registered supplier, oxygenate blender, pipeline, or other third-party terminal and relinquishes custody of the Arizona CBG or AZRBOB to a transporter.
"Type 1 Arizona CBG" means a gasoline that meets the standards contained in ~~R20-2-751(A)~~ R3-7-751(A) and Table 1.
"Type 2 Arizona CBG" means a gasoline that meets the standards contained in Table 2 or is certified using the PM according to the requirements of ~~R20-2-751(G)~~ R3-7-751(G), (H), and (I), and meets the requirements in:
~~R20-2-751(A)~~ R3-7-751(A) beginning April 1 through October 31 of each year, and
~~R20-2-751(B)~~ R3-7-751(B) beginning November 1 through March 31 of each year.
"Winter" means November 1 through March 31.

~~R20-2-750~~ R3-7-750. Registration Relating to Arizona CBG or AZRBOB

A. Each of the following shall register with the Director before producing, importing, or obtaining custody of Arizona CBG or AZRBOB:
1. A refiner that produces Arizona CBG or AZRBOB;
2. An importer that imports Arizona CBG or AZRBOB;
3. An oxygenate blender that blends oxygenate with AZRBOB to produce Arizona CBG; or
4. A pipeline or third-party terminal that has custody of Arizona CBG or AZRBOB.

B. A person listed in subsection (A) shall register on a form prescribed by the Director and include the following information:
1. Business name, business address, and contact name or position title and telephone number;
2. For each refinery or oxygenate blending facility, the facility name, physical location, contact name or position title and telephone number, and type of facility;
3. For each refinery, oxygenate blending facility, or importer:
   a. The location of the records required under this Article. If records are kept off-site, the primary off-site storage facility name, physical location, and contact name or position title and telephone number; and
   b. If an independent laboratory is used to meet the requirements of ~~R20-2-752(F)~~ R3-7-752(F), the name and address of the independent laboratory, and contact name or position title and telephone number;
4. If required under 40 CFR 80.76(d), the EPA registration number; and

5. A statement of consent permitting the Department or its authorized agent to collect samples and access records as provided in ~~R20-2-716~~ R3-7-716.

C. A person registered under subsection (B) shall notify the Director within 10 days after the effective date of a change in any of the information provided under subsection (B).

D. If a refiner, importer, or oxygenate blender fails to register under this Section, all Arizona CBG or AZRBOB produced by the refiner or oxygenate blender or imported by the importer and transported to the CBG-covered area is presumed to be noncompliant from the date that registration should have occurred.

E. The Department shall maintain a list of all registered suppliers.

~~R20-2-751~~ R3-7-751. Arizona CBG Requirements

A. General fuel property and performance requirements. In addition to the other requirements of this Article and except as provided in subsection (B), all Arizona CBG shall meet the following requirements and for any fuel property not specified, shall meet the requirements in ASTM D4814. The dates in this subsection are compliance dates for the owner or operator of a motor fuel dispensing site or a fleet vehicle fueling facility.

1. Sulfur: 500 ppm by weight (max).
2. Aromatics: 50 percent by volume (max).
3. Olefins: 25 percent by volume (max).
4. E200: 70-30 percent volume.
5. E300: 100-70 percent volume.
6. Maximum vapor pressure:
   a. October: 9.0 psi.
   b. November 1 - March 31: 9.0 psi.
   c. April: 10.0 psi.
   d. May: 9.0 psi.
   e. June 1 - September 30: 7.0 psi.
   f. A gasoline ethanol blend in the CBG-covered area is subject to the 1 psi vapor pressure waiver, as described in ~~R20-2-708(B)~~ R3-7-708(B), during April only.
7. Oxygen and oxygenates:
   a. Minimum content:
      i. November 1 - March 31: 10 percent fuel ethanol by volume. If A.R.S. § 41-2124(E) petition in effect: 2.7 percent oxygen by weight as approved by the Director.
      ii. April 1 - October 31: 0 percent by weight (any oxygenate).
   b. The maximum oxygen content shall not exceed 4.0 percent by weight for fuel ethanol and as specified in A.R.S. § 41-2122 for other oxygenates, and shall comply with the requirements of A.R.S. § 41-2123.
   c. Arizona CBG shall not contain more than 0.3 volume percent MTBE nor more than 0.1 weight percent oxygen from all other ethers or alcohols listed in A.R.S. § 41-2122.
8. Type 1 Arizona CBG shall meet the Federal Complex Model VOC emissions reduction percentage May 1 through September 15: ≥ 27.5 percent (Federal Complex Model settings: Summer, Area Class B, Phase 2). Type 2 Arizona CBG shall meet CARB Phase 2 requirements.

B. Wintertime requirements. In addition to the other requirements of this Article, the owner or operator of a motor fuel dispensing site or a fleet vehicle fueling facility shall ensure that beginning November 1 through March 31 of each year, all Arizona CBG meets the following fuel property requirements.

1. Sulfur: 80 ppm by weight (max),
2. Aromatics: 30% by volume (max),
3. Olefins: 10% by volume (max),
4. 90% Distillation Temp. (T90): 330° F (max),
5. 50% Distillation Temp. (T50): 220° F (max),
6. Vapor Pressure: 9.0 psi (max), and
7. Oxygenate - Ethanol;
   a. Minimum oxygenate content - 10 percent fuel ethanol by volume;
   b. Maximum oxygen content - 4.0 percent oxygen by weight, and shall comply with the requirements of A.R.S. § 41-2123; and
   c. Alternative minimum fuel ethanol content may be used if approved by the Director under A.R.S. § 41-2124(D).

C. Fuel ethanol specifications. A person that uses fuel ethanol as a blending component with AZRBOB or Arizona CBG shall ensure that the fuel ethanol meets the requirements in ASTM D4806 and the following:

1. A sulfur content not exceeding 10 ppm by weight,
2. An olefins content not exceeding 0.5 percent by volume, and
3. An aromatic hydrocarbon content not exceeding 1.7 percent by volume.

D. General elections. Except as provided in subsection (E), a registered supplier shall make an initial election, and a subsequent election each time a change occurs, before beginning to transport Arizona CBG or AZRBOB. A registered supplier shall make the election with the Director on a form or in a format prescribed by the Director. The election shall state:

1. Whether the registered supplier (at each point where the Arizona CBG or AZRBOB is certified) will supply Arizona CBG or AZRBOB that complies with Type 1 Arizona CBG, Type 2 Arizona CBG, or the PM alternative gasoline formulation requirements and, if the registered supplier will supply Arizona CBG or AZRBOB that complies with the PM alternative gasoline formulation requirements, whether the registered supplier will certify using the CARB Phase 2 model; and
2. For each applicable fuel property or performance standard in the election under subsection (D)(1), whether the Arizona CBG or AZRBOB will comply with the average standards or per-gallon standards. A registered supplier shall not elect to comply with average standards unless the registered supplier is in compliance with ~~R20-2-760~~ R3-7-760. A registered supplier shall not elect to comply with Type 1 Arizona CBG average standards in Table 1, columns B and C, from September 16 through October 31 and February 1 through April 30.

E. Winter elections. Beginning November 1 through March 31 of each year, a registered supplier shall ensure that all Arizona CBG or AZRBOB complies with Type 2 Arizona CBG requirements or the PM alternative gasoline formulation requirements under Table 2. A registered supplier shall make an initial election, and a subsequent election each time a change occurs, before beginning to transport Arizona CBG or AZRBOB. A registered supplier shall make the election with the Director on a form or in a format prescribed by

the Director. The election shall state:

1. Whether the registered supplier (at each point where the Arizona CBG or AZRBOB is certified) will supply Arizona CBG or AZRBOB that complies with the Type 2 Arizona CBG or the PM alternative gasoline formulation requirements; and
2. For each applicable fuel property, whether the Arizona CBG or AZRBOB will comply with the average standards or per-gallon standards.

F. A registered supplier may elect and produce Type 1 Arizona CBG from December 1 through March 31 but the registered supplier shall not distribute the Arizona CBG to a motor fuel dispensing site within the CBG-covered area before April 1.

G. Certification as Type 1 Arizona CBG or Type 2 Arizona CBG. A registered supplier shall certify Arizona CBG or AZRBOB under ~~R20-2-752~~ R3-7-752 as meeting all requirements of the election made in subsection (D) or (E). For each fuel property, Type 1 Arizona CBG shall comply with the requirements in either column A or columns B through D of Table 1, and shall be certified using the Federal Complex Model, which is incorporated by reference in ~~R20-2-702~~ R3-7-702. For each fuel property, Type 2 Arizona CBG shall comply with the requirements of columns A and B (averaging option), or column C in Table 2. The PM alternative gasoline formulation shall meet the requirements of subsections (H), (I), and (J), and column A of Table 2. A registered supplier may certify Arizona CBG or AZRBOB using an equivalent test method that the Department approves using the criteria stated in ~~R20-2-759~~ R3-7-759.

H. Certification and use of Predictive Model for alternative PM gasoline formulations.

1. Except as provided in subsections (H)(4) and (J), a registered supplier shall use the PM as provided in the Predictive Model Procedures.
2. A registered supplier shall certify a PM alternative gasoline formulation with the Director by either:
   a. Submitting to the Director a complete copy of the documentation provided to the executive officer of CARB according to 13 California Code of Regulations, Section 2264 and subsection (J); or
   b. Notifying the Director, on a form prescribed by or in a format acceptable to the Director, of:
      i. The PM alternative specifications that apply to the final blend, including for each specification whether it is a PM flat limit or a PM averaging limit; and
      ii. The numerical values for percent change in emissions for oxides of nitrogen and hydrocarbons determined in accordance with the Predictive Model Procedures.
3. A registered supplier shall deliver the certification required under subsection (H)(2) to the Director before transporting the PM alternative gasoline formulation.
4. Restrictions for elections to sell or supply final blends as PM alternative gasoline formulations.
   a. A registered supplier shall not make a new election to sell or supply from its production or import facility a final blend of Arizona CBG as a PM alternative gasoline formulation if the registered supplier has an outstanding requirement under subsection (K) to provide offsets for fuel properties at the same production or import facility.
   b. If a registered supplier elects to sell or supply from its production or import facility a final blend of Arizona CBG as a PM alternative gasoline formulation subject to a PM averaging compliance option for one or more fuel properties, the registered supplier shall not elect any other compliance option, including another PM alternative gasoline formulation, if an outstanding requirement to provide offsets for fuel properties exists under the provisions of subsection (K). This subsection does not preclude a registered supplier from electing another PM alternative gasoline formulation if:
      i. The PM flat limit for one or more fuel properties is changed to a PM averaging limit, or a single PM averaging limit for which there is no outstanding requirement to provide offsets is changed to a PM flat limit;
      ii. There are no changes to the PM alternative specifications for remaining fuel properties; and
      iii. The new PM alternative formulation meets the criteria in the Predictive Model Procedures.
   c. If a registered supplier elects to sell or supply from the registered supplier's production or import facility a final blend of Arizona CBG as a PM alternative gasoline formulation, the registered supplier shall not use a previously assigned designated alternative limit for a fuel property to provide offsets under subsection (K).
   d. If a registered supplier notifies the Director under subsection (D) or (E) that a final blend of Arizona CBG is sold or supplied from a production or import facility as a PM alternative gasoline formulation, all final blends of Arizona CBG or AZRBOB subsequently sold or supplied from that production or import facility are subject to the same PM alternative specifications until the registered supplier either:
      i. Designates a final blend at that facility as a PM alternative gasoline formulation subject to different PM alternative specifications; or
      ii. Elects, under subsection (D) or (E), a final blend at that facility subject to a flat limit compliance option or an averaging compliance option.

I. Prohibited activities regarding PM alternative gasoline formulations. A registered supplier shall not sell, offer for sale, supply, or offer to supply from the registered supplier's production or import facility Arizona CBG that is reported as a PM alternative gasoline formulation under ~~R20-2-752~~ R3-7-752 if any of the following occur:

1. The elected PM alternative specifications do not meet the criteria for approval in the Predictive Model Procedures,
2. The registered supplier is prohibited by subsection (H)(4)(a) from electing to sell or supply the gasoline as a PM alternative gasoline formulation,
3. The gasoline fails to conform with any PM flat limit in the PM alternative specifications election, or
4. With respect to any fuel property for which the registered supplier elects a PM averaging limit:
   a. The gasoline exceeds the applicable PM average limit in Table 2, column B, and no designated alternative limit for the fuel property is established for the gasoline in accordance with subsection (H)(2); or
   b. A designated alternative limit for the fuel property is established for the gasoline in accordance with subsection (H)(2), and either the gasoline exceeds the designated alternative limit for the fuel property or the designated alternative limit for the fuel property exceeds the PM averaging limit and the exceedance is not fully offset in accordance with subsection (K).

J. Oxygen content requirements for PM alternative gasoline formulations. A registered supplier shall ensure that from November 1 through March 31, all alternative PM gasoline formulations comply with oxygen content requirements for the CBG-covered area. Regardless of the oxygen content, a registered supplier shall certify the final alternative PM gasoline formulation using the PM with a minimum oxygen content of 2.0 percent by weight. A registered supplier may use the CARBOB Model as a substitute for the preparation of a fuel ethanol hand blend and use the fuel qualities calculated under the CARBOB Model for compliance and reporting purposes.

K. Offsetting fuel properties and performance standards. A registered supplier that elects to comply with the averaging standards for any of the fuel properties or performance standards contained in Tables 1 and 2, or the PM, shall, from a single production or import facility, complete physical transfer of certified Arizona CBG or AZRBOB in sufficient quantity to offset the amount by which the Arizona

CBG or AZRBOB exceeds the averaging standard according to the following schedule:

1. A registered supplier that elects to comply with the averaging standards contained in Table 2 or the PM shall offset each exceeded average standard within 90 days before or after beginning to transport any final blend of Arizona CBG or AZRBOB from the production or import facility;
2. A registered supplier that elects to comply with the averaging standard for the VOC Emission Reduction Percentage in Table 1, column B, shall offset an exceedance of the standard that occurs from May 1 to September 15 during that same period; and
3. A registered supplier that elects to comply with the averaging standard for the NOx Emission Reduction Percentage contained in Table 1, column B, shall offset an exceedance of the standard that occurs from May 1 to September 15 during that same period.

L. Consequence of failure to comply with averages.

1. In addition to a penalty under ~~R20-2-762~~ R3-7-762, if any, a registered supplier that fails to comply with a requirement of subsection (K) shall meet the applicable per-gallon standards contained in Table 1, Table 2, or an alternative PM gasoline formulation, for a probationary period as follows:
   a. For a registered supplier that elects to comply with the standards contained in Table 1, the probationary period begins on the first day of the next averaging season and ends on the last day of that averaging season if the conditions of subsection (L)(2) are met;
   b. For a registered supplier that elects to comply with the standards contained in Table 2 or the PM, the probationary period begins no later than 90 days after the registered supplier determines, or receives a notice from the Director, that the registered supplier did not comply with the requirements of subsection (K). Before the probationary period begins, the registered supplier shall notify the Director in writing of the beginning date of the probationary period. The probationary period ends 90 days after its beginning date.
2. A registered supplier shall not produce or import Arizona CBG or AZRBOB under an averaging compliance election until:
   a. The registered supplier submits a compliance plan to the Director that includes:
      i. An implementation schedule for actions to correct noncompliance, and
      ii. Reporting requirements that document implementation of the compliance plan,
   b. The Director approves the plan,
   c. The registered supplier implements the plan, and
   d. The registered supplier achieves compliance.
3. If a registered supplier fails to comply with the requirements of subsection (K) within one year of the end of a probationary period under subsection (L)(1), the registered supplier shall comply with applicable per-gallon standards for a subsequent probationary period of two years, or until the conditions in subsection (L)(2) are satisfied, whichever is later.
   a. If a registered supplier elects to comply with the Table 1 standards, the probationary period begins on the first day of the next averaging season.
   b. If a registered supplier elects to comply with the Table 2 standards or the PM, the probationary period begins no later than 90 days after the registered supplier determines, or receives notice from the Director, that the registered supplier did not comply with the requirements of subsection (K). Before the probationary period begins, the registered supplier shall notify the Director in writing of the beginning date of the probationary period.
4. If a registered supplier fails to comply with the requirements of subsection (K) within one year after the end of a probationary period provided under subsection (L)(3), the registered supplier shall permanently comply with applicable per-gallon standards.

M. Effect of VOC survey failure. Each time a VOC survey conducted under ~~R20-2-760~~ R3-7-760 shows excess VOC emissions in the CBG-covered area, the VOC emissions performance reduction in ~~R20-2-751(A)(8)~~ R3-7-751(A)(8) and the minimum per-gallon VOC emission reduction percentage in Table 1, column C shall be increased by an absolute 1.0 percent, not to exceed the VOC percent emissions reduction percentage per-gallon standard in Table 1, column A.

N. Effect of NOx survey failure. Each time a NOx survey conducted under ~~R20-2-760~~ R3-7-760 shows excess NOx emissions in the CBG-covered area, the NOx average emission reduction percentage applicable to the period of May 1 through September 15 in Table 1, column B shall be increased by an absolute 1.0 percent.

O. Subsequent survey compliance. If the minimum VOC or average NOx emissions reduction percentage has been made more stringent according to subsection (M) or (N) and all emissions reduction surveys for VOC or NOx for two consecutive years show emissions within the applicable adjusted reduction percentage in the CBG-covered area, the applicable VOC or NOx emissions adjusted reduction percentage shall be reduced by an absolute 1.0 percent beginning in the year following the year in which the second compliant survey is conducted. Each emissions reduction percentage adjusted under this subsection shall not be decreased below the following:

1. >27 percent for the VOC emissions reduction percentage, May 1 - September 15, Table 1, column C; and
2. >6.8 percent for the NOx emissions reduction percentage, May 1 - September 15, Table 1, column B.

P. Subsequent survey failures. If a VOC or NOx emissions reduction percentage is made less stringent under subsection (O) and a subsequent VOC or NOx survey shows excess VOC or NOx emissions in the CBG-covered area:

1. For a VOC survey failure, the Federal Complex Model VOC emissions reduction percentage in ~~R20-2-751(A)(8)~~ R3-7-751(A)(8) and the minimum per gallon VOC emission reduction percentage in Table 1, column C shall be increased by an absolute 1.0 percent, not to exceed the VOC percent emissions reduction percentage per gallon standard in Table 1, column A;
2. For a NOx survey failure, the NOx average emission reduction percentage applicable May 1 through September 15 in Table 1, column B shall be increased by an absolute 1.0 percent; and
3. If the VOC or NOx emission reduction percentage is increased under subsection (P)(1) or (2), the VOC or NOx emission reduction percentage shall not be made less stringent regardless of the result of subsequent surveys for VOC or NOx emissions.

Q. Effective date for adjusted standards. If a performance standard is adjusted by operation of subsection (M), (N), (O), or (P), the effective date for the change is the beginning of the next averaging season for which the standard is applicable.

~~R20-2-752~~ R3-7-752. General Requirements for Registered Suppliers

A. A registered supplier shall certify that each batch of Arizona CBG or AZRBOB transported for sale or use in the CBG-covered area meets the standards in this Article.

B. A registered supplier shall make the certification on a form or in a format prescribed by the Director. The registered supplier shall include in the certification information on shipment volumes, fuel properties as determined under ~~R20-2-759~~ R3-7-759, and performance standards for each batch of Arizona CBG or AZRBOB. The registered supplier shall submit the certification to the Director on or before the 15th day of each month for each batch of Arizona CBG or AZRBOB transported during the previous month.

C. Recordkeeping and records retention.

1. A registered supplier that samples and analyzes a final blend or shipment of Arizona CBG or AZRBOB under this Section shall maintain, for five years from the date of each sampling, records of the following:

a. Sample date;
b. Identity of blend or product sampled;
c. Container or other vessel sampled;
d. The final blend or shipment volume; and
e. The test results for sulfur, aromatic hydrocarbon, olefin, oxygen, vapor pressure, and as applicable, T50, T90, E200, and E300 as determined under ~~R20-2-759~~ R3-7-759.

2. If Arizona CBG or AZRBOB produced or imported by a registered supplier is not tested and documented as required by this Section, the Director shall deem the Arizona CBG or AZRBOB to have a vapor pressure, sulfur, aromatic hydrocarbon, olefin, oxygen, T50, and T90 that exceeds the standards specified in ~~R20-2-751~~ R3-7-751 or the comparable PM averaging limits, unless the registered supplier demonstrates to the Director that the Arizona CBG or AZRBOB meets all applicable fuel property limits and performance standards.
3. A registered supplier shall provide to the Director any records maintained by the registered supplier under this Section within 20 days of a written request from the Director. If a registered supplier fails to provide records for a blend or shipment of Arizona CBG or AZRBOB, the Director shall deem the final blend or shipment of Arizona CBG or AZRBOB in violation of ~~R20-2-751~~ R3-7-751, unless the registered supplier demonstrates to the Director that the Arizona CBG or AZRBOB meets all applicable fuel property limits and performance standards.

D. Notification requirement. A registered supplier shall notify the Director by fax before transporting Arizona CBG or AZRBOB into the CBG-covered area by a means other than a pipeline.

E. Quality Assurance and Quality Control (QA/QC) Program. A registered supplier shall develop a QA/QC program to demonstrate the accuracy and effectiveness of the registered supplier's laboratory testing of Arizona CBG or AZRBOB. The registered supplier shall submit the QA/QC program to the Director for approval at least three months before the registered supplier transports Arizona CBG or AZRBOB. The Director shall approve a QA/QC program only if the Director determines that the QA/QC program ensures that the registered supplier's laboratory testing procedures comply with ~~R20-2-759~~ R3-7-759 and the data generated by the registered supplier's laboratory are complete, accurate, and reproducible. If the registered supplier makes significant changes to the QA/QC program, the registered supplier shall resubmit the QA/QC program to the Director for review and approval. Within 30 days of receiving the changed QA/QC program, the Director shall determine whether the changed QA/QC program meets the original quality objectives. The Director shall approve the changed QA/QC program if it meets the quality objectives. Instead of developing a QA/QC program, a registered supplier may comply with the independent testing requirements of subsection (F).

F. Independent testing.

1. A registered supplier of Arizona CBG or AZRBOB that does not develop a QA/QC program shall conduct a program of independent sample collection and analysis for the Arizona CBG or AZRBOB produced or imported, that complies with one of the following:
   a. Option 1. A registered supplier shall, for each batch of Arizona CBG or AZRBOB produced or imported, have an independent laboratory collect and analyze a representative sample from the batch using the methodology specified in ~~R20-2-759~~ R3-7-759 for compliance with each fuel property and performance standard for which the Arizona CBG or AZRBOB is certified.
   b. Option 2. A registered supplier shall have an independent testing program for all Arizona CBG or AZRBOB that the registered supplier produces or imports that consists of the following:
      i. An independent laboratory shall collect a representative sample from each batch;
      ii. The Director or designee shall identify up to 10% of the samples collected under subsection (F)(1)(b)(i) for analysis; and
      iii. The independent laboratory shall, for each sample identified by the Director or designee, analyze the sample using the methodology specified in ~~R20-2-759~~ R3-7-759 for compliance with each fuel property and performance standard for which the Arizona CBG or AZRBOB is certified.
2. The Director or designee may request in writing a duplicate of the batch sample collected under subsection (F)(1)(a) or (b) for analysis by a laboratory selected by the Director or designee. The registered supplier shall submit a duplicate of the sample to the Director within 24 hours of the written request.
3. Designation of independent laboratory.
   a. A registered supplier that does not develop a QA/QC program shall designate one independent laboratory for each production or import facility at which the registered supplier produces or imports Arizona CBG or AZRBOB. The independent laboratory shall collect samples and perform analyses according to subsection (F).
   b. A registered supplier shall identify the designated independent laboratory to the Director under the registration requirements of ~~R20-2-750~~ R3-7-750.
   c. A laboratory is considered independent if:
      i. The laboratory is not operated by a registered supplier or the registered supplier's subsidiary or employee,
      ii. The laboratory does not have any interest in any registered supplier, and
      iii. The registered supplier does not have any interest in the designated laboratory.
   d. Notwithstanding the restrictions in subsection (F)(3)(c), the Director shall consider a laboratory independent if it is owned or operated by a pipeline owned or operated by four or more registered suppliers.
   e. A registered supplier shall not use a laboratory that is debarred, suspended, or proposed for debarment according to the Government-wide Debarment and Suspension regulations, 40 CFR 32, or the Debarment, Suspension and Ineligibility provisions of the Federal Acquisition Regulations, 48 CFR 9.4.
4. A registered supplier shall ensure that its designated independent laboratory:
   a. Records the following at the time the designated independent laboratory collects a representative sample from a batch of Arizona CBG or AZRBOB:
      i. The producer's or importer's assigned batch number for the batch sampled;
      ii. The volume of the batch;
      iii. The identification number of the gasoline storage tank in which the batch is stored at the time the sample is collected;
      iv. The date and time the batch became Arizona CBG or AZRBOB;
      v. The date and time the sample is collected;
      vi. The grade of the batch (for example, unleaded premium, unleaded mid-grade, or unleaded); and
      vii. For Arizona CBG or AZRBOB produced by computer-controlled in-line blending, the date and time the blending process began and the date and time the blending process ended, unless exempt under subsection (G);

b. Retains each sample collected under this subsection for at least 45 days, unless this time is extended by the Director for up to 180 days;
c. Submits to the Director a quarterly report on or before the 15th day of January, April, July, and October of each year that includes, for each sample of Arizona CBG or AZRBOB analyzed under subsection (F):
i. The results of the independent laboratory's analyses for each fuel property, and
ii. The information specified in subsection (F)(4)(a) for each sample; and
d. Supplies to the Director, upon request, a duplicate of the sample.

G. Exemptions to QA/QC and independent laboratory testing requirements. A registered supplier that produces or imports Arizona CBG or AZRBOB using computer-controlled in-line blending equipment and operates under an exemption from EPA under 40 CFR 80.65(f)(iv), is exempt from the requirements of subsections (E) and (F), if reports of the results of the independent audit program of the registered supplier's computer-controlled in-line blending operation, which are submitted to EPA under 40 CFR 80.65(f)(iv), are submitted to the Director by March 1 of each year.

H. Use of laboratory analysis for certification of Arizona CBG and AZRBOB.
1. If both a registered supplier and an independent laboratory collect a sample from the same batch of Arizona CBG or AZRBOB and perform a laboratory analysis under subsection (F) to determine compliance of the sample with a fuel property, the registered supplier and independent laboratory shall use the same test methodology. The results of the analysis conducted by the registered supplier shall be used for certification of the Arizona CBG or AZRBOB under subsection (B), unless the absolute value of the difference between the two results is larger than one of the following:
a. Sulfur content: 25 ppm by weight,
b. Aromatics: 2.7% by volume,
c. Olefins: 2.5% by volume,
d. Fuel ethanol: 0.4% by volume,
e. Vapor pressure: 0.3 psi,
f. 50% distillation temperature: ASTM reproducibility for that sample using the slope from the registered supplier's results,
g. 90% distillation temperature: ASTM reproducibility for that sample using the slope from the registered supplier's results,
h. E200: 2.5% by volume,
i. E300: 3.5% by volume, or
j. API gravity: 0.3° API.
2. If the absolute value of the difference between the results of the analyses conducted by the registered supplier and independent laboratory is larger than one of the values specified in subsection (H)(1), the registered supplier shall use one of the following for certification of the batch of Arizona CBG or AZRBOB under subsection (B):
a. The larger of the two values for each fuel property, except the smaller of the two values shall be used for measures of oxygenates; or
b. Have a second independent laboratory analyze the Arizona CBG or AZRBOB for each fuel property. If the difference between the results obtained by the second independent laboratory and those obtained by the registered supplier are within the range listed in subsection (H)(1), the registered supplier's results shall be used for certifying the Arizona CBG or AZRBOB under subsection (B).

~~R20-2-753~~ R3-7-753. General Requirements for Pipelines and Third-party Terminals

A. A pipeline or third-party terminal shall not accept Arizona CBG or AZRBOB for transport unless:
1. The Arizona CBG or AZRBOB is physically transferred from an importer, refiner, oxygenate blender, pipeline, or third-party terminal registered with the Department under ~~R20-2-750~~ R3-7-750; and
2. The registered supplier provides written verification that the gasoline is Arizona CBG or AZRBOB and complies with the standards in ~~R20-2-751(A)~~ R3-7-751(A) or (B), as applicable, without reproducibility or numerical rounding.

B. A pipeline or third-party terminal that transports Arizona CBG or AZRBOB shall collect a sample of each incoming batch. The pipeline or third-party terminal shall retain the sample for at least 30 days unless this time is extended for an individual sample for up to 180 days by the Director.

C. A pipeline shall conduct quality control testing of Arizona CBG or AZRBOB at a frequency of at least one sample from one batch completing shipment for each registered supplier each day at each input location.

D. A pipeline shall provide the Director with a report summarizing the quality control testing results obtained under subsection (C) within 10 days of the end of each month. The report shall contain the quantity of Arizona CBG or AZRBOB, date tendered, whether the Arizona CBG or AZRBOB was transported by pipeline, present sample location, and laboratory analysis results.

E. If a batch does not meet the standards in ~~R20-2-751(A)~~ R3-7-751(A) or (B), as applicable, but is within reproducibility, the pipeline shall notify the Director by fax within 48 hours of the batch volume and date tendered, proposed shipment date, whether the batch was transported by the pipeline, present batch location, and laboratory analysis results.

F. If a batch does not meet the standards in ~~R20-2-751(A)~~ R3-7-751(A) or (B), as applicable, including reproducibility, the pipeline or third-party terminal shall notify the Director by fax within 24 hours of the batch quantity and date tendered, proposed shipment date, whether the batch was transported by the pipeline, present batch location, and laboratory analysis results. If the batch is in the pipeline's or third-party terminal's control, the pipeline or third-party terminal shall prevent release of the batch from a distribution point until the batch is certified as meeting the standards in ~~R20-2-751(A)~~ R3-7-751(A) or (B), as applicable.

G. A pipeline or third-party terminal shall develop a QA/QC program to demonstrate the accuracy and effectiveness of the pipeline's or third-party terminal's laboratory testing. The QA/QC program for a pipeline or third-party terminal shall include a description of the laboratory testing protocol used to verify that Arizona CBG or AZRBOB transported to the CBG-covered area meets the standards in ~~R20-2-751(A)~~ R3-7-751(A) or (B). A pipeline or third-party terminal shall submit the QA/QC program to the Director for approval at least three months before the pipeline or third-party terminal begins to transport Arizona CBG or AZRBOB. The Director shall approve a QA/QC program only if the Director determines that the QA/QC program ensures that the pipeline's or third-party terminal's laboratory testing produces data that are complete, accurate, and reproducible. If a pipeline or third-party terminal makes significant changes to the QA/QC program, the pipeline or third-party terminal shall resubmit the QA/QC program to the Director for review and approval. Within 30 days of receiving the changed QA/QC program, the Director shall determine whether the changed QA/QC program meets the quality objectives originally approved by the Department. The Director shall approve the changed QA/QC program if it meets the quality objectives.

H. A portion of a facility that a third-party terminal uses for production, import, or oxygenate blending is exempt from this Section, but the third-party terminal shall operate the exempt portion of the facility in compliance with requirements for registered suppliers in ~~R20-2-752~~ R3-7-752 and oxygenate blenders in ~~R20-2-755~~ R3-7-755, as applicable.

I. A pipeline is not liable under ~~R20-2-761~~ R3-7-761 if it follows all of the procedures in this Section.

~~R20-2-755~~ R3-7-755. Additional Requirements for AZRBOB and Downstream Oxygenate Blending

A. Application of Arizona CBG standards to AZRBOB.
1. Determining whether AZRBOB complies with Arizona CBG standards.
   a. If a registered supplier designates a final blend as AZRBOB and complies with the provisions of this Section, the fuel properties and performance standards of the AZRBOB, for purposes of compliance with Table 2, are determined by adding the specified amount of fuel ethanol to a representative sample of the AZRBOB and testing the resulting gasoline using the test methods in ~~R20-2-759~~ R3-7-759 or certifying the ARZBOB using the CARBOB model. If the registered supplier designates a range of amounts of fuel ethanol to be added to the AZRBOB, the minimum designated amount of fuel ethanol shall be added to the AZRBOB to determine the fuel properties and performance standards of the resulting Arizona CBG. If a registered supplier does not comply with this subsection, the Department shall determine whether the AZRBOB complies with applicable fuel properties and performance standards, excluding requirements for vapor pressure, without adding fuel ethanol to the AZRBOB.
   b. In determining whether AZRBOB complies with the Arizona CBG standards, the registered supplier shall ensure that the fuel ethanol added to the representative sample under subsection (A)(1)(a) is representative of the fuel ethanol the registered supplier reasonably expects will be subsequently added to the AZRBOB.
2. Calculating the volume of AZRBOB. If a registered supplier designates a final blend as AZRBOB and complies with this Section, the volume of AZRBOB is calculated for compliance purposes under ~~R20-2-751~~ R3-7-751 by adding the minimum amount of fuel ethanol designated by the registered supplier. If a registered supplier fails to comply with this subsection, the Department shall calculate the volume of AZRBOB for purposes of compliance with applicable fuel properties and performance standards without adding the amount of fuel ethanol to the AZRBOB.

B. Restrictions on transferring AZRBOB.
1. A person shall not transfer ownership or custody of AZRBOB to any other person unless the transferee notifies the transferor in writing that:
   a. The transferee is a registered oxygenate blender and will add fuel ethanol in the amount (or within the range of amounts) designated in ~~R20-2-757~~ R3-7-757 before the AZRBOB is transferred from a final distribution facility, or
   b. The transferee will take all reasonably prudent steps necessary to ensure that the AZRBOB is transferred to a registered oxygenate blender that adds the amount (or within the range of amounts) of fuel ethanol designated in ~~R20-2-757~~ R3-7-757 to the AZRBOB before the AZRBOB is transferred from a final distribution facility.
2. A person shall not sell or supply Arizona CBG from a final distribution facility if the amount or range of amounts of fuel ethanol designated in ~~R20-2-757~~ R3-7-757 has not been added to the AZRBOB.

C. Restrictions on blending AZRBOB with other products. A person shall not combine AZRBOB supplied from the facility at which the AZRBOB is produced or imported with any other AZRBOB, gasoline, blendstock, or oxygenate, except for:
1. Fuel ethanol in the amount (or within the range of amounts) specified by the registered supplier at the time the AZRBOB is supplied from the production or import facility, or
2. Other AZRBOB for which the same fuel ethanol amount (or range of amounts) is specified by the registered supplier at the time the AZRBOB is supplied from the production or import facility.

D. Quality assurance sampling and testing requirements for a registered supplier supplying AZRBOB from a production or import facility. A registered supplier supplying AZRBOB from a production or import facility shall use an independent third-party quality assurance sampling and testing program as described in subsection (E) or conduct a quality assurance sampling and testing program that meets the requirements of 40 CFR 80.69(a)(7), as it existed on July 1, 1996, except for the changes listed in subsections (D)(1) through (3). 40 CFR 80.69(a)(7), July 1, 1996, is incorporated by reference and on file with the Department. A copy may be obtained at the Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov. The material incorporated includes no future editions or amendments.
1. 40 CFR 80.69(a)(7). The word "RBOB" is changed to read "AZRBOB";
2. 40 CFR 80.69(a)(7). "...using the methodology specified in § 80.46..." is changed to read "...using the methodology specified in ~~R20-2-759~~ R3-7-759...;" and
3. 40 CFR 80.69(a)(7)(ii). "(within the correlation ranges specified in § 80.65(e)(2)(i))" is changed to read "(within the ranges of the applicable test methods).

E. General requirements for an independent third-party quality assurance sampling and testing program. A registered supplier may contract with an independent third party that conducts a quality assurance sampling and testing program for one or more registered suppliers. The registered supplier shall ensure that the quality assurance sampling and testing program:
1. Is designed and conducted by a third party that is independent of the registered supplier. To be considered independent:
   a. The third party shall not be an employee of a registered supplier,
   b. The third party shall not have an obligation to or interest in any registered supplier, and
   c. The registered supplier shall not have an obligation to or interest in the third party;
2. Is conducted from November 1 through March 31 on all samples collected under the program design previously approved by the Director under subsection (G);
3. Involves sampling and testing that is representative of all Arizona CBG dispensed in the CBG-covered area;
4. Analyzes each sample for oxygenate according to the methodologies specified in ~~R20-2-759~~ R3-7-759;
5. Bases results on an analysis of each sample collected during the sampling period unless a specific sample does not comply with the applicable per gallon maximum or minimum standards for the fuel property being evaluated in addition to any reproducibility applicable to the fuel property;
6. Participates in a correlation program with the Director to ensure the validity of analysis results;
7. Does not provide advance notice, except as provided in subsection (F), of the date or location of any sampling;
8. Provides a duplicate of any sample, with information regarding where and the date on which the sample was collected, upon request of the Director, within 30 days after submitting the report required under subsection (E)(10);
9. Permits a Department official to monitor sample collection, transportation, storage, and analysis at any time; and
10. Prepares and submits a report to the Director within 30 days after the sampling is completed that includes the following information:
    a. Name of the person collecting the samples;
    b. Attestation by an officer of the third party that the sampling and testing was done according to the program plan approved by the Director under subsection (G) and the results are accurate;

c. Identification of the registered supplier for whom the sampling and testing program was conducted if the sampling and testing program was conducted for only one registered supplier;
d. Identification of the area from which the samples were collected;
e. Address of each motor fuel dispensing site from which a sample was collected;
f. Dates on which the samples were collected;
g. Results of the analysis of the samples for oxygenate type and oxygen weight percent, aromatic hydrocarbon, and olefin content, E200, E300, and vapor pressure, and the calculated VOC or NOx emissions reduction percentage, as applicable;
h. Name and address of each laboratory at which the samples were analyzed;
i. Description of the method used to select the motor fuel dispensing sites from which a sample was collected;
j. Number of samples collected at each motor fuel dispensing site; and
k. Justification for excluding a collected sample if one was excluded.

F. An independent third party that contracts with one or more registered suppliers to conduct a quality assurance sampling and testing program shall begin the sampling on the date selected by the Director. The Director shall inform the third party of the date selected at least 10 business days before sampling is to begin.

G. To obtain the Director's approval of an independent third-party quality assurance sampling and testing program plan, the person seeking the approval shall:
1. Submit the plan to the Director no later than January 1 to cover the sampling and testing period from November 1 through March 31 of each year, and
2. Have the plan signed by an officer of the third party that will conduct the sampling and testing program.

H. No later than September 1 of each year, a registered supplier that intends to meet the requirements in subsection (D) by contracting with an independent third party to conduct quality assurance sampling and testing from November 1 through March 31 shall enter into the contract and pay all of the money necessary to conduct the sampling and testing program. The registered supplier may pay the money necessary to conduct the sampling and testing program to the third party or to an escrow account with instructions to the escrow agent to release the money to the third party as the testing program is implemented. No later than September 15, the registered supplier shall submit to the Director a copy of the contract with the third party, proof that the money necessary to conduct the sampling and testing program has been paid, and, if applicable, a copy of the escrow agreement.

I. Requirements for oxygenate blenders.
1. Requirement to add fuel ethanol to AZRBOB. If an oxygenate blender receives AZRBOB from a transferor to whom the oxygenate blender represents that fuel ethanol will be added to the AZRBOB, the oxygenate blender shall add fuel ethanol to the AZRBOB in the amount (or within the range of amounts) identified in the documentation accompanying the AZRBOB.
2. Additional requirements for oxygenate blending at terminals. An oxygenate blender that makes Arizona CBG by blending fuel ethanol with AZRBOB in a motor fuel storage tank, other than a truck used to deliver motor fuel to a retail outlet or bulk-purchaser consumer facility, shall determine the oxygen content and volume of the Arizona CBG before shipping, by collecting and analyzing a representative sample of the Arizona CBG, using the methodology in ~~R20-2-759~~ R3-7-759.
3. Additional requirements for oxygenate blending in trucks. An oxygenate blender that blends AZRBOB in a motor fuel delivery truck shall conduct quality assurance sampling and testing that meets the requirements in 40 CFR 80.69(e)(2), as it existed on July 1, 1996, except for the changes listed in subsections (I)(3)(a) through (c). 40 CFR 80.69(e)(2), July 1, 1996, is incorporated by reference and on file with the Department. A copy may be obtained at the Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov. The material incorporated includes no future editions or amendments.
   a. 40 CFR 80.69(e)(2). The word "RBOB" is changed to read "AZRBOB;"
   b. 40 CFR 80.69(e)(2)(iv). "... using the testing methodology specified at § 80.46 ..." is changed to read "... using the testing methodology specified in ~~R20-2-759~~ R3-7-759...;" and
   c. 40 CFR 80.69(e)(2)(v). "(within the ranges specified in § 80.70(b)(2)(I))" is changed to read "(within the ranges of the applicable test methods)."
4. Additional requirements for in-line oxygenate blending in pipelines using computer-controlled blending.
   a. An oxygenate blender that produces Arizona CBG by blending fuel ethanol with AZRBOB into a pipeline using computer-controlled in-line blending shall, for each batch of Arizona CBG produced:
      i. Obtain a flow proportional composite sample after the addition of fuel ethanol and before combining the resulting Arizona CBG with any other Arizona CBG;
      ii. Determine the oxygen content of the Arizona CBG by analyzing the composite sample within 24 hours of blending using the methodology in ~~R20-2-759~~ R3-7-759; and
      iii. Determine the volume of the resulting Arizona CBG.
   b. If the test results for the Arizona CBG indicate that it does not contain the amount of fuel ethanol specified by the ranges of the applicable test methods, the oxygenate blender shall:
      i. Notify the pipeline to downgrade the Arizona CBG to conventional gasoline or transmix upon arrival in Arizona;
      ii. Begin an investigation to determine the cause of the noncompliance;
      iii. Collect a representative sample every two hours during each in-line blend of AZRBOB and fuel ethanol, and analyze the samples within 12 hours of collection, until the cause of the noncompliance is determined and corrected; and
      iv. Notify the Director in writing within one business day that the Arizona CBG does not comply with the requirements of this Article.
   c. The oxygenate blender shall comply with subsection (I)(4)(b)(iii) until the Director determines that the corrective action has remedied the noncompliance.
5. Recordkeeping and records retention.
   a. An oxygenate blender shall maintain, for five years from the date of each sampling, records of the following:
      i. Sample date,
      ii. Identity of blend or product sampled,
      iii. Container or other vessel sampled,
      iv. Volume of final blend or shipment,
      v. Oxygen content as determined under ~~R20-2-759~~ R3-7-759, and
      vi. Results from all testing.
   b. The Director shall deem that Arizona CBG blended by an oxygenate blender and not tested and documented as required by this Section has an oxygen content that exceeds the standards specified in ~~R20-2-751~~ R3-7-751 or exceeds the comparable PM averaging limits, if applicable, unless the oxygenate blender demonstrates to the Director that the Arizona CBG meets the standards in ~~R20-2-751~~ R3-7-751.

c. Within 20 days of the Director's written request, an oxygenate blender shall provide any records maintained by the oxygenate blender under this Section. If the oxygenate blender fails to provide records requested for a blend or shipment of Arizona CBG, the Director shall deem that the blend or shipment of Arizona CBG violates ~~R20-2-751~~ R3-7-751 or exceeds the comparable PM averaging limits, if applicable, unless the oxygenate blender demonstrates to the Director that the Arizona CBG meets the standards and limits under ~~R20-2-751~~ R3-7-751.

6. Notification requirement. An oxygenate blender shall notify the Director by fax before transporting Arizona CBG or AZRBOB into the CBG-covered area by a means other than a pipeline.
7. Quality assurance and quality control (QA/QC) program. An oxygenate blender that conducts sampling and testing under subsection (I) in the oxygenate blender's own laboratory shall develop a QA/QC program to demonstrate the accuracy and effectiveness of the oxygenate blender's sampling and testing of Arizona CBG or AZRBOB. The oxygenate blender shall submit the QA/QC program to the Director for approval at least three months before transporting Arizona CBG. The Director shall approve a QA/QC program only if the Director determines that the QA/QC program ensures that the oxygenate blender's sampling and testing produces data that are complete, accurate, and reproducible. Instead of developing a QA/QC program, an oxygenate blender may comply with the independent testing requirements of ~~R20-2-752(F)~~ R3-7-752(F), except that, for sampling and testing conducted under subsection (I)(3), the minimum number of samples collected and tested by the independent laboratory shall be 10% of the number of samples required to be collected and tested under subsection (I).
8. An oxygenate blender that does not conduct laboratory sampling and testing required under subsection (I) in its own laboratory shall designate an independent laboratory, as described in ~~R20-2-752(F)~~ R3-7-752(F), to conduct the sampling and testing required under subsection (I)(7).
9. Within 24 hours of the Director's or designee's written request, an oxygenate blender shall submit a duplicate of any sample collected under subsection (I)(7).

J. Subsection (A)(1)(a) will not become effective until Arizona's revised State Implementation Plan is approved by EPA.

~~R20-2-756~~ R3-7-756. Downstream Blending of Arizona CBG with Nonoxygenate Blendstocks

A. A person shall not combine Arizona CBG supplied from a production or import facility with any nonoxygenate blendstock, other than vapor recovery condensate, unless the person demonstrates to the Director:
1. The blendstock added to the Arizona CBG meets all of the Arizona CBG standards regardless of the fuel properties and performance standards of the Arizona CBG to which the blendstock is added;
2. The person meets the requirements in this Article applicable to producers of Arizona CBG; and
3. The resulting fuel blend is not used within the CBG-covered area.

B. Notwithstanding subsection (A), a person may add nonoxygenate blendstock to a previously certified batch or mixture of certified batches of Arizona CBG that does not comply with one or more of the applicable per-gallon standards contained in ~~R20-2-751(A)~~ R3-7-751(A) or (B) if the person obtains prior written approval from the Director based on a demonstration that adding the blendstock will bring the previously certified Arizona CBG into compliance with the applicable per-gallon standards for Arizona CBG. The oxygenate blender or registered supplier shall certify the re-blended Arizona CBG to the Department.

~~R20-2-760~~ R3-7-760. Compliance Surveys

A. A registered supplier that elects to certify that Arizona CBG or AZRBOB meets an averaging standard under ~~R20-2-751~~ R3-7-751 shall ensure that compliance surveys are conducted in accordance with a compliance survey program plan approved by the Director. The Director shall approve a compliance survey program plan if it:
1. Consists of at least four VOC and NOx surveys conducted at least one per month between May 1 through September 15 of each year, and
2. Complies with subsection (J).

B. If a registered supplier fails to ensure that an approved compliance survey program is conducted, the Director shall issue an order requiring the registered supplier to comply with all applicable fuel property and performance standards on a per-gallon basis for six months or through the end of the survey period identified in subsection (A)(1), whichever is longer. Regardless of when a failure to survey occurs, the Director's order shall require compliance with per-gallon standards from the beginning of the survey period during which the failure to survey occurs.

C. General compliance survey requirements. A registered supplier shall ensure that a compliance survey conforms to the following:
1. Consists of all samples that are collected under an approved survey program plan during any consecutive seven days and that are not excluded under subsection (C)(4);
2. Is representative of all Arizona CBG being dispensed in the CBG-covered area as provided in subsection (G);
3. Analyzes each sample included in the compliance survey for oxygenate type and content, olefins, sulfur, aromatic hydrocarbons, E200, E300, and vapor pressure according to the test methods in ~~R20-2-759~~ R3-7-759. Vapor pressure is required to be analyzed only from May 1 through September 15;
4. Bases the results of the compliance survey upon an analysis of each sample collected during the course of the compliance survey, unless a sample does not comply with the applicable per gallon maximum or minimum fuel property standard being evaluated in addition to any reproducibility that applies to the fuel property standard; and
5. If a laboratory analyzes the compliance survey samples, the laboratory participates in a correlation program with the Director to ensure the validity of analysis results.

D. If the Director determines that a sample used in a compliance survey does not comply with ~~R20-2-751~~ R3-7-751 or another requirement under this Article, the Director shall take enforcement action against the registered supplier.

E. A registered supplier shall comply with the following VOC and NOx compliance survey requirements:
1. For each compliance survey sample, determine the VOC and NOx emissions reduction percentage based upon the tested fuel properties for that sample using the methodology for calculating VOC and NOx emissions reductions at 40 CFR 80.45, as incorporated by reference in ~~R20-2-702~~ R3-7-702;
2. The CBG-covered area fails a VOC compliance survey if the VOC emissions reduction percentage average of all samples collected during the compliance survey is less than the per-gallon standard for VOC emissions reduction percentage in Table 1, column A.
3. The CBG-covered area fails a NOx compliance survey if the NOx emissions reduction percentage average of all samples collected during the compliance survey is less than the per-gallon standard for NOx emissions reduction percentage in Table 1, column A.

F. A registered supplier shall determine the result of the series of NOx compliance surveys conducted between May 1 and September 15 as follows:

1. For each compliance survey sample, the NOx emissions reduction percentage is determined based upon the tested fuel properties for that sample using the methodology for calculating NOx emissions reduction at 40 CFR 80.45, as incorporated by reference in ~~R20-2-702~~ R3-7-702; and
2. The CBG-covered area fails the NOx series of compliance surveys conducted between May 1 and September 15 if the NOx emissions reduction percentage average for all compliance survey samples collected during that time is less than the Federal Complex Model per-gallon standard for the NOx emissions reduction percentage in Table 1, column A.

G. General requirements for an independent surveyor conducting a compliance survey. A registered supplier may have the compliance surveys required by this Section conducted by an independent surveyor. The Director shall approve a compliance survey program conducted by an independent surveyor if the compliance survey program:
1. Is designed and conducted by a surveyor that is independent of the registered supplier. To be considered independent:
   a. The surveyor shall not be an employee of any registered supplier,
   b. The surveyor shall not have an obligation to or interest in any registered supplier, and
   c. The registered supplier shall not have an obligation to or interest in the surveyor;
2. Includes enough samples to ensure that the average levels of oxygen, vapor pressure, aromatic hydrocarbons, olefins, T50, T90, and sulfur are determined with a 95 percent confidence level, with error of less than 0.1 psi for vapor pressure, 0.1 percent for oxygen (by weight), 0.5 percent for aromatic hydrocarbons (by volume), 0.5 percent for olefins (by volume), 5°F for T50 and T90, and 10 wppm for sulfur;
3. Requires that the surveyor not provide advance notice, except as provided in subsection (H), of the date or location of any survey sampling;
4. Requires that the surveyor provide a duplicate of any sample taken during the survey, with information regarding the name and address of the facility from and the date on which the sample was taken, upon request of the Director, within 30 days following submission of the survey report required under subsection (G)(6);
5. Requires that the surveyor permit a Department official to monitor sample collection, transportation, storage, and analysis at any time;
6. Requires the surveyor to submit a report of each survey to the Director within 30 days after sampling for the survey is completed that includes the following information:
   a. Name of the person conducting the survey;
   b. Attestation by an officer of the surveyor that the sampling and testing was conducted according to the compliance survey program plan and the results are accurate;
   c. Identification of the registered supplier for whom the compliance survey was conducted if the compliance survey was conducted for only one registered supplier;
   d. Identification of the area from which survey samples were selected;
   e. Dates on which the survey was conducted;
   f. Address of each facility at which a sample was collected, and the date of collection;
   g. Results of the analysis of samples for oxygenate type and oxygen weight percent, aromatic hydrocarbon, and olefin content, E200, E300, and vapor pressure, and the calculated VOC or NOx emissions reduction percentage, as applicable, for each survey conducted during the period identified in subsection (A)(1);
   h. Name and address of each laboratory at which samples were analyzed;
   i. Description of the method used to select the facilities from which a sample was collected;
   j. Number of samples collected from each facility;
   k. Justification for excluding a collected sample from the survey, if one was excluded; and
   l. Average VOC and NOx emissions reduction percentage.

H. An independent surveyor shall begin each survey on a date selected by the Director. The Director shall notify the surveyor of the date selected at least 10 business days before the survey is to begin.

I. To obtain the Director's approval of a compliance survey program plan, the person seeking approval shall:
1. Submit the plan to the Director no later than January 1 to cover the survey period of May 1 through September 15 of each year, and
2. Have the plan signed by a corporate officer of the registered supplier or by an officer of the independent surveyor.

J. No later than April 1 of each year, a registered supplier that intends to meet the requirements in subsection (A) by contracting with an independent surveyor to conduct the compliance survey plan for the next summer and winter season shall enter into the contract and pay all of the money necessary to conduct the compliance survey plan. The registered supplier may pay the money necessary to conduct the compliance survey plan to the independent surveyor or to an escrow account with instructions to the escrow agent to release the money to the independent surveyor as the compliance survey plan is implemented. No later than April 15, the registered supplier shall submit to the Director a copy of the contract with the independent surveyor, proof that the money necessary to conduct the compliance survey plan has been paid, and, if applicable, a copy of the escrow agreement.

~~R20-2-761~~ R3-7-761. Liability for Noncompliant Arizona CBG or AZRBOB

A. Persons liable. If motor fuel designated as Arizona CBG or AZRBOB does not comply with ~~R20-2-751~~ R3-7-751, the following are liable for the violation:
1. Each person who owns, leases, operates, controls, or supervises a facility where the noncompliant Arizona CBG or AZRBOB is found;
2. Each registered supplier whose corporate, trade, or brand name, or whose marketing subsidiary's corporate, trade, or brand name, appears at a facility where the noncompliant Arizona CBG or AZRBOB is found; and
3. Each person who manufactured, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of any gasoline in a storage tank containing Arizona CBG or AZRBOB found to be noncompliant.

B. Defenses.
1. A person who is otherwise liable under subsection (A) is not liable if that person demonstrates:
   a. That the violation was not caused by the person or person's employee or agent;
   b. That product transfer documents account for all of the noncompliant Arizona CBG or AZRBOB and indicate that the Arizona CBG or AZRBOB complied with this Article; and
   c. That the person had a quality assurance sampling and testing program, as described in subsection (C) in effect at the time of the violation; except that any person who transfers Arizona CBG or AZRBOB, but does not assume title, may rely on the quality assurance program carried out by another person, including the person who owns the noncompliant Arizona CBG or AZRBOB, provided the quality assurance program is properly administered.

2. If a violation is found at a facility that operates under the corporate, trade, or brand name of a registered supplier, that registered supplier must show, in addition to the defense elements in subsection (B)(1), that the violation was caused by:
   a. A violation of law other than A.R.S. Title 41, Chapter 15, Article 6, this Article, or an act of sabotage or vandalism;
   b. A violation of a contract obligation imposed by the registered supplier designed to prevent noncompliance, despite periodic compliance sampling and testing by the registered supplier; or
   c. The action of any person having custody of Arizona CBG or AZRBOB not subject to a contract with the registered supplier but engaged by the registered supplier for transportation of Arizona CBG or AZRBOB, despite specification or inspection of procedures and equipment by the registered supplier designed to prevent violations.
3. To show that the violation was caused by any of the actions in subsection (B)(2), the person must demonstrate by reasonably specific showings, by direct or circumstantial evidence, that the violation was caused or must have been caused by another person.

C. Quality assurance sampling and testing program. To demonstrate an acceptable quality assurance program for Arizona CBG or AZRBOB, at all points in the gasoline distribution network, other than at a service station or fleet owner facility, a person shall present evidence:
1. Of a periodic sampling and testing program to determine compliance with the maximum or minimum standards in ~~R20-2-751~~ R3-7-751; and
2. That each time Arizona CBG or AZRBOB is noncompliant with one of the requirements in ~~R20-2-751~~ R3-7-751:
   a. The person immediately ceases selling, offering for sale, dispensing, supplying, offering for supply, storing, transporting, or causing the transportation of the noncompliant Arizona CBG or AZRBOB; and
   b. The person remedies the violation as soon as practicable.

Table 2. Type 2 Arizona CBG Standards

	Averaging Option		Non-averaging Option	
	A	B	C	
Fuel Property	Maximum Standard (per gallon)	Averaging Standard*	Flat Standard * (per gallon maximum)	Units of Standard
Sulfur Content	80	30	40	Parts per million by weight
Olefin Content	10.0	4.0	6.0	% by volume
90% Distillation Temperature (T90)	330	290	300	Degrees Fahrenheit
50% Distillation Temperature (T50)	220	200	210	Degrees Fahrenheit
Aromatic Hydrocarbon Content	30.0	22.0	25.0	% by volume
Oxygen content: fuel ethanol**				
November 1 - March 31	10% fuel ethanol**	–	10% fuel ethanol**	% by vol.
April 1 - October 31		–		
The maximum oxygen content EtOH year around			4.0	% by weight

* Instead of the standards in columns B and C, a registered supplier may comply with the standards contained in column A, and ~~R20-2-751(G)~~ R3-7-751(G), (H), and (I) for the use of the PM.
** Maximum oxygen content shall comply with the EPA oxygenate waiver requirements.
A registered supplier shall certify all Arizona CBG using fuel ethanol as the oxygenate beginning November 1 through March 31. Alternative fuel ethanol contents not less than 2.7% total oxygen may be used if approved by the Director under A.R.S. § 41-2124(D).
NOTE: Dates represent compliance dates for the owner of a motor fuel dispensing site or fleet vehicle fuel facility.

ARTICLE 9. GASOLINE VAPOR CONTROL

~~R20-2-902~~ R3-7-902. Exemptions

A. The owner or operator of a gasoline dispensing site that has decommissioned the site's stage II vapor recovery system in accordance with ~~R20-2-913~~ R3-7-913 or that is subject to A.R.S. § 41-2132, is exempt from the provisions of this Article but shall comply with the provisions of Article 10.

B. The owner or operator of a gasoline dispensing site that has a throughput that does not exceed the throughput specified in A.R.S. § 41-2135(B) may obtain an exemption by submitting a written request to the Department attesting that throughput at the gasoline dispensing site is not in excess of that specified in A.R.S. § 41-2135(B). By the 15th of each month, beginning the month after the Department approves the exemption, the person shall submit a written throughput report to the Department. If a person does not timely file a monthly throughput report or if a monthly throughput report reflects that the exemption limit is exceeded, the Department deems the exemption void.

C. To obtain an independent small business marketer exemption, a person shall derive at least 50 percent of the person's annual income from the sale of gasoline at each gasoline dispensing site for which an exemption is requested. The person shall submit a written request for exemption to the Department. The Department shall determine the percentage of total annual income represented by the sale of gasoline on the basis of the person's state and federal gross income for the preceding year for income tax purposes. The following items are excluded from income computations:
1. Purchase and sale of diesel fuel, and
2. State lottery sales net commissions and incentives.

D. Motor raceways, motor vehicle proving grounds, and marine and aircraft fueling facilities are exempt from stage II vapor recovery requirements.

~~R20-2-903~~ R3-7-903. Equipment and Installation

A. A person subject to A.R.S. § 41-2135 shall install, maintain, and operate a stage I and stage II vapor recovery system and component as specified in this Article until the stage II vapor recovery system is decommissioned in accordance with ~~R20-2-913~~ R3-7-913.

B. The Department shall reject a vapor recovery system or component from future installation if:
1. Federal regulations prohibit its use;
2. The vapor recovery system or component does not meet the manufacturer's specifications as certified by CARB using test methods approved in ~~R20-2-901~~ R3-7-901; or
3. The vapor recovery system or component fails greater than 20% of Department inspections for that system or component or the Department receives equivalent failure results from a vapor recovery registered service agency or from another jurisdiction's vapor recovery program, and the Department provides at least 30 days public notice of its proposed rejection.

C. The piping of both a stage I and stage II vapor recovery system shall be designed and constructed as certified by CARB for that specific vapor recovery system. A person shall not alter a stage I and stage II vapor recovery system or component from the CARB-certified configuration without obtaining Department approval under ~~R20-2-904~~ R3-7-904.

D. If Department inspection or test data reveal a deficiency in a fitting, assembly, or component that cannot be permanently corrected, the deficient fitting, assembly, or component shall not be used in Arizona.

E. A stage I spill containment may have a plugged drain rather than a drain valve if a hand-operated pump is kept onsite for draining entrapped liquid. A stage II vapor recovery system shall have pressure/vacuum (P/V) threaded valves on top of the vent lines for gasoline storage tanks.

~~R20-2-904~~ R3-7-904. Application Requirements and Process for Authority to Construct Plan Approval

A. A person shall not begin to construct a site requiring a vapor recovery system or to make a major modification of an existing vapor recovery system or component before obtaining approval of an authority to construct plan application. A major modification is:
1. Adding or replacing a gasoline storage tank that is equipped with a Department approved stage II vapor recovery system;
2. Adding or replacing underground piping, vapor piping within a dispenser, or a dispenser at an existing vapor recovery site unless the dispenser replacement is necessary due to unforeseen damage to the existing dispenser; or
3. Replacing a Department-approved stage II vapor recovery system of one certified configuration with an approved stage II vapor recovery system of a different certified configuration.

B. A person shall file with the Department a written change order to an authority to construct plan approval on a form provided by the Department if a modification of the approved vapor recovery system or component is needed after the Department issues an authority to construct plan approval. The person shall not make any modification until the Department approves the change order.

C. To obtain an authority to construct plan approval, a person shall submit to the Department, on a form provided by the Department, the following:
1. The name, address, and phone number of any owner, operator, and proposed contractor, if known;
2. The name of the stage I or stage II vapor recovery system or component to be installed along with the CARB certification for that system or component;
3. The street address of the site where construction or major modification will take place with an estimated timetable for construction or modification;
4. A copy of a blueprint or scaled site plan for the vapor recovery system or component including all equipment and piping detail; and
5. The application fee specified under ~~R20-2-906~~ R3-7-906.

D. After review and approval of the authority to construct plan, the Department shall issue the authority to construct plan approval and mail the plan approval to the address indicated on the application.
1. A copy of the authority to construct plan approval shall be maintained at the facility during construction so that it is accessible for Department review.
2. Construction of a stage II vapor recovery system or component at a site not having an approved authority to construct plan, shall be stopped and no further installation work done until an authority to construct plan approval is obtained.
3. An authority to construct plan approval is not transferable.

E. The Department shall deny an authority to construct plan for any of the following reasons:
1. Providing incomplete, false, or misleading information; or
2. Failing to meet the requirements stated in this Chapter.

F. If excavation is involved, the Department may visually inspect the stage II underground piping of a gasoline dispensing site before the pipeline is buried, for compliance with the authority to construct plan approval. A person who owns or operates a vapor recovery system or component shall give the Department notice by fax or e-mail at least two business days before the underground piping is complete. The Department shall require the owner or operator to excavate all piping not inspected before burial if the owner or operator does not give the required two business days' notice.

G. After construction is complete, a person who has a valid authority to construct plan approval may dispense gasoline for up to 90 days before final approval, if an initial inspection is scheduled according to ~~R20-2-905~~ R3-7-905.

H. An authority to construct plan approval expires one year from the date of issue or the completion of construction, whichever is sooner.

~~R20-2-905~~ R3-7-905. Initial Inspection and Testing

A. Within 10 days after beginning the dispensing of gasoline at a site that requires an authority to construct plan approval, a person shall provide the Department with a written certification of completion by the contractor and schedule an inspection that includes tests and acceptance criteria specified in the authority to construct plan approval. The inspection shall be witnessed by the Department at a time approved by the Department and include any of the following relevant to the specific vapor recovery system installed:
1. A dynamic pressure performance test from each dispenser for each product grade to its associated underground storage tank;
2. A pressure decay test for each vapor control system including nozzles, underground storage tanks, and tank vents. This test shall be performed with caps removed from stage I fill and vapor risers. If the pressure decay test in ~~R20-2-901(1)~~ R3-7-901(1) is used, the Department shall fail the vapor recovery system if gasoline storage tanks have less than 10 percent or greater than 60 percent vapor space. If the pressure decay test in ~~R20-2-901(2)~~ R3-7-901(2) is used, the Department shall fail the vapor recovery system if gasoline storage tanks have less than 15 percent or more than 30,000 gallons vapor space. The Department shall compute combined tank vapor space for manifolded systems;
3. Communication from dispenser to tanks for each product, using the San Diego TP-96-1 and CARB TP-201.4 test procedures;
4. Air to liquid volume ratio by volume meter of a vapor recovery system, using CARB TP-201.5 or CARB-endorsed equivalent procedures to determine air to liquid (A/L) ratios;

5. Spillage of a stage II vapor recovery system, using the CARB TP-201.2C procedure;
6. Liquid removal of a stage II vapor recovery system, using the CARB TP-201.6 procedure;
7. Flow versus pressure for components in a stage II vapor recovery system, using the CARB TP-201.2B procedure; and
8. Procedures specified by a manufacturer for testing the vapor recovery system.

B. If there is a difference between a testing contractor's and the Department's test results, the Department's test results prevail.

C. If a site fails to pass any of the tests required by subsection (A), the affected vapor recovery system or component shall remain out-of-service until the vapor recovery system and component pass all the appropriate tests in subsection (A).

D. A person who cancels an initial inspection shall notify the Department by calling the Department's designated telephone number at least one hour before the scheduled inspection and shall reschedule the inspection within 10 business days after this notification. The Department shall take enforcement action if a person fails to comply with this Section.

E. A person shall notify the Department when a vapor recovery system or component is repaired after failing an initial inspection. A registered service representative shall not proceed with a reinspection until the Department approves the reinspection date and time.

F. If a registered service representative does not start an initial inspection pressure decay test within 30 minutes of the scheduled start time, the Department shall fail the initial inspection of that site.

G. If a person cancels an initial inspection, the person shall reschedule the inspection within 90 days from the date gasoline was first dispensed.
1. The Department shall take enforcement action if the person fails to timely reschedule the inspection.
2. The registered service agency shall notify the Department in writing at least 10 business days before the inspection of the time, date, and location of the inspection.
3. The Department shall notify the registered service agency within five business days, by facsimile or electronic mail, whether it approves the inspection date and time.

~~R20-2-909~~ R3-7-909. Recordkeeping and Reporting

A. The owner or operator of a gasoline dispensing site employing stage II vapor recovery shall maintain daily records of the inspections done under this Article.

B. The owner or operator of a gasoline dispensing site employing stage II vapor recovery shall maintain a log and related records of all regularly scheduled maintenance and any repairs that have been made to stage II equipment.

C. The owner or operator of a gasoline dispensing site that is exempt under A.R.S. § 41-2135(B) from requirements to install and operate stage II vapor recovery equipment, shall maintain a log at the site showing monthly throughputs. The owner or operator shall submit throughput records to the Department as required under ~~R20-2-902(B)~~ R3-7-902(B). If any throughput requirement provided in A.R.S. § 412135(B) and this Article is exceeded for any month, the owner or operator shall notify the Department in writing within 30 days. The owner or operator shall within six months after the end of the month the throughput is exceeded, install and operate a stage II vapor recovery system conforming to this Article.

D. The owner or operator of a gasoline dispensing site shall keep all records required by this Article at the gasoline dispensing site for at least one year and shall make these records available to the Department upon request.

~~R20-2-910~~ R3-7-910. Annual Inspection and Testing

A. A person shall ensure that an annual inspection is conducted by a registered service representative on or before the annual inspection date. The annual inspection date is the last day of the month in which the last scheduled annual inspection was performed. A registered service agency shall notify the Department in writing at least 10 business days before an annual inspection of the time, date, and location of the inspection. The Department shall notify the registered service agency within five business days, by fax or e-mail, whether it approves the annual inspection date and time. The registered service agency shall not perform the annual inspection unless the Department approves the inspection date and time.

B. The annual inspection shall include the tests defined in ~~R20-2-905(A)(1)~~ R3-7-905(A)(1) through (8) that pertain to the specific vapor recovery system installed.

C. If there is a difference between a testing contractor's and the Department's test results, the Department's test results prevail.

D. If a site fails to pass any of the tests required by subsection (B), the affected vapor recovery system or component shall remain out-of-service until the vapor recovery system and component pass all appropriate tests in subsection (B).

E. After an annual inspection begins, a person shall not make a repair to the vapor recovery system or component until the results of the inspection are recorded.

F. A registered service representative shall perform all tests according to Article 9 and any other vapor recovery procedure that the Department issues to registered service agencies.

G. A person who cancels a witnessed inspection shall notify the Department by calling the Department's designated telephone number at least one hour before the scheduled inspection and shall reschedule the test to be completed by the annual inspection date. A registered service agency shall notify the Department in writing at least 10 business days before an annual inspection of the time, date, and location of the inspection. The Department shall notify the registered service agency within five business days, by fax or e-mail, of its approval of the inspection date and time. The Department shall take enforcement action if a person does not comply with this subsection.

~~R20-2-911~~ R3-7-911. Compliance Inspections

The Department shall not announce when it plans to conduct a compliance inspection of a stage I or stage II vapor recovery system or component. If results of a compliance inspection reveal a violation of A.R.S. Title 41, Chapter 15, or this Article, the Department shall require the vapor recovery system or component to undergo an appropriate test as specified in ~~R20-2-910~~ R3-7-910.

~~R20-2-913~~ R3-7-913. Stage II Decommissioning

A. The owner or operator of a gasoline dispensing site with a stage II vapor recovery system shall decommission the stage II vapor recovery system in accordance with the following schedule:
1. If the owner or operator holds a license issued by the Department numbered BMF 13676 or less, the owner or operator shall decommission the stage II vapor recovery system between October 1, 2016 and September 30, 2017; or
2. If the owner or operator holds a license issued by the Department numbered BMF 13677 or more, the owner or operator shall decommission the stage II vapor recovery system between October 1, 2017 and September 30, 2018.

B. Request for alternate decommissioning plan. The following owners or operators may submit an alternate decommissioning plan requesting to decommission the stage II vapor recovery systems at a time other than would be required under subsection (A)(1) or (A)(2) but no sooner than October 1, 2016 and no later than September 30, 2018. The owner or operator shall submit the alternate decommissioning plan to the Department for approval no later than December 31, 2015.

1. An owner or operator that holds licenses issued by the Department for three or fewer gasoline dispensing sites if all the licenses are issued in the same business name and mailing address. The owner or operator shall ensure that the alternate decommissioning plan includes the information specified in subsections (C)(1) through (4); and
2. An owner or operator that holds licenses issued by the Department for four or more gasoline dispensing sites if all the licenses are issued in the same business name and mailing address. The owner or operator shall ensure that the alternate decommissioning plan includes the information specified in subsection (C).

C. An owner or operator that submits a request for approval of an alternate decommissioning plan shall include the following information as specified under subsection (B):
1. The business name and mailing address on all licenses;
2. The name and telephone number of an individual with whom the Department can communicate;
3. The license number and address of each gasoline dispensing site and a statement of whether the owner or operator proposes to decommission each vapor recovery system between October 1, 2016 and September 30, 2017, or October 1, 2017 and September 30, 2018;
4. A statement of whether all gasoline dispensers at the gasoline dispensing site will be replaced and if so, whether the owner or operator proposes to replace the gasoline dispensers between October 1, 2016 and September 30, 2017, or October 1, 2017 and September 30, 2018; and
5. If the owner or operator owns four or more gasoline dispensing sites, an alternate decommissioning plan that includes:
   a. The license numbers and addresses of 50 percent of the gasoline dispensing sites at which the vapor recovery systems will be decommissioned between October 1, 2016 and September 30, 2017; and
   b. The license numbers and addresses of the remaining 50 percent of the gasoline dispensing sites at which the vapor recovery systems will be decommissioned between October 1, 2017 and September 30, 2018.

D. The Department shall approve or reject, on a first-come-first-served basis, an alternate decommissioning plan within three months after the alternate decommissioning plan is submitted. The Department shall allow decommissioning of stage II vapor recovery equipment at the time gasoline dispensers are replaced as indicated on the request for approval under subsection (C)(4). The Department may reject an alternate decommissioning plan if the information required under subsection (B) is not provided or if the year requested for decommissioning already has more than 60 percent of all gasoline dispensing sites scheduled for decommissioning;

E. The owner or operator of a gasoline dispensing site that is exempt under ~~R20-2-902~~ R3-7-902 shall decommission the site any time between October 1, 2016, and September 30, 2018;

F. The owner or operator of a gasoline dispensing site shall ensure that a Notice of Intent, using a form or format provided by the Department, is submitted to the Department at least 10 days before the planned decommissioning and includes the following information:
1. Name of the owner or operator of the gasoline dispensing site,
2. Address of the gasoline dispensing site,
3. Name of the decommissioning contractor,
4. Decommissioning dates,
5. Name of the vapor testing registered service representative, and
6. A statement indicating whether all gasoline dispensers at the gasoline dispensing site are being replaced.

G. If any of the information provided under subsection (F) changes, the owner or operator shall ensure that the Department receives the changed information at least 24 hours before the scheduled start of decommissioning.

H. The owner or operator of a gasoline dispensing site shall ensure that all stage II vapor recovery systems are decommissioned according to the material incorporated by reference in ~~R20-2-901(4)~~ R3-7-901(4) with the following exceptions:
1. Liquid shall be purged from the vapor piping following disconnection in section 14.6.6;
2. Vapor piping that is not disconnected from the tank top in accordance with section 14.6.7 shall be disconnected in the future if construction involving excavation that renders the piping accessible is performed; and
3. The pressure decay test conducted under section 14.6.12 shall meet the requirements in ~~R20-2-1005(A)(1)~~ R3-7-1005(A)(1).

I. The decommissioning contractor shall:
1. Complete a Decommissioning Checklist using a form or format provided by the Department,
2. Provide a copy of the completed Decommissioning Checklist to the owner or operator of the gasoline dispensing site at the time of decommissioning, and
3. Submit a copy of the completed Decommissioning Checklist to the Department within 10 days after decommissioning of the stage II vapor recovery system is complete. Decommissioning of a stage II vapor recovery system is complete on the date and at the time when the gasoline dispensing site resumes sales of motor fuel following decommissioning.

J. A gasoline dispensing site with a stage II vapor recovery system that is decommissioned is exempt from the annual inspection and testing required under ~~R20-2-910~~ R3-7-910 but shall be subject to the initial inspection and testing prescribed under ~~R20-2-1005~~ R3-7-1005 within 60 days after decommissioning is complete.

K. The requirements in Article 10 apply to all gasoline dispensing sites at which stage II vapor recovery systems have been decommissioned.

L. The Department shall place out-of-service a gasoline dispensing site at which a stage II vapor recovery system is not decommissioned according to this Section until the gasoline dispensing site is decommissioned and impose civil penalties under A.R.S. § 41-2115 on the owner or operator of the gasoline dispensing site.

ARTICLE 10. STAGE I VAPOR RECOVERY

~~R20-2-1002~~ R3-7-1002. Exemptions

A. The owner or operator of a gasoline dispensing site at which the site's stage II vapor recovery system has not been decommissioned in accordance with ~~R20-2-913~~ R3-7-913 is exempt from the provisions of this Article but shall comply with the provisions of Article 9.

B. An owner or operator of a gasoline dispensing site with a gasoline throughput that does not exceed that specified in A.R.S. § 41-2132(B) may file for an exemption from this Article. To obtain an exemption, the owner or operator of the gasoline dispensing site shall submit an annual throughput report to the Department, using a form prescribed by the Department, no later than March 30 of each year and attest to the throughput during each month of the previous calendar year. If the owner or operator fails to file an annual throughput report timely or if the annual throughput report indicates the exemption limit specified in A.R.S. § 41-2132(B) was exceeded, the Department shall deem the exemption void.

~~R20-2-1003~~ R3-7-1003. Equipment and Installation

A. The Department shall reject a vapor recovery system or component from future installation if:

1. Federal regulations prohibit its use;
2. The vapor recovery system or component does not meet the manufacturer's specifications as certified by CARB using test methods approved in ~~R20-2-1001~~ R3-7-1001; or
3. The vapor recovery system or component fails greater than 20% of Department inspections for that system or component or the Department receives equivalent failure results from a vapor recovery registered service agency or from another jurisdiction's vapor recovery program, and the Department provides at least 30 days public notice of its proposed rejection.

B. The piping of a stage I vapor recovery system shall be designed and constructed as certified by CARB for that specific vapor recovery system. A person shall not alter a stage I vapor recovery system or component from the CARB-certified configuration without obtaining Department approval under ~~R20-2-1004~~ R3-7-1004. All components installed with the stage I vapor recovery system shall be certified by CARB or approved by the Department as required under A.R.S. § 41-2132.

C. If Department inspection or test data reveal a deficiency in a fitting, assembly, or component that cannot be permanently corrected, the deficient fitting, assembly, or component shall not be used in Arizona.

D. A stage I liquid or vapor spill containment bucket may have a plugged drain rather than a drain valve if a hand-operated pump is kept onsite for draining entrapped liquid.

E. A stage I vapor recovery system shall have pressure/vacuum (P/V) threaded valves on top of the vent lines for gasoline storage tanks.

~~R20-2-1004~~ R3-7-1004. Application Requirements and Process for Authority to Construct Plan Approval

A. A person shall not begin to construct a site requiring a stage I vapor recovery system or to make a major modification of an existing vapor recovery system before obtaining approval of an authority to construct plan application. A major modification is:
1. Adding or replacing a gasoline storage tank that is equipped with a Department approved stage I vapor recovery system;
2. Modifying, adding, or replacing underground vent piping; or
3. Conducting construction under ~~R20-2-913(H)(2)~~ R3-7-913(H)(2).

B. A person shall file with the Department a written change order, using a form provided by the Department, to obtain a modification of the approved vapor recovery system or component if a modification is needed after the Department issues an authority to construct plan approval. The person shall not make any modification until the Department approves the change order.

C. To obtain an authority to construct plan approval, a person shall submit to the Department, on a form provided by the Department, the following:
1. The name, address, and telephone number of any owner, operator, and proposed contractor, if known;
2. The name of the stage I vapor recovery system or component to be installed along with the CARB certification for that system or component;
3. The street address of the site where construction or major modification will take place with an estimated timetable for construction or modification;
4. A copy of a blueprint or scaled site plan for the vapor recovery system or component including all stage I vapor recovery equipment and stage I vapor recovery piping detail; and
5. The application fee specified under ~~R20-2-1006~~ R3-7-1006.

D. A person shall ensure that an installed or modified stage I vapor recovery system meets the following requirements:
1. Has CARB-certified product and vapor adaptors that prevent loosening or over-tightening of the stage I product and vapor adaptors;
2. Consists of a two-point stage I system with separate fill and vapor connection points. Coaxial stage I vapor recovery systems shall not be used;
3. Has a submerged fill pipe that has the fill pipe's highest point of discharge no more than six inches from the tank bottom;
4. Has no tank containing motor fuel other than gasoline connected to the vapor piping;
5. Uses cement that is resistant to deterioration from exposure to water, hydrocarbons, and alcohol to join all pipes;
6. Has tank vent pipes that extend at least 12 feet above the elevation of the stage I fill points;
7. Has tank vent pipes with a minimum inside diameter of:
   a. Two inches if the pipe is not manifolded, or
   b. Three inches from the point of manifold if the pipe is manifolded;
8. Has pressure vacuum vent valves that are attached to the tank vent pipes by a threaded connection;
9. If a gasoline tank is installed in an enclosed vault, has an emergency vent in addition to the pressure vacuum vent valve required under subsection (D)(8);
10. Has a one-eighth inch threaded tap on the vent pipe between six and eight feet above ground level;
11. Has risers into gasoline storage tanks that are capped with UL-approved caps;
12. Has lead wires for instrumentation that pass through a leak-tight grommet with a compression fitting suitable for exposure to gasoline vapors;
13. Has storage tank vent pipes and fill and vapor manhole tops that are painted a color that minimizes solar gain and has a reflective effectiveness of at least 55 percent. Reflectivity shall be determined by visually comparing the paint with paint-color cards obtained from a paint manufacturer that uses the Master Pallet Notation to specify the paint color (i.e. 58YY *88*/180 where the number in italics is the paint reflectivity). Examples of colors have a reflective effectiveness of at least 55 percent include, but are not limited to, yellow, light gray, aluminum, tan, red iron oxide, cream or pale blue, light green, glossy gray, light blue, light pink, light cream, white, silver, beige, tin plate, and mirrored finish. A manhole cover that is color coded for product identification is exempt from this subsection; and
14. Complies with other requirements outlined in the authority to construct permit.

E. After review and approval of the authority to construct plan, the Department shall issue the authority to construct plan approval and mail, fax, or e-mail the plan approval to the address indicated on the application.
1. A copy of the authority to construct plan approval shall be maintained at the facility during construction so that it is accessible for Department review.
2. Construction of a stage I vapor recovery system or component at a site not having an approved authority to construct plan, shall be stopped and no further installation work done until an authority to construct plan approval is obtained.
3. An authority to construct plan approval is not transferable.

F. The Department shall deny an authority to construct plan for any of the following reasons:
1. Providing incomplete, false, or misleading information; or
2. Failing to meet the requirements stated in this Chapter.

G. If excavation is involved, the Department may visually inspect the stage I underground piping of a gasoline dispensing site before the piping is buried for compliance with the authority to construct plan approval. The owner or operator of a vapor recovery system or

component shall give the Department notice by fax or e-mail at least two business days before the underground piping is complete to schedule the inspection. The Department may require the owner or operator to excavate all piping not inspected before burial if the owner or operator does not give the required two business days' notice.

H. After construction is complete, a person who has a valid authority to construct plan approval may dispense gasoline for up to 90 days before final approval if an initial inspection is scheduled according to ~~R20-2-1005~~ R3-7-1005.

I. An authority to construct plan approval expires one year from the date of issue or the completion of construction, whichever is sooner.

~~R20-2-1007~~ R3-7-1007. Operation

A. The owner or operator of a gasoline dispensing site with stage I vapor recovery shall not transfer or permit the transfer of gasoline into any gasoline storage tank subject to this Article unless stage I vapor recovery equipment is installed, maintained, operating, and being used according to the requirements of A.R.S. Title 41, Chapter 15, Article 7, and this Article.

B. The owner or operator of a gasoline dispensing site with stage I vapor recovery shall operate the stage I vapor recovery system and associated components in compliance with the CARB certification or Department approval under A.R.S. § 41-2132 for that system and these rules.

C. The owner or operator of a gasoline dispensing site with stage I vapor recovery located in area A shall inspect the system and its components at least once every seven days. The inspections shall include all stage I fittings and spill containment.

D. The owner or operator of a gasoline dispensing site shall immediately stop using a stage I vapor recovery system or component if one or more of the following system or component defects occur:

1. Tank vent pipes are not the proper height or are not properly capped with approved pressure and vacuum vent valves;
2. Vent pipes do not meet the CARB-specified paint color code specified in ~~R20-2-1004(D)(13)~~ R3-7-1004(D)(13);
3. The stage I vapor recovery system is not properly installed or maintained as evidenced by the following:
   a. Spill containment buckets are cracked, rusted, or not clean and empty of liquid; sidewalls are not attached or are otherwise improperly installed; and drain valves are non-functioning or do not seal;
   b. A fill adaptor collar or vapor poppet (drybreak) is loose, damaged, or has a fill or vapor cap that is not installed or is missing, broken, not securely attached, or missing gaskets;
   c. Coaxial stage I is not equipped with a functioning CARB-approved poppeted fill tube or the coaxial cap is not installed or is missing, broken, not securely attached, or missing gaskets; or
   d. A fill tube is missing, broken, or not sealed; has holes or damaged overfill prevention; or the high point of the bottom opening is more than six inches above the tank bottom;
4. The tank rise cap with instrument lead wire for an electronic monitoring system is not installed tightly or any other tank riser is not sealed and capped securely;
5. An above-ground storage tank does not display a permanently attached UL approval plaque; or
6. Any other component identified in the diagrams, exhibits, attachments, or other documents and certified by CARB or required by the authority to construct permit for that system is missing, disconnected, or malfunctioning.

E. For proper operation of a stage I system under A.R.S. § 41-2132(C)(4), the owner or operator of a gasoline dispensing site shall recover vapors during pump-out from a gasoline storage tank to a mobile transporter.

F. The owner or operator of a gasoline dispensing site shall ensure that any underground tightness test is conducted in a manner that prevents gasoline vapors being emitted to the atmosphere.

~~R20-2-1009~~ R3-7-1009. Recordkeeping and Reporting

A. The owner or operator of a gasoline dispensing site employing stage I vapor recovery in area A shall maintain records of the inspections done under ~~R20-2-1007~~ R3-7-1007.

B. The owner or operator of a gasoline dispensing site employing stage I vapor recovery in area A shall maintain a log and related records of all regularly scheduled maintenance and any repairs that have been made to stage I equipment.

C. The owner or operator of a gasoline dispensing site that is exempt under A.R.S. § 41-2132(B) from requirements to install and operate stage I vapor recovery equipment shall maintain a log at the site showing monthly throughputs. The owner or operator shall make the log available to the Department within 24 hours after request. The owner or operator shall submit to the Department the throughput information required under ~~R20-2-1002(B)~~ R3-7-1002(B). If any throughput requirement provided in A.R.S. § 412132(B) and this Article is exceeded for any month, the owner or operator shall notify the Department in writing within 30 days. The owner or operator shall, within six months after the end of the month the throughput is exceeded, install and operate a stage I vapor recovery system conforming to this Article. If a stage I vapor recovery system is already installed, the owner or operator shall have the system tested under ~~R20-2-1010~~ R3-7-1010 within 30 days after the end of the month in which the throughput was exceeded.

D. The owner or operator of a gasoline dispensing site that has decommissioned a stage II vapor recovery system under ~~R20-2-913~~ R3-7-913 shall maintain a copy of the decommissioning checklist required under ~~R20-2-913(I)~~ R3-7-913(I) for three years.

E. Except as specified in subsection (D), the owner or operator of a gasoline dispensing site shall keep all records required by this Article at the gasoline dispensing site for at least one year and shall make these records available to the Department upon request.

~~R20-2-1010~~ R3-7-1010. Annual Testing and Inspection

A. A person shall ensure that an annual inspection is conducted by a registered service representative on or before the annual inspection date. The annual inspection date is the last day of the month in which the last scheduled annual inspection was performed. A registered service agency shall notify the Department in writing at least 10 business days before an annual inspection of the time, date, and location of the inspection. The Department shall notify the registered service agency within five business days, by fax or e-mail, whether it approves the annual inspection date and time. The registered service agency shall not perform the annual inspection unless the Department approves the inspection date and time.

B. The annual inspection shall include the tests defined in ~~R20-2-1005(A)(1)~~ R3-7-1005(A)(1) through (3) that pertain to the specific vapor recovery system installed.

C. To verify proper operation of a vapor recovery system, the Department may perform or may require registered service representatives to perform additional tests under ~~R20-2-1005(A)(4)~~ R3-7-1005(A)(4) during the annual inspection and testing. The Department shall provide registered service agencies with six months' notice before requiring additional annual testing under ~~R20-2-1005(A)(4)~~ R3-7-1005(A)(4).

D. If there is a difference between a testing contractor's test results and the Department's test results, the Department's test results prevail.

E. If a site fails to pass any of the tests required under subsection (B), the affected vapor recovery system or component shall remain out-of-service until the vapor recovery system and component pass all tests required under subsection (B).

F. After an annual inspection begins, a person shall not make a repair to the vapor recovery system or component until the results of the inspection are recorded.
G. A person shall notify the Department when a vapor recovery system or component is repaired after failing an annual inspection. A registered service representative shall not conduct a reinspection until the Department approves the reinspection date and time.
H. A registered service representative shall perform all tests according to this Article and any other vapor recovery procedure the Department issues to registered service agencies.
I. A person that cancels an annual inspection shall notify the Department by calling the Department's designated telephone number at least one hour before the scheduled inspection and shall reschedule the test to be completed by the annual inspection date. A registered service agency shall notify the Department in writing at least 10 business days before an annual inspection of the time, date, and location of the inspection. The Department shall notify the registered service agency within five business days, by fax or e-mail, of its approval of the inspection date and time. The Department shall take enforcement action if a person does not comply with this subsection.
J. Gasoline dispensing sites located in area B are exempt from the annual inspection and testing requirements of this Section.

~~R20-2-1011~~ R3-7-1011. Compliance Inspections and Additional Test Methods
The Department shall not announce when it plans to conduct a compliance inspection of a stage I vapor recovery system or component. If results of a compliance inspection reveal a violation of A.R.S. Title 41, Chapter 15, or this Article, the Department shall require the vapor recovery system or component to undergo an appropriate test as specified in ~~R20-2-1010~~ R3-7-1010.

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Information **2262**
Rulemaking Guide **2263**

RULES AND RULEMAKING

Final Rulemaking, Notices of

1 A.A.C. 6 Governor's Regulatory Review Council 2265
3 A.A.C. 7 Department of Agriculture - Weights and Measures Services Division. 2280
9 A.A.C. 22 Arizona Health Care Cost Containment System - Administration. 2338

Final Exempt Rulemaking, Notices of

2 A.A.C. 20 Citizens Clean Elections Commission 2342
2 A.A.C. 20 Citizens Clean Elections Commission 2344

GOVERNOR'S OFFICE

Governor's Executive Orders

E.O. 2017-02: Internal Review of Administrative Rules; Moratorium to Promote Job Creation and Customer-Service-Oriented Agencies. 2346

Governor's Proclamations

Public Works Week 2348
Putting Investors First Month 2348
Rosie the Riveter Day 2349
Senior Corps Week 2349
Syringomyelia Awareness Month. 2350
Water Safety Month 2350
Women's Health Week. 2350

INDEXES

Register Index Ledger 2352
Rulemaking Action, Cumulative Index for 2017 2353
Other Notices and Public Records, Cumulative Index for 2017 2362

CALENDAR/DEADLINES

Rules Effective Dates Calendar 2364
Register Publishing Deadlines 2366

GOVERNOR'S REGULATORY REVIEW COUNCIL

Governor's Regulatory Review Council Deadlines. 2367

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~~5. An explanation of how the person is regulated by the fee rule; and~~
~~6. Other supporting information, such as statistical data or a description of persons likely to be adversely affected if the petition is denied, if applicable.~~

~~**B.** The petition shall be printed on one side, not exceed five double-spaced or space-and-a-half pages, and be in a clear and legible type-face from 9 to 12 point. The Chair may allow for a different format, based on a written explanation by the person of why a different format is necessary.~~

~~**C.** The Council shall notify the agency of the petition by 5:00 p.m. of the business day following receipt of the petition. Within 14 days of the date the petition is filed the agency shall file an original and one electronic copy of a response, in the form of a letter signed by the agency head, indicating whether the agency:~~
~~1. Agrees with the expiration date proposed by the petitioner, or~~
~~2. Disagrees with the expiration date proposed by the petitioner and providing any reasons for denying the petition.~~

~~**D.** The Council shall schedule the petition for a Council meeting as soon as practicable, but no later than 60 days after receipt of the agency's response under subsection (C).~~

~~**E.** Within seven calendar days after the Council's decision on the petition, the Chair shall send a letter to the affected agency head and the person filing the petition, advising them of the Council's decision, including the reasons for and date of the decision.~~

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 7. DEPARTMENT OF AGRICULTURE
WEIGHTS AND MEASURES SERVICES DIVISION

[R17-146]

PREAMBLE

1. Article, Part, or Section Affected (as applicable)	Rulemaking Action
R3-7-101	Amend
R3-7-102	Amend
R3-7-103	Amend
R3-7-104	Amend
R3-7-108	Amend
R3-7-109	Amend
R3-7-110	Amend
Table 1	Amend
R3-7-201	Amend
R3-7-203	Amend
R3-7-302	Amend
R3-7-402	Amend
R3-7-501	Amend
R3-7-502	Amend
R3-7-503	Amend
R3-7-504	Amend
R3-7-505	Amend
R3-7-506	Amend
R3-7-507	Amend
R3-7-601	Amend
R3-7-602	Amend
R3-7-603	Amend
R3-7-604	Amend
R3-7-701	Amend
R3-7-702	Amend
R3-7-703	Amend
R3-7-704	Amend
R3-7-705	Amend
R3-7-706	Repeal
R3-7-707	Amend
R3-7-708	Amend
R3-7-709	Repeal
R3-7-710	Amend
R3-7-711	Amend
R3-7-712	Amend
R3-7-713	Amend
R3-7-714	Amend
R3-7-715	Amend
R3-7-716	Amend
R3-7-717	Amend
R3-7-718	Amend

R3-7-749	Amend
R3-7-750	Amend
R3-7-751	Amend
R3-7-752	Amend
R3-7-753	Amend
R3-7-754	Amend
R3-7-755	Amend
R3-7-756	Amend
R3-7-757	Amend
R3-7-759	Amend
Table A	Amend
R3-7-760	Amend
R3-7-761	Amend
R3-7-762	Amend
Table 1	Amend
Table 2	Amend
R3-7-901	Amend
R3-7-902	Amend
R3-7-903	Amend
R3-7-904	Amend
R3-7-905	Amend
R3-7-907	Amend
R3-7-908	Amend
R3-7-909	Amend
R3-7-910	Amend
R3-7-911	Amend
R3-7-912	Amend
R3-7-913	Amend
R3-7-1001	Amend
R3-7-1002	Amend
R3-7-1003	Amend
R3-7-1004	Amend
R3-7-1005	Amend
R3-7-1007	Amend
R3-7-1008	Amend
R3-7-1009	Amend
R3-7-1010	Amend
R3-7-1011	Amend
R3-7-1012	Amend
R3-7-1013	Amend

2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. §§ 3-3414(A)(4), (D), 3-3433(M), 3-3512(E), (I), 3-3514, and 3-3515(F), (H)

Implementing statute: A.R.S. §§ 3-3416, 3-3431, 3-3433, 3-3434, 3-3436, 3-3437, 3-3451, 3-3453, 3-3454, 3-3471, 3-3472, 3-3474, 3-3491, 3-3492, 3-3493, 3-3494, 3-3495, 3-3498, 3-3512, and 3-3515

3. The effective date for the rules:

October 2, 2017

a. If the agency selected a date earlier than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Not applicable

b. If the agency selected a date later than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Not applicable

4. Citation to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 23 A.A.R. 982, April 28, 2017

Notice of Proposed Rulemaking: 23 A.A.R. 895, April 28, 2017

5. The agency's contact person who can answer questions about the rulemaking:

Name: Michelle Wilson

Address: Department of Agriculture
Weights and Measures Services Division
1688 W. Adams St.

Phoenix, AZ 85007
Telephone: (602) 771-4933
Fax: (623) 939-8586
E-mail: mwilson@azda.gov
Web site: https://dwm.az.gov/

6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:

The Department is updating the rules following the transfer of the Arizona Department of Weights and Measures to the Department of Agriculture, Weights and Measures Services Division and to conform to additional requirements passed in Laws 2015, Chapter 244 (HB2480) and Laws 2016, Chapter 232 (HB2171). Additionally, the Department has conducted a review of rules with interested stakeholders and is streamlining rules to reduce regulatory burden, provide consistency with current federal and industry standards, and the allow use of more modern technologies. Specific updates to the rules include:

• Correction of citations and other requirements based on the transfer of the Department of Weights and Measures to the Department of Agriculture;
• Incorporation of the latest handbooks that outline testing and device requirements;
• Modify definitions to ensure consistency with state statutes;
• Revise enforcement procedures to eliminate mandatory fine amounts and give the Division discretion to issue lower fine amounts;
• Require licensed service technicians to report discovery of consumer credit card skimming devices in retail fuel pumps;
• Reduce stringent criteria requiring grandfathered commercial devices that have been used within Arizona since 1975 to demonstrate that they have been continuously licensed;
• Implement provisions of HB2171 related to price posting behind sales counters and fuel quality requirements;
• Clarify and streamline price posting requirements for retailers;
• Streamline weighmaster licensing and weight ticket issuance to allow for electronic signatures and stamps, and to remove exam requirements for deputy public weighmasters;
• Update licensee exam requirements for registered service representatives and public weighmasters to better align with other divisions of the Department of Agriculture.
• Allow for optional third-party test administration at the discretion of the Division to better service the regulated community. The cost of third-party testing would be paid by the person wishing to utilize such services;
• Reduce classroom and examination requirements for vapor recovery testers from an annual requirement to once every three years;
• Update and streamline fuel-related rules for consumer postings, fuel quality requirements, dispenser equipment requirements:
  • Clarify that diesel fuel with 5 percent or less biodiesel meets diesel fuel standard ASTM D975;
  • Better align consumer postings on dispensers with federal standards and provide greater flexibility for labeling of No. 2 diesel;
  • Adopt current versions of ASTM International fuel standards;
  • Include standards for color-coding of tank covers if color-coding practice is used;
  • Clarify and remove oxygen content cap to match federal requirements allowing the sale of E15 outside the Cleaner-Burning Gasoline (CBG)-covered area and include applicable consumer posting requirements;
  • Update E85 standards to newer recognized ASTM standard for Ethanol Flex Fuel to be consistent with HB2171 and provide for appropriate labeling requirements of such fuel.
  • Provide greater flexibility in production of Ethanol Flex Fuel in the cleaner-burning gasoline area by allowing the use of conventional fuel for blending;
  • Specify requirements for sites that choose to label fuel as "premium diesel;"
  • Reorganize rules to include dispenser labeling requirements for all fuel types in the same rule;
  • Revised product transfer document (PTD) requirements to allow use of up to 5 percent biodiesel in diesel fuel that meets ASTM standards without labeling specific biodiesel quantities per HB2171;
  • Include nozzle cover color requirements for diesel and ethanol flex fuel per HB2171;
  • Include nozzle size and dispenser filter requirements per nationally-recognized standards;
  • Streamline the requirements for production, supply, and blending of biofuels to reduce strict State oversite and better reflect requirements for these products as established on a national level. As such, submittal of Quality Assurance/Quality Control (QA/QC) plans for approval, monthly submittal of specified test results and blend volumes, specific testing frequencies and sample retention, and other overly-burdensome requirements have been removed. These entities will have more flexibility to meet requirements for implementation of their own QA/QC plan as required under A.R.S. § 3-3433(M);
• Removes the deadline for submittal of alternate decommissioning plans to allow flexibility to gas stations that are required to remove stage II vapor recovery equipment by September 30, 2018;
• Other minor clarifications and updates throughout.

An exemption from Executive Orders 2016-03 and 2017-02 was provided for this rulemaking by Hunter Moore, Natural Resources Policy Advisor in the Governor's office, in e-mails dated June 9, 2016, and February 20, 2017, respectively.

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

The Department did not review and does not intend to rely on a study in its evaluation of or justification for the rulemaking.

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

Not applicable

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

The majority of the changes in the rule relate to streamlining and clarification of the rules, which will increase the ease of understanding and compliance for the regulated community, while continuing protections for consumers and air quality. The rule includes many changes that will reduce the administrative costs on the regulated community, such as:

- Reduction in paperwork and regulatory submittals for biofuels producers and blenders;
- Clarification of price posting requirements;
- Update of weighmaster requirements to allow use of modern technology such as electronic signatures;
- Reduction in travel and employee costs for testing of deputy public weighmasters; and
- Reduction in costs to business and the Department for issuance of civil penalties on minor offenses with no direct impact to consumers or air quality.

The rule also includes several updates to provide additional protection to consumers including use of color-coded nozzle covers, diesel nozzle size requirements, dispenser filter and labeling requirements. The costs of these additional protections are minimal and will most likely impact few motor fuel dispensing sites as many of these requirements are already standard practice within the industry.

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

Two minor changes were made to clarify rules. In response to a comment received, R3-7-717(C) was updated to provide allowable exceptions to fuel dispenser requirements to accommodate rare instances when a fuel dispenser was not manufactured to utilize fuel filters. R3-7-718(A)(2) was updated to require annual biofuel volumes to be reported to the Department instead of monthly biofuel volumes. Additionally, minor editorial changes have been made.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to comments:

The Department received one written comment from members of the regulated community and no comments from the public during the public comment period. Six members of the regulated community and interested stakeholders attended the oral proceeding on May 31, 2017, but no written or oral comments were received during the oral proceeding. The public comment received stated that there are a handful of motor fuel dispensing sites that do not currently utilize fuel filters due to site-specific configurations and requested R3-7-717(C) be modified to clarify that the use of fuel filters is not mandated at these sites.

12. All agencies shall list any other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

A.R.S. § 3-3414(D) requires the Associate Director of the Weights and Measures Services Division to consult with the Director of the Department of Environmental Quality when making rules relating to quality standards for motor fuel, including oxygenated fuels. A.R.S. § 3-3433(C) also requires consultation regarding standards and test methods for motor fuels. This rulemaking establishes the standards relating to motor fuels. The required consultation occurred.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The licenses listed in Table 1 are general permits consistent with A.R.S. § 41-1037 because they are issued to qualified individuals or entities to conduct activities that are substantially similar in nature.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

This rulemaking is consistent with the federal law. The cleaner-burning gasoline and vapor recovery air quality programs are regulated at the federal level under the Clean Air Act and required under State Implementation Plans in effect for the region.

In November 2010 and January 2011, the Environmental Protection Agency issued partial waivers allowing the use of gasoline containing 10 to 15 percent by volume of ethanol (commonly referred to as E15). The former rules prohibit the sale of gasoline containing greater than 4.0 weight percent oxygen or 10 volume percent ethanol. The Division is removing these limitations and clarifying that E15 may be sold in areas outside of the cleaner-burning gasoline (CBG)-covered area. The CBG covered area will continue to require gasoline containing 10 volume percent ethanol in the winter and no more than 10 volume percent ethanol in the summer as required by the statutes and rules that are part of the federally-enforced State Implementation Plan approved by EPA.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

The following materials are incorporated at R3-7-101:

United States Division of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 44, *Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices*, 2017 edition.

United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 130, *Uniform Laws and Regulations*, 2017 edition.

United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 133, *Checking The Net Contents of Packaged Goods*, 2017 edition.

The following materials are incorporated at R3-7-702:

Government Publishing Office, 16 CFR 306 - Automotive Fuel Ratings, Certification and Posting, January 14, 2016 Edition.

American Petroleum Institute, API Recommended Practice 1637 (API RP 1637), "Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Gasoline Dispensing Facilities and Distribution Terminals," published July 2006, Reaffirmed May 2012.

ASTM International, ASTM Standard D975, 2016a (ASTM D975- 16a), "Standard Specification for Diesel Fuel Oils," published 2016.

ASTM International, ASTM Standard D4806, 2016a (ASTM D4806- 16a), "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel," published 2016.

ASTM International, ASTM Standard D4814, 2016ee1 (ASTM D4814- 16ee1), "Standard Specification for Automotive Spark-Ignition Engine Fuel," published ~~2016~~.

United States Environmental Protection Agency, Waiver Requests under Section 211(f) of the Clean Air Act, August 22, 1995.

ASTM International, ASTM Standard D5798, 2015 (ASTM D5798- 15), "Standard Specification for Ethanol Fuel Blends for Flexible-Fuel Automotive Spark-Ignition Engines," published 2015.

ASTM International, ASTM Standard D6751, 2015ce1 (ASTM D6751- 15ce1), "Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels," published 2015.

California Air Resources Board, "California Procedures for Evaluating Alternative Specifications for Phase 2 Reformulated Gasoline Using the California Predictive Model," adopted April 20, 1995.

Government Publishing Office, the Federal Complex Model contained in 40 CFR 80.45, January 1, 1999.

California Air Resources Board, The California Reformulated Gasoline Regulations, Title 13, California Code of Regulations, Section 2266.5 (Requirements Pertaining to California Reformulated Gasoline Blendstock for Oxygen Blending (CARBOB) and Downstream Blending), as of April 9, 2005.

California Air Resources Board, Procedures for Using the California Model for California Reformulated Gasoline Blendstocks for Oxygenate Blending (CARBOB), adopted April 25, 2001.

ASTM International, ASTM Standard D7467, 2015ce1 (ASTM D7467- 15ce1), "Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20)," published 2015.

SAE International, SAE J285, "Dispenser Nozzle Spouts for Liquid Fuels Intended for Use with Spark Ignition and Compression Ignition Engines," published May 5, 2012.

The following materials are incorporated at R3-7-714:

Government Publishing Office, 40 CFR 80.1501, July 18, 2014.

The following materials are incorporated at R3-7-754:

American Petroleum Institute, API Manual of Petroleum Measurement Standards, Chapters 3.1A (1st edition, December 1994) and 3.1B (1st edition, April 1992).

The following materials are incorporated at R3-7-755:

Government Publishing Office, 40 CFR 80.69(a)(7), July 1, 1996.

Government Publishing Office 40 CFR 80.69(e)(2), July 1, 1996.

The following materials are incorporated at R3-7-901:

Environmental Protection Agency, Appendix J.5 of Technical Guidance – Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, Vol. II: Appendices, November 1991 edition (EPA450/391022b).

San Diego Air Pollution Control District, *San Diego County Air Pollution Control District Test Procedure TP-96-1*, March 1996.

California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.4, Determination of Dynamic Pressure Performance of Vapor Recovery Systems of Dispensing Facilities, April 12, 1996.

California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.5, Determination (by Volume Meter) of Air to Liquid Volume Ratio of Vapor Recovery Systems of Dispensing Facilities, April 12, 1996.

California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.2C, Determination of Spillage of Phase II Vapor Recovery Systems of Dispensing Facilities, April 12, 1996.

California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.6, Determination of Liquid Removal of Phase II Vapor Recovery Systems of Dispensing Facilities, April 12, 1996.

California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.2B, Determination of Flow Versus Pressure for Equipment in Phase II Vapor Recovery Systems of Dispensing Facilities, April 12, 1996.

California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.1B, Static Torque of Rotatable Phase 1 Adaptors, October 8, 2003.

California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.1C, Leak Rate of Drop Tube/Drain Valve Assembly, October 8, 2003.

California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.1E, Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves, October 8, 2003.

The following materials are incorporated at R3-7-1001:

California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.1B, Static Torque of Rotatable Phase 1 Adaptors, October 8, 2003.

California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.1C, Leak Rate of Drop Tube/Drain Valve Assembly, October 8, 2003.

California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.1D, Leak Rate of Drop Tube Overfill Protection Devices and Spill Container Drain Valves, October 8, 2003.

California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.1E, Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves, October 8, 2003.

California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.3, Determination of 2 Inch WC Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities, July 26, 2012.

California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.3C, Determination of Vapor Piping Connections to Underground Gasoline Storage Tanks (Tie-Tank Test), March 17, 1999.

14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

None of the rules were previously made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 3. AGRICULTURE

CHAPTER 7. DEPARTMENT OF AGRICULTURE WEIGHTS AND MEASURES SERVICES DIVISION

ARTICLE 1. ADMINISTRATION AND PROCEDURES

Section
R3-7-101. Definitions
R3-7-102. Metrology Laboratory Testing and Calibration Fees
R3-7-103. Licensing and Fees
R3-7-104. Administrative Enforcement Action
R3-7-108. Time-frames for Licenses, Renewals, and Authorities to Construct
R3-7-109. Administrative Hearing Procedures
R3-7-110. Motion for Rehearing or Review
Table 1. Time-frames (~~in~~ calendar days)

ARTICLE 2. COMMERCIAL DEVICES

Section
R3-7-201. Licensing Process
R3-7-203. Approval, Installation, and Sale of Devices
R3-7-204. Livestock and Vehicle Scale Installation

ARTICLE 3. PACKAGING, LABELING, AND METHOD OF SALE

Section
R3-7-302. Handbook 130 and Handbook 133

ARTICLE 4. PRICE VERIFICATION AND PRICE POSTING

Section
R3-7-402. Price-posting Inspection Procedure and Violation Exceptions

ARTICLE 5. PUBLIC WEIGHMASTERS

Section
R3-7-501. Qualifications; License and Renewal Application Process
R3-7-502. Duties
R3-7-503. Grounds for Denying License or Renewal; and Disciplinary Action
R3-7-504. Scales and Vehicle Weighing

R3-7-505. Weight Certificates
R3-7-506. Seal of Authority
R3-7-507. Prohibited Acts

ARTICLE 6. REGISTERED SERVICE AGENCIES AND REPRESENTATIVES

Section
R3-7-601. Qualifications; License and Renewal Application Process
R3-7-602. Duties
R3-7-603. Grounds for Denying License or Renewal; Disciplinary Action; and Certification of Standards and Testing Equipment
R3-7-604. Prohibited Acts

ARTICLE 7. MOTOR FUELS AND PETROLEUM PRODUCTS

Section
R3-7-701. Definitions
R3-7-702. Material Incorporated by Reference
R3-7-703. Volumetric Inspection of Motor Fuels and Motor Fuel Dispensers
R3-7-704. Motor Fuel Dispensing Site Price and Grade Posting on External Signs
R3-7-705. ~~Price, Octane, and Lead Substitute Notification on Dispensers~~ Retail Dispenser Price Notification and Labeling
R3-7-706. ~~Unattended Retail Dispensers~~ Repealed
R3-7-707. Product Transfer Documentation and Record Retention for Motor Fuel other than Arizona CBG and AZRBOB
R3-7-708. Gasoline ~~Ethanol~~ Oxygenate Blends
R3-7-709. ~~Retail Oxygenated Fuel Labeling~~ Repealed
R3-7-710. Blending Requirements
R3-7-711. ~~Alcohol-oxygenated~~ Gasoline-Alcohol Blend Storage Tank Requirements
R3-7-712. Water in ~~Service Station~~ Motor Fuel Dispensing Site Storage Tanks
R3-7-713. Motor Fuel Storage Tank Labeling
R3-7-714. Additional Requirements for Motor Fuels ~~Other than Arizona CBG~~
R3-7-715. Motor Fuel ~~Quality~~ Testing Methods and Requirements
R3-7-716. Sampling and Access to Records
R3-7-717. ~~Hold-open Latch Exception~~ Motor Fuel Dispensing Equipment
R3-7-718. Additional Requirements for the Production, Transport, Distribution, and Sale of Biofuels and Biofuel Blends
R3-7-749. Definitions Applicable to Arizona CBG and AZRBOB
R3-7-750. Registration Relating to Arizona CBG or AZRBOB
R3-7-751. Arizona CBG Requirements
R3-7-752. General Requirements for Registered Suppliers
R3-7-753. General Requirements for Pipelines and Third-party Terminals
R3-7-754. Downstream Blending Exceptions for Transmix
R3-7-755. Additional Requirements for AZRBOB and Downstream Oxygenate Blending
R3-7-756. Downstream Blending of Arizona CBG with Nonoxygenate Blendstocks
R3-7-757. Product Transfer Documentation; Records Retention
R3-7-759. Testing Methodologies
Table A. Arizona ~~Department of~~ Weights and Measures Services Division Test Methods for Arizona CBG and AZRBOB
R3-7-760. Compliance Surveys
R3-7-761. Liability for Noncompliant Arizona CBG or AZRBOB
R3-7-762. Penalties
Table 1. Type 1 Arizona CBG Standards
Table 2. Type 2 Arizona CBG Standards

ARTICLE 9. GASOLINE VAPOR CONTROL FOR SITES WITH BOTH STAGE I AND STAGE II VAPOR RECOVERY SYSTEMS

Section
R3-7-901. Material Incorporated by Reference
R3-7-902. Exemptions
R3-7-903. Equipment and Installation
R3-7-904. Application Requirements and Process for Authority to Construct Plan Approval
R3-7-905. Initial Inspection and Testing
R3-7-906. Fee
R3-7-907. Operation
R3-7-908. Training and Public Education
R3-7-909. Recordkeeping and Reporting
R3-7-910. Annual Inspection and Testing
R3-7-911. Compliance Inspections
R3-7-912. Enforcement
R3-7-913. State II Decommissioning

ARTICLE 10. STAGE I VAPOR RECOVERY SYSTEMS

Section
R3-7-1001. Material Incorporated by Reference
R3-7-1002. Exemptions
R3-7-1003. Equipment and Installation
R3-7-1004. Application Requirements and Process for Authority to Construct Plan Approval
R3-7-1005. Initial Inspection and Testing
R3-7-1007. Operation
R3-7-1008. Training and Public Education
R3-7-1009. Recordkeeping and Reporting
R3-7-1010. Annual Inspection and Testing
R3-7-1011. Compliance Inspection
R3-7-1012. Enforcement
R3-7-1013. Stage II Vapor Recovery

ARTICLE 1. ADMINISTRATION AND PROCEDURES

R3-7-101. Definitions

The definitions in A.R.S. §§ ~~41-2051~~ 3-3401, ~~41-2065~~ 3-3414, ~~41-2085~~ 3-3436, ~~41-2121~~, and ~~41-2131~~ 3-3511 and the following definitions apply to this Chapter:

1. "ADEQ" means the Arizona Department of Environmental Quality.
2. "Administrative order" means a corrective action notice that the ~~Department~~ Division issues for a violation of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Chapter, that orders a person to:
   a. Remove from use or sale, or dispose of, a commercial device, commodity, or liquid fuel;
   b. Stop selling a commodity or liquid fuel until the person provides documentation to the ~~Department~~ Division that the weight, measure, fuel quality, or price posting complies with the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter;
   c. Stop using a commercial device, commodity, liquid fuel, vapor recovery system, or vapor recovery system component, until the person provides documentation to the ~~Department~~ Division that the weight, measure, fuel, vapor recovery system, or component complies with the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter;
   d. Stop performing weighmaster, deputy public weighmaster, registered service agency, or registered service representative licensed duties until the person provides documentation to the ~~Department~~ Division that the person is complying with the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter;
   e. ~~Maintain~~ Comply with labeling, policies, and cash register indicator displays according to A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter;
   f. Stop constructing or modifying a vapor recovery system until the person complies with A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter;
   g. Excavate a vapor recovery site according to R3-7-104(L); or
   h. Comply with scheduling a test according to R3-7-104(L)~~;~~. ~~or~~
   ~~i. Retake a competency examination under A.R.S. § 41-2094.~~
3. "Application" means, for purposes of R3-7-108, forms ~~designated as applications~~ and all documents and additional information the ~~Department~~ Division requires an applicant to submit ~~with an application~~ when applying for a license.
4. "ASTM" means American Society for Testing and Materials.
5. "Area A" has the same meaning as in A.R.S. § 49-541.
6. "Area B" has the same meaning as in A.R.S. § 49-541.
7. "CARB" means the California Air Resources Board.
8. "CARB certified" means, with respect to a vapor recovery system, that the system has been certified in an executive order of the CARB.
9. "Certified prover" means a calibrated device, traceable to the National Institute of Standards and Technology, used for measuring liquid volume.
10. "Completion of construction" means the point when a gasoline dispensing site is placed into or returned into service following installation or modification of an approved vapor recovery system.
11. "Construction commenced" means the point in time when construction of a gasoline dispensing site begins:
    a. At a location where there was not one previously;
    b. To replace all gasoline storage tanks; or
    c. To replace, repair, or modify at least 75% of the facility's gasoline dispensing equipment.
12. "EPA" means the United States Environmental Protection Agency.
13. "Gasoline vapors" means volatile organic compounds in a gaseous state.

14. "Handbook 44" means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 44, *Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices*, Government ~~Printing~~ Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov (~~2010~~ 2017 edition), incorporated by reference and on file with the ~~Department~~ Division. This incorporation by reference contains no future editions or amendments.

~~15. "Handbook 112" means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 112, *Examination Procedure Outlines for Commercial Weighing and Measuring Devices*, Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov (2002 edition), incorporated by reference and on file with the Department. This incorporation by reference contains no future editions or amendments.~~

~~16.~~15. "Handbook 130" means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 130, *Uniform Laws and Regulations*, Government ~~Printing~~ Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov (~~2009~~ 2017 edition), incorporated by reference and on file with the ~~Department~~ Division. This incorporation by reference contains no future editions or amendments.

~~17.~~16. "Handbook 133" means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 133, *Checking The Net Contents of Packaged Goods*, Government ~~Printing~~ Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov (January ~~2005~~ 2017 edition), incorporated by reference and on file with the ~~Department~~ Division. This incorporation by reference contains no future editions ~~and~~ or amendments.

~~18. "NCWM" means the National Conference on Weights and Measures.~~

~~19.~~17. "Malfunction" means any failure of gasoline vapor recovery equipment to operate in the normal and usual manner.

~~20.~~18. "Modification" means adding to, replacing, or upgrading a site's stage II vapor recovery system, but does not include the repair or replacement of like parts.

~~21.~~19. "Monthly throughput" means the total amount of gasoline transferred into or dispensed from a gasoline dispensing site during one calendar month.

~~22.~~20. "Motor vehicle" means any vehicle equipped with a spark-ignited internal combustion engine, except vehicles that run on or are guided by rails, and vehicles that are designed primarily for travel through air or water.

21. "NCWM" means the National Conference on Weights and Measures.

~~23.~~22. "NIST" means the National Institute of Standards and Technology.

~~24.~~23. "Operator" means a person in control of, or having responsibility for, the daily operation of a gasoline dispensing site.

~~25.~~24. "Out-of-service tag" means a red rejection tag that signifies ~~that~~ a commercial device does not meet the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, or this Chapter.

~~26.~~25. "Person" as defined in A.R.S. § ~~41-2051~~ 3-3401, means an owner or operator of a commercial device or vapor recovery system, retail seller, wholesaler, registered supplier, pipeline distributor, packer, manufacturer, licensee, transporter, or consignee.

~~27.~~26. "Placed in service" means the certification by a registered service agency or representative that a commercial device meets the requirements of A.R.S. Title 3, Chapter 19, Handbook 44, and this Chapter, and may be used, unless the ~~Department~~ Division orders otherwise.

~~28.~~27. "Placed-in-service report" means the form that a registered service representative completes and submits to the ~~Department~~ Division after placing a commercial device in service.

~~29.~~28. "Product transfer document" means the bill of lading, loading ticket, manifest, delivery receipt, invoice, or other customarily used documentation to denote delivery information for motor fuel.

~~30.~~29. "Retail" means the sale of a commodity to a consumer for profit by someone in the business of selling the commodity.

~~31.~~30. "Seal of authority" means a stamp or press of the ~~Department~~ Division's official mark, issued to a public weighmaster, certifying the weighmaster's authority to issue weight certificates.

31. "Service Counter" means a display staffed by a sales associate and requires a customer to receive assistance in order to purchase a product.

32. "Seizure" means taking into physical possession, or otherwise securing for evidence, a commodity, liquid fuel, weight, measure, commercial device, or component of a device by the ~~Department~~ Division.

33. "Stop-sale, stop-use tag" means a blue tag or blue tape that signifies that a commercial device, including a vapor recovery system or vapor recovery component, or a commodity or liquid fuel, does not meet the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, Handbook 130, Handbook 133, CARB Executive Orders, or this Chapter.

34. "Third-party registered service agency" means a registered service agency that performs work under contract for any business or company.

35. "Underground storage tank" means a tank as described in A.R.S. § 491001~~(18)~~.

36. "Unit" means a quantity adopted as a standard of measurement.

37. "Vapor recovery registered service representative ~~No. 1~~" means an individual to whom the ~~Department~~ Division has issued a license authorizing the individual to conduct all vapor-recovery tests required under A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19 or this Chapter including annual vapor-recovery tests.

~~38. "Vapor recovery registered service representative No. 2" means an individual to whom the Department has issued a license authorizing the individual to conduct the specific vapor recovery tests necessary to determine whether equipment on which the individual performed maintenance or repairs is operating properly.~~

~~39.~~38. "Warning tag" means a yellow tag that signifies a commercial device, vapor recovery system, or vapor recovery component does not comply with A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, CARB Executive Orders, or this Chapter.

~~40.~~39. "Weight certificate" means a document, issued by a public weighmaster in a form approved by the ~~Department~~ Division, ~~that~~ which certifies the accuracy of the weight of the commodity measured.

R3-7-102. Metrology Laboratory Testing and Calibration Fees

A. For all services of the ~~Department~~ Division's Metrology Laboratory, the ~~Department~~ Division shall charge $110 per hour with a minimum charge of $50.

B. In addition to the fee in subsection (A), the ~~Department~~ Division shall charge for travel and per diem at the rates established under A.R.S. §§ 38-623(D) and 38-624(C) for tests or calibrations conducted outside the Metrology Laboratory.

R3-7-103. Licensing and Fees

A. A license is effective on the first day of the month following the date that the license application is filed with the ~~Department~~ Division. If an application is filed on the first of a month and is complete and accurate, the license is effective on the first day of that month.

B. A payment is delinquent if not received or postmarked on or before ~~the Department does not receive the payment by~~ the due date. The ~~Department~~ Division shall not process a license or renewal application for which payment is delinquent.

~~**C.** The Department shall prorate a license renewal fee if the licensee's first renewal is fewer than 12 months from the date that license is issued.~~

~~**D.** The Department shall issue a full refund to a licensee for a license renewal fee only if the licensee provides written notice to the Department before the renewal fee due date that the renewal is not needed.~~

C. If the Division receives payment for a license that excludes the payment of applicable late fees or past due civil penalties, the Division shall apply the license fee payment to the licensee's account and issue a separate invoice for the additional monies owed to the Division. The license will not be issued by the Division until all fees due are paid.

R3-7-104. Administrative Enforcement Action

A. The ~~Department~~ Division shall take progressive enforcement action for a violation of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, CARB Executive Orders, Handbook 44, Handbook 130, Handbook 133, or this Chapter.

B. The ~~Department~~ Division shall ~~provide~~ make available a copy of its inspection report to the person who owns or operates a location that the ~~Department~~ Division inspects. The report shall include the inspection results~~,~~ and violations~~, and enforcement action~~. The Division shall send a copy of the inspection report to the owner of a location by e-mail if the owner has provided an e-mail address to the Division. Inspection results and violations shall be posted on the Division website.

C. The person who owns or operates a location inspected by the ~~Department~~ Division may request a hearing under R3-7-109 to dispute the inspection results, violation, or enforcement action.

D. The ~~Department~~ Division shall suspend, revoke, or refuse to renew any license if the licensee does not comply with an enforcement action imposed under this Section.

E. A maximum civil penalty may be doubled as stated in A.R.S. § ~~41-2115(B)~~ 3-3475(C).

F. Commercial device.

1. The ~~Department~~ Division ~~shall~~ may place out of service an unlicensed commercial device that it determines has been in use for more than 30 days.
2. The ~~Department~~ Division ~~shall~~ may confiscate a commercial device when a person violates an administrative order related to that commercial device, or removes a warning tag, out-of-service tag, or stop-sale, stop-use tag issued to that commercial device without ~~Department~~ Division authority.
3. The Division may condemn and confiscate a weight, measure, or other commercial device that the Division determines is incorrect and not capable of compliance with Handbook 44.
~~3.~~4. The ~~Department~~ Division shall issue an out-of-service tag or a stop-sale, stop-use tag if a commercial device is not in compliance with the requirements in ~~Handbook 44~~ A.R.S. Title 3 Chapter 19, Handbook 44 or this Chapter and the lack of compliance creates a situation favorable to the person who owns or operates the commercial device.
   a. A person shall not use a commercial device that has an out-of-service tag until the person repairs the commercial device.
   b. A person shall not sell or use a commercial device that has a stop-sale, stop-use tag until the commercial device meets the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, and this Chapter.
~~4.~~5. The ~~Department~~ Division shall issue a warning tag when a commercial device is not in compliance with the requirements in ~~Handbook 44~~ A.R.S. Title 3, Chapter 19, Handbook 44, or this Chapter and the lack of compliance creates a situation favorable to the ~~public~~ consumer. The ~~Department~~ Division shall issue an out-of-service tag if the commercial device is not repaired by the deadline on the warning tag. A person shall not use a commercial device after the period specified on the warning tag for repair unless the commercial device complies with A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, and this Chapter.
~~5.~~6. The ~~Department~~ Division may ~~shall~~ issue an out-of-service tag if a commercial device does not have a non-tampering seal affixed.
~~6.~~7. The ~~Department~~ Division shall issue an out-of-service tag if a ~~Department~~ Division inspector cannot conduct an inspection of a commercial device because of malfunction, abnormal performance, or a potential safety risk that the person who owns or operates the commercial device does not correct within 30 minutes of the attempted inspection.
~~7.~~8. The ~~Department~~ Division shall issue an out-of-service tag if a commercial device cannot begin weighing, measuring, metering, or counting at zero as prescribed in Handbook 44.

~~8.~~ 9. The ~~Department~~ Division shall issue a warning tag if the manufacturer's plate on a commercial device does not contain the information required by Handbook 44, is missing, or is unreadable. The ~~Department~~ Division shall issue an out-of-service tag if the person who owns or operates a commercial device does not obtain a compliant manufacturer's plate by the 30-day deadline imposed on the warning tag.

~~9.~~ 10. The ~~Department~~ Division shall issue a warning tag to a person who did not construct a large-scale approach according to Handbook 44. The ~~Department~~ Division shall issue a stop-sale, stop-use tag if the large-scale approach is not made compliant by the deadline imposed on the warning tag.

~~10.~~ 11. In addition to any enforcement action under subsections (F)(1) through ~~(9)~~ (10):

a. If the ~~Department~~ Division finds during an inspection that a commercial device does not comply with the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Chapter and the lack of compliance favors the owner or operator of the commercial device:
   i. The ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $300 ~~civil penalty~~ on the person who owns or operates the commercial device; and
   ii. The ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $500 ~~civil penalty~~ on the person who owns or operates the commercial device for each reinspection until the commercial device is in compliance.

b. If the ~~Department~~ Division finds during an inspection that a person who weighs a product on a commercial device violates Handbook 44 or does not post rates according to Handbook 44 or this Chapter:
   i. The ~~Department~~ Division ~~shall~~ may issue an administrative order to the person at the conclusion of the inspection and impose a civil penalty up to $300 ~~civil penalty~~; and
   ii. The ~~Department~~ Division ~~shall~~ may issue an administrative order to the person and impose a civil penalty up to $500 ~~civil penalty~~ at each reinspection until the person complies with Handbook 44 and this Chapter.

G. Public and deputy public weighmaster.

1. The ~~Department~~ Division ~~shall~~ may issue an administrative order if a public weighmaster's:
   a. Weigh tickets are not in numbered sequence or are missing,
   b. The seal, ~~Seal or~~ press, or electronic seal is not readable, or
   c. Records are not maintained according to R3-7-505.
2. The ~~Department~~ Division ~~shall~~ may issue an administrative order and impose a civil penalty up to $500 ~~civil penalty~~ on a public weighmaster if:
   a. The public weighmaster's weigh tickets contain inaccurate information,
   b. The public weighmaster violates an administrative order, ~~or~~
   c. The public weighmaster misuses a seal or press or has an unauthorized seal or press~~.~~; or
   d. The public weighmaster misuses an electronic seal or signature.
3. The ~~Department~~ Division shall confiscate a seal or press if a public weighmaster violates an administrative order issued to the public weighmaster.
4. The ~~Department~~ Division shall suspend, revoke, or refuse to renew a license if a public weighmaster does not comply with an enforcement action under this Section.
5. The ~~Department~~ Division shall issue an administrative order and a civil penalty up to $300 to a person who performs public weighmaster duties without a license.
6. If a public ~~Weighmaster~~ weighmaster permits an unlicensed person to perform deputy ~~Weighmaster~~ public weighmaster duties, the ~~Department~~ Division ~~shall~~ may:
   a. Impose a civil penalty up to $300 ~~civil penalty~~ on the public weighmaster for the first time the public weighmaster permits an unlicensed person to perform deputy public weighmaster duties;
   b. Impose a civil penalty up to $500 ~~civil penalty~~ on a public weighmaster for the second time the public weighmaster permits an unlicensed person to perform deputy public weighmaster duties; and
   c. Confiscate the public weighmaster's records, equipment, and devices if the public weighmaster permits an unlicensed person to perform deputy public weighmaster duties more than twice.

H. ~~Package~~ Packaging.

1. The ~~Department~~ Division shall issue an administrative order to an owner or an employee of the owner where a package inspection is held if a package is not in compliance with a requirement in Handbook 130 or Handbook 133. The person to whom the administrative order is issued shall correct the package violation by:
   a. Returning the package to the packer or manufacturer,
   b. Labeling the package to reflect its correct quantity,
   c. Placing a notice on the package that states the violation and pricing the package to reflect its correct quantity, or
   d. Repackaging the commodity so the package contains the quantity represented.
2. In addition to an administrative order, the ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $500 ~~civil penalty~~ per lot on a person who violates a requirement in Handbook 130 or Handbook 133.

I. Price verification.

1. The initial inspection of a retail location for price verification is for educational purposes and an enforcement action will not be imposed for a violation identified during the initial inspection.
2. The ~~Department~~ Division shall issue a stop-sale, stop-use tag to a person who fails a price verification ~~reinspection~~ inspection if the violation cannot be corrected within 30 minutes of the ~~Department~~ Division completing the ~~reinspection~~ inspection.
   a. The ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $100 ~~civil penalty~~ per violation on a person who fails a reinspection if the ~~Department~~ Division finds more than one item at more than its posted price.
   b. The ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $200 ~~civil penalty~~ per violation on a person who fails a second reinspection. The ~~Department~~ Division shall increase the per violation civil penalty imposed by $100 for each subsequent reinspection until the violation is corrected.

3. If the ~~Department~~ Division receives and substantiates a complaint about a person against whom the ~~Department~~ Division took an administrative enforcement action under subsection (I)(2) within the 60 days before the date of the complaint, the ~~Department~~ Division shall issue a stop-sale, stop-use tag and impose a civil penalty that is $100 more than the civil penalty that the ~~Department~~ Division previously imposed against this person.
4. The ~~Department~~ Division ~~shall~~ may issue a warning tag to a person who does not have a written price-error policy. The ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $500 ~~civil penalty~~ if the person does not have a written price-error policy upon reinspection.
5. The ~~Department~~ Division shall issue a warning tag to a person who does not have a price display visible to the ~~public~~ consumer at a check-out location. The ~~Department~~ Division shall issue an out-of-service tag if the person does not have a price display visible to the ~~public~~ consumer at a check-out location upon reinspection.

J. Price posting.
1. The initial inspection of a retail location for price posting is for educational purposes and an enforcement action will not be imposed for a violation identified during the initial inspection.
2. The ~~Department~~ Division shall issue a stop-sale, stop-use tag to a person who fails a price posting ~~reinspection~~ inspection if the violation cannot be corrected within 30 minutes of the ~~Department~~ Division completing the ~~reinspection~~ inspection.
3. The ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $50 ~~civil penalty~~ for each inspected lot not priced if a person fails a reinspection with a score of less than 96 percent.
4. The ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $100 ~~civil penalty~~ for each inspected lot not priced if a person fails a second reinspection.
5. If the ~~Department~~ Division receives and substantiates a complaint about a person against whom the ~~Department~~ Division took an administrative enforcement action under subsection (J)(2) within the 60 days before the date of the complaint, the ~~Department~~ Division shall issue a stop-sale, stop-use tag and impose a civil penalty that is $100 more than the civil penalty that the ~~Department~~ Division previously imposed against this person.

K. Fuel quality and labeling.
1. The ~~Department~~ Division shall issue a warning tag to a person whose fuel dispenser labeling violates A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Chapter. The ~~Department~~ Division shall issue an out-of-service tag to the person if the person does not correct the fuel dispenser labeling violation within the time specified on the warning tag.
2. The ~~Department~~ Division ~~shall~~ may issue an administrative order to a person whose fuel storage tank labeling or external street signage violates A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Chapter. The ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $300 ~~civil penalty~~ if the person does not correct the labeling or signage violation within the time specified in the administrative order.
3. The ~~Department~~ Division ~~shall~~ may issue an administrative order and impose a civil penalty up to $500 per octane level ~~civil penalty~~ or fuel grade to a person who violates a fuel-quality requirement under A.R.S. Title 41, Chapter 15, or this Chapter. The person shall correct the violation by:
   a. Removing non-compliant motor fuel from the storage tank and replacing it with compliant motor fuel,
   b. Selling the motor fuel at the correct octane level,
   c. Adding sufficient compliant motor fuel to the storage tank to bring the motor fuel in the storage tank into compliance,
   d. Removing all water from the storage tank or emptying the tank per R3-7-711 or R3-7-712, or
   e. Removing the non-compliant motor fuel to another area within the state if the motor fuel complies with specifications of that area.
4. The ~~Department~~ Division ~~shall~~ may issue an administrative order to a person who does not provide requested product transfer documentation within 24 hours of the ~~Department~~ Division's request. The ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $300 ~~civil penalty~~ on a person who provides the requested documentation between 24 and 72 hours. The ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $500 ~~civil penalty~~ on a person who does not provide the requested documentation within 72 hours.

L. Vapor recovery.
1. The ~~Department~~ Division ~~shall~~ may issue an administrative order to stop construction at a vapor recovery site and impose a civil penalty up to $500 ~~civil penalty~~ on a person who:
   a. Begins construction or makes a major modification without an authority to construct plan approval,
   b. Does not comply with the authority to construct plan approval, or
   c. Does not obtain an approved change order for construction or major modification of the vapor recovery site unless:
      i. The vapor recovery system and its components comply with A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter; and
      ii. The vapor recovery system passes the required vapor recovery tests according to A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter.
2. The ~~Department~~ Division ~~shall~~ may issue an administrative order requiring a person to excavate a vapor recovery site if the person covers a vapor recovery component before a ~~Department~~ Division pre-burial inspection and ~~shall~~ may impose a civil penalty up to $500 ~~civil penalty~~ if the excavated system does not pass required vapor recovery tests according to A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter.
3. The ~~Department~~ Division shall issue an administrative order if a person fails to ensure that a vapor recovery site passes an initial test within 90 days of being opened or passes an annual test within the designated test month. The ~~Department~~ Division shall issue a stop-sale, stop-use tag if the person does not comply with the administrative order.
4. The ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $100 ~~civil penalty~~ on a person who does not have an authority to construct plan approval available for inspection at the construction site during normal business hours.
5. The ~~Department~~ Division ~~shall~~ may issue a warning tag to a person whose vapor recovery system labeling does not comply with ~~the authority to construct plan approval~~ R3-7-713. The ~~Department~~ Division ~~shall~~ may issue a stop-sale, stop-use tag and impose

a civil penalty up to $500 ~~civil penalty~~ on a person who does not correct a labeling violation within the time specified on a warning tag.

6. The ~~Department~~ Division shall issue a stop-sale, stop-use tag to a person whose vapor recovery system fails a test under R3-7-905, ~~or~~ R3-7-910, R3-7-1005, or R3-7-1010. If the test failure is isolated to a system component, the ~~Department~~ Division's stop-sale, stop-use tag shall pertain to that component so the rest of the system may operate.

~~7.~~**M.** The ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $500 ~~civil penalty~~ and issue another stop-sale, stop-use tag to a person who violates a stop-sale, stop-use tag. The ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $500 ~~civil penalty~~ and revoke, suspend, or refuse to renew a commercial device license if a person removes a stop-sale, stop-use tag without approval.

~~M.~~**N.** Registered service agency and registered service representative.

1. If a registered service agency submits to the ~~Department~~ Division an inaccurate or incomplete placed-in-service or test report, the ~~Department~~ Division ~~shall:~~ may
   ~~a. If a registered service agency submits to the Department an inaccurate or incomplete placed-in-service report, the Department shall:~~
   ~~b.~~ ~~Impose~~ impose a civil penalty up to $50 ~~civil penalty~~ on the agency each time the agency resubmits a placed-in-service or test report without making all needed corrections.
2. The ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $300 ~~civil penalty~~ on a registered service representative who incorrectly:
   a. Installs a commercial device,
   b. Repairs a commercial device,
   c. Tests a vapor recovery system, or
   d. Repairs a vapor recovery system.
3. If an unlicensed person represents itself as a registered service agency, the ~~Department~~ Division ~~shall~~ may:
   a. Issue an administrative order,
   b. Impose a civil penalty up to $500 ~~civil penalty~~ and confiscate the unlicensed person's calibration standards if the unlicensed person violates the administrative order, and
   c. Deny a registered service agency license to the unlicensed person if the unlicensed person fails to comply with the enforcement action under this subsection.
4. The ~~Department~~ Division ~~shall~~ may issue an administrative order to an unlicensed person who performs the duties of a registered service representative. The ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $300 ~~civil penalty~~ on the registered service agency for which the unlicensed individual works.
5. The ~~Department~~ Division ~~shall~~ may issue an administrative order if a registered service representative places a commercial device into service without ~~Department~~ Division authorization. The ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $500 ~~civil penalty~~ on the registered service agency whose representative places a commercial device into service without ~~Department~~ Division authorization.
6. The ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $500 ~~civil penalty~~ on a registered service agency whose registered service representative uses a metrology standard or vapor recovery ~~air-to-liquid (A/L) ratio~~ testing equipment that is not certified according to this Chapter and, as applicable, CARB test methods. The ~~Department~~ Division ~~shall~~ may confiscate a metrology standard or ~~A/L ratio~~ vapor recovery testing equipment if a registered service representative uses the uncertified standard or equipment after the registered service agency is penalized. The ~~Department~~ Division shall return the standard or equipment when it is properly certified.
7. The ~~Department~~ Division shall issue an administrative order to a vapor recovery registered service agency or person who owns a vapor recovery system that does not, according to A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter:
   a. Notify the ~~Department~~ Division of a test date and time,
   b. Begin a test at the approved time,
   c. Appear for a witnessed test,
   d. Close a vapor recovery system for repairs if the system fails, or
   e. Perform a test.
8. The Division may impose a civil penalty up to $300 on a vapor RSA that violates subsections (M)(7)(a), (b), (d), or (e). The ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $300 ~~civil penalty~~ on a vapor recovery registered service agency that violates subsection (M)(7)(c) twice in 12 months.
9. If a registered service agency's registered service representative does not attach a non-tampering seal on a commercial device that is equipped for a seal, the ~~Department~~ Division ~~shall~~ may:
   a. Impose a civil penalty up to $300 ~~civil penalty~~ on the registered service agency for the first violation, and
   b. Impose a civil penalty up to $500 ~~civil penalty~~ on the registered service agency for each subsequent violation by the registered service representative.
10. If a registered service representative determines that a vapor recovery system or component is not in compliance with A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Chapter, the registered service representative shall:
    a. Secure the non-compliant vapor recovery system or component from use before the registered service representative leaves the vapor recovery site or until the system or component passes the tests required by R3-7-910;
    b. Notify the ~~Department~~ Division of the secured, non-compliant vapor recovery system or component before leaving the vapor recovery site; and
    c. Notify the ~~Department~~ Division of the time of the test required by R3-7-910 or R3-7-1010 by 6:00 a.m. of the day after the non-compliant vapor recovery system or component is secured or one hour before the test, whichever is sooner.
11. If a registered service representative fails to comply with subsection (M)(10)(b) or (c), the ~~Department~~ Division ~~shall~~ may:
    a. Impose a civil penalty up to $300 ~~civil penalty~~ on the registered service representative;

b. Issue an administrative order, if the registered service representative is penalized under this subsection three times in 12 months, requiring the registered service representative to take and pass the licensing competency examination; and
c. Suspend or revoke the license of the registered service agency employing the registered service representative if the registered service representative does not comply with an order issued under subsection (M)(11)(b).

12. If a registered service representative fails to notify the Division of a non-compliant commercial device under R3-7-602(B)(1)(f), the Division may impose a civil penalty up to $300.

R3-7-108. Time-frames for Licenses, Renewals, and Authorities to Construct

A. For each type of license, renewal, or authority issued by the ~~Department~~ Division, the overall time-frame described in A.R.S. § 41-1072(2) is set forth in Table 1.

B. For each type of license, renewal, or authority issued by the ~~Department~~ Division, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) is set forth in Table 1 and begins on the date the ~~Department~~ Division receives an application.

1. If the application is not administratively complete, the ~~Department~~ Division shall send a deficiency notice to the applicant.
   a. The deficiency notice shall state each deficiency and the information needed to complete the application.
   b. Within the time provided in Table 1 for response to the deficiency notice, the applicant shall submit to the ~~Department~~ Division the missing information specified in the deficiency notice. The time-frame for the ~~Department~~ Division to finish the administrative completeness review is suspended from the date the ~~Department~~ Division mails or e-mails the deficiency notice to the applicant until the date the ~~Department~~ Division receives the missing information.
   c. If the applicant does not submit the missing information within the time to respond to the deficiency notice set forth in Table 1, the ~~Department~~ Division shall send a written notice to the applicant informing the applicant that the application is deemed withdrawn. An applicant who desires to reapply shall begin the application process anew.
2. If the application is administratively complete, the ~~Department~~ Division shall send a written notice of administrative completeness to the applicant. If the Division, within 10 days of submittal, fails to send a written notice of administrative completeness or deficiency notice outlined in subsection (B)(1), the application shall automatically be deemed administratively complete.

C. For each type of license, renewal, or authority issued by the ~~Department~~ Division, the substantive review time-frame described in A.R.S. § 41-1072(3) is set forth in Table 1 and begins on the date the ~~Department~~ Division sends written notice of administrative completeness to the applicant.

1. During the substantive review time-frame, the ~~Department~~ Division may make one comprehensive written request for additional information. The applicant shall submit the additional information within the time provided in Table 1 for response to a comprehensive written request for additional information. The time-frame for the ~~Department~~ Division to finish the substantive review is suspended from the date the ~~Department~~ Division mails or e-mails the request until the ~~Department~~ Division receives the information.
2. If the applicant does not submit the requested additional information within the time-frame in Table 1, the ~~Department~~ Division shall issue a written notice informing the applicant that the application is deemed withdrawn. The applicant may request in writing that the ~~Department~~ Division deny the application within 15 days of the date of the notice of withdrawal. An applicant who desires to reapply shall begin the application process anew.
3. The ~~Department~~ Division shall issue a written notice of denial of license, renewal, or authority if the ~~Department~~ Division determines that the applicant does not meet all of the substantive criteria required by A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter for a license, renewal, or authority. The notice of denial shall include:
   a. Reasons for the denial, with citations to the statutes or rules on which the denial is based; and
   b. The name and telephone number of a ~~Department~~ Division employee who can answer questions regarding the application process.
4. If the applicant meets all of the substantive criteria required by A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter for a license, renewal, or authority the ~~Department~~ Division shall issue the license, renewal, or authority to the applicant.

D. The time period for an applicant to respond to a deficiency notice or request for additional information shall commence on the date of personal service or the postmark date.

E. In computing any time period prescribed in this Section, the day of the act, event, or default shall not be included. The last day of the period shall be included unless it is Saturday, Sunday, or a state holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or state holiday. The computation shall include intermediate Saturdays, Sundays and holidays.

F. An applicant whose license, renewal, or authority is denied has a right to a hearing, an opportunity for rehearing, and if the denial is upheld, judicial review pursuant to A.R.S. Title 41, Chapter 6, Articles 6 and 10, and A.R.S. Title 12, Chapter 7, Article 6.

R3-7-109. Administrative Hearing Procedures

A.R.S. Title 41, Chapter 6, Articles 6 and 10 apply to the ~~Department~~ Division's hearings.

R3-7-110. Motion for Rehearing or Review

A. Except as provided in subsection (G), any party in a contested case or appealable agency action before the ~~Department~~ Division who is aggrieved by a decision rendered in the case may file with the ~~Department~~ Division, a written motion for rehearing or review of the decision, pursuant to A.R.S. Title 41, Chapter 6, Article 10, specifying the particular grounds for the motion.

B. A motion for rehearing or review may be amended at any time before it is ruled upon by the ~~Department~~ Division. A response may be filed within 15 days after service of the motion or amended motion by any other party. The ~~Department~~ Division may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.

C. A rehearing or review of the decision may only be granted for any of the following reasons materially affecting the moving party's rights or ability to receive a fair hearing:

1. Any irregularity in the hearing, order, or abuse of discretion by the administrative law judge or the ~~Department~~ Division.
2. Misconduct of the ~~Department~~ Division, the 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 have been discovered with reasonable diligence and produced at the original hearing.
5. Excessive or insufficient penalties.
6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing.
7. That the decision is not justified by the evidence or is contrary to law.

D. The ~~Department~~ Division may affirm or modify its decision, or grant a rehearing or review. After giving the parties or their counsel notice and an opportunity to be heard, the ~~Department~~ Division may grant a rehearing or review for a reason not stated in a party's motion. An order granting a rehearing or review shall specify the grounds on which the rehearing or review is granted. The rehearing or review shall cover only those matters so specified.

E. The ~~Department~~ Division, within the time for filing a motion for rehearing or review under this rule, may order a rehearing or review for any of the reasons set forth in subsection (C), after giving the parties notice and an opportunity to be heard.

F. When a motion for rehearing or review is based upon affidavits, the moving party shall serve the affidavits with the motion. An opposing party has 15 days from the date of service to serve opposing affidavits. The ~~Department~~ Division may extend the period to respond up to 20 days for good cause, or by written stipulation of the parties. If the ~~Department~~ Division permits reply affidavits, the replying party has five days in which to serve them.

G. If the ~~Department~~ Division makes specific findings that the immediate effectiveness of a decision is necessary for the immediate preservation of the public peace, health, and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the ~~Department~~ Division may issue the decision as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the ~~Department~~ Division's final decision.

Table 1. Time-frames (~~in~~ calendar days)

Type of License	Authority	Administrative Completeness Review ~~Time-frame~~	~~Time to Respond to Deficiency Notice~~ Response to Completion Request	Substantive Completeness Review ~~Time-frame~~	~~Time to Respond to Request for~~ Response to Additional Information	Overall Time-frame
Commercial Device ~~R3-7-201~~	R3-7-201	~~10~~ 14	~~20~~ 28	30	~~20~~ 30	~~40~~ 44
Public Weighmaster ~~R3-7-501~~	R3-7-501	~~10~~ 14	~~20~~ 28	30	~~20~~ 30	~~40~~ 44
Registered Service Agency/Representative ~~R3-7-601~~	R3-7-601	~~10~~ 14	~~20~~ 28	30	~~20~~ 30	~~40~~ 44
Authority to Construct ~~R3-7-904~~	R3-7-904 R3-7-1004	~~10~~14	~~20~~ 28	30	~~20~~ 30	~~40~~ 44

ARTICLE 2. COMMERCIAL DEVICES

R3-7-201. Licensing Process

Before using a commercial device, a person or a contracted registered service representative shall apply for a license for the commercial device. The commercial device may be used without a license for up to 30 days after an application is filed with the ~~Department~~ Division. The application shall be on a form supplied by the ~~Department~~ Division that includes:

1. The applicant's name, address, and telephone number;
2. The name, address, and telephone number of the location where the commercial device will be operated;
3. A description of the commercial device; ~~and~~
4. The applicant's signature~~.~~ ; and
5. An e-mail address for the owner or operator for the Division to provide licenses, invoices, inspections and reports, enforcement action, and other notifications.

R3-7-203. Approval, Installation, and Sale of Devices

A. A commercial device installed or placed in use after January 1, 1975, shall ~~be prototype approved by~~ have an NCWM National Type Evaluation Program (NTEP) Certificate of Conformance or have a certificate of approval from the California Type Evaluation Program. NTEP Certificate of Conformance issuance may be verified at the NCWM website: http://www.ncwm.net/ntep/cert_search.

1. If a commercial device has been continuously licensed, or evidence shows it has been in use by the owner in Arizona since January 1, 1975, the commercial device is exempt from NCWM or California Type Evaluation Program prototype approval.
2. If a commercial device exempt under subsection (A)(1) fails the specifications, tolerances, or other technical requirements of Handbook 44 during a ~~Department~~ Division inspection, the ~~Department~~ Division shall issue an out of service tag or confiscate the device per R3-7-104(F)(3) and revoke the commercial device license, ~~and a~~ A person shall ~~not~~ no longer use the device commercially.

B. The seller of a commercial device that is remanufactured for the purpose of commercial sale shall mark the commercial device as remanufactured.

ARTICLE 3. PACKAGING, LABELING, AND METHOD OF SALE

R3-7-302. Handbook 130 and Handbook 133

A. A person shall comply with all packaging, labeling, and method of sale requirements in Handbook 130, except as otherwise stated in this Chapter. A person shall ensure that packaged commodities kept, offered, exposed for sale, sold, or in the process of delivery are weighed, measured, and inspected using sampling and testing procedures designated in Handbook 133, except as otherwise stated in this Chapter.

B. A retail seller shall ensure that a package that is offered for sale in a variable weight, measurement, or count, and that is weighed, measured, or counted at the time of sale, includes a label on the package identifying the net weight, measurement, or count, item description, and packer's name if the packer is not the retailer. Pre-packaged produce does not require a label on each package if the retailer:

1. Clearly labels the price-per-pound where the packaged produce is displayed, and
2. Deducts a tare for the packaging from the gross weight at the time of sale.

C. A retail seller shall price a commodity at the date and time that it is ordered by a customer.

D. A retail seller who offers, exposes, or advertises a commodity for sale or rent shall post a definite, plain, and conspicuous price on the commodity or adjacent to where the commodity is displayed. If the price of the commodity is by weight, measure, or count, the retailer shall place the price per weight, measure, or count on the commodity or adjacent to where the commodity is displayed. If a retailer offers a commodity for sale or rent at a price reduced by a percentage or a fixed amount from a previously offered price, the retailer shall place the reduction or reduced price on the commodity or adjacent to where the commodity is displayed.

E. A person who owns or operates a plant nursery shall label each commodity with its identity~~, container size,~~ and price, or post a sign with this information adjacent to the point of display.

F. A retail seller shall ensure that the price of each item purchased is displayed visibly to the public at each check-out location.

G. Items in or behind a service counter that can be sold only with the assistance of a sales associate are not required to have a price displayed. If a price is displayed, it must meet the requirements of this Chapter.

ARTICLE 4. PRICE VERIFICATION AND PRICE POSTING

R3-7-402. Price-posting Inspection Procedure and Violation Exceptions

A. The ~~Department~~ Division shall choose one item that was used and up to four adjacent items that were not used for a price-verification inspection as the samples for a price-posting inspection.

B. If the ~~Department~~ Division finds an alleged price-posting violation involving an item used during its price-verification inspection, the ~~Department~~ Division shall record the price-posting violation on the inspection report.

C. The following are price-posting violations:

1. No price is posted or displayed for an inspected item unless it is not required under subsection (D)(12);~~, or~~
2. Less than 98 percent of the prices of inspected items are posted accurately; or~~.~~
3. A percentage off is provided, but there is no price displayed for the item on, in, or behind a service counter.

D. The following are not price-posting violations:

1. A price is posted on a shelf where an item is displayed rather than marked on the item individually;
2. A price is posted on the shelf or on a hook in front of or behind a row of items at the farthest left side of all items with the same price for up to 3 feet of shelf space or at the farthest left and farthest right side of the shelf or hooks with the same priced items. For items of the same price, the uniform price codes may differ for the commodities with prices labeled in this manner, as long as the price posted is a generic price and does not refer to a specific product;~~The price for commodities with the same uniform price code may be more than three feet from the price posted if they are all displayed in the same location;~~
3. ~~A price posted above the highest item in a vertical location is the price of all items in that location~~ A price is posted on a vertical display in a location clearly visible to the consumer for items of the same price;
4. Self-contained refrigerated coolers may have prices posted on the inside or outside of the refrigerator doors located on the left, right, or center of the shelving units in a location clearly visible to the consumer.
4.5. A storage area that is posted as a storage area for which a customer should ask for assistance;
5.6. A restocking area that is posted as a restocking area for which a customer should ask for assistance;
6.7. A price is posted on a hook in front of or behind a row of items but the price is clearly visible or a notice is clearly visible stating that the price is posted behind the row of items;
7.8. An item is located in an advertising display without a posted price but a notice is posted informing a customer to ask for price information assistance about an item in the display;~~. A service counter is not an advertising display;~~
8.9. A menu-type sign at a point of display that lists the name and price of every item at the point of display in ~~text at least 3/8" high~~ legible text. A menu-type sign may also be used to display single-item purchase prices in areas where space is limited, or used to display a price for purchase of multiple items and single-item purchase prices at the point of display as long as it is located at, above or near the point of display;
9.10. A point of display contains more than one item posted with the manufacturer's name or logo and the price and name of each item in the point of display is posted;
10.11. A price is posted only at each entrance to a store but that price is the price of each item in the store, or at each entrance to a department within a store but that price is the price of each item in the department; ~~and~~
11.12. A notice states that there is an additional charge based on an item's size and each size and the additional charge for each size is posted~~.~~; and
13. An item that does not have a price and is located in or behind a service counter and available only with the assistance of a sales associate. If a price is displayed, it must meet the requirements of this Chapter.

ARTICLE 5. PUBLIC WEIGHMASTERS

R3-7-501. Qualifications; License and Renewal Application Process

A. In addition to the requirements of A.R.S. § ~~41-2093~~ 3-3453, to be a public weighmaster or a deputy public weighmaster, a person shall:
1. Be at least 18 years old,
2. Be able to operate a scale accurately, and
3. Be able to execute weight certificates properly.

B. A person shall not perform the duties of a public weighmaster ~~or deputy public weighmaster~~ until the person passes the written weighmaster examination administered by the ~~Department~~ Division with a minimum score of 75 percent. A person may not take the examination more than ~~two~~ three times in six months and must wait 7 days before retaking the exam.

C. A person that meets the qualifications for public weighmaster or deputy public weighmaster may apply for a license on a form supplied by the ~~Department~~ Division. A separate application shall be submitted for each location the public weighmaster or deputy public weighmaster will issue weight tickets.
1. The application form includes:
   a. The applicant's name, address, and telephone number;
   b. A statement by the applicant that the applicant knows and understands weighmaster laws and rules;
   c. The name, address, and telephone number of each of the applicant's public weighmaster locations; and
   d. The applicant's signature.
2. The public weighmaster's application form also includes:
   a. The name of each deputy public weighmaster operating at each location;
   b. A statement that the public weighmaster understands they are responsible to ensure that any deputy public weighmasters working at the location are adequately trained and licensed;
   ~~b.~~c. The name and address of the scale; and
   ~~c.~~d. The scale description.
3. The deputy public weighmaster application shall include a certification that they understand the requirements on a form provided by the Division and be signed by both the public weighmaster and the applicant.
~~3.~~4. An applicant may be required to submit evidence of qualifications ~~and shall be examined regarding competence or qualifications~~.
5. The public weighmaster shall ensure all deputy public weighmasters are licensed for the location prior to their issuance of weight tickets.
6. An applicant shall submit information and documentation concerning lawful presence required by A.R.S. §41-1080.

D. Before the ~~Department~~ Division issues or renews a public weighmaster or deputy public weighmaster license, the applicant shall pay the required fees and provide information required in A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter.

E. The ~~Department~~ Division does not charge a fee to process a change in name or address.

F. In the event a public weighmaster leaves employment, a licensed deputy public weighmaster may utilize a public weighmaster stamp which contains only the location identity as issued under R3-7-506(B) for 30 days at a location while a public weighmaster license application is underway. A public weighmaster stamp containing the public weighmaster's name may not be continued to be used following a public weighmaster's departure.

R3-7-502. Duties

A public weighmaster shall:
1. Be responsible for the daily operation and maintenance of the licensed scale used when performing weighmaster duties;
2. Use scales according to applicable laws and rules; ~~and~~
3. Be responsible for all acts performed by any deputy public weighmaster designated by the weighmaster; and~~.~~
4. Ensure deputy public weighmasters are licensed prior to their issuance of a weight ticket and cancel deputy public weighmasters licenses within 10 days of their leaving employment to ensure each location has the correct licensed deputy public weighmasters. A deputy public weighmaster license may be canceled by sending an e-mail or other written notification to the Division.

R3-7-503. Grounds for Denying License or Renewal; and Disciplinary Action

A. The ~~Department~~ Division may deny a weighmaster license for any of the following reasons:
1. Providing false or misleading information;
2. Failing to meet the requirements stated in this Article; or
3. Any of the reasons stated in subsections (B)(1) through (9).

B. The ~~Department~~ Division may impose disciplinary action against, or refuse to renew a public weighmaster's license for any of the reasons stated in subsection (A)(1) or (2), or if the ~~Department~~ Division has determined that the public weighmaster:
1. Does not have the ability to weigh accurately;
2. Has not correctly made weight certificates;
3. Has been found to have violated any provision of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Chapter;
4. Has falsified a weight certificate;
5. Has delegated authority to someone other than a licensed public weighmaster or deputy public weighmaster;
6. Has improperly used a weighmaster's seal of authority;
7. Has presigned certificates for later use;
8. Has issued a weight certificate on which changes or alterations were made; or
9. Has used a scale for public weighing that is not properly licensed.

R3-7-504. Scales and Vehicle Weighing

A. When making a weight determination, a public weighmaster shall use a weighing device that is suitable for the function.

B. The public weighmaster shall not use a scale to weigh a load that exceeds the normal or rated capacity of the scale.
C. The owner or user of a weighing device is responsible for the accuracy of the device used by a public weighmaster. The owner or user shall comply with Handbook 44.
D. If a scale is equipped with a printing device, it shall be used for all relevant entries on the weight certificate.
E. The ~~Department~~ Division shall separately license and regulate each scale location.
F. A weighmaster shall weigh any vehicle or combination of vehicles on a scale having a platform that fully accommodates the vehicle or combination of vehicles as one unit.
G. If a combination of vehicles is divided into separate units to be weighed, each separate unit shall be entirely disconnected before weighing and a separate weight certificate shall be issued for each unit.

R3-7-505. Weight Certificates
A. In issuing a weight certificate, a public weighmaster shall enter only those weight values that the weighmaster or deputy public weighmaster has accurately and personally determined.
B. A public weighmaster or deputy public weighmaster shall not make any entries on a weight certificate issued by another person.
C. By signing a weight certificate, a weighmaster or the weighmaster's deputy shall be responsible for the accuracy of all entries on the weight certificate.
D. A weight certificate is valid only when properly signed and sealed by the issuing public weighmaster or the ~~weighmaster's~~ deputy public weighmaster. The name and image of the seal of the public weighmaster and deputy public weighmaster may be imprinted electronically on the weighmaster certificate in lieu of a handwritten signature and embossed seal if the electronically imprinted name and seal is that of the weighmaster or deputy public weighmaster who weighed, measured, or counted the commodity. To issue an electronic signature or seal, the weighmaster or deputy public weighmaster shall have an individual login associated with the electronic signature and seal or other security measures in place to prevent non-licensed persons from use.
E. If an error is made on a weight certificate, the weighmaster shall void the certificate and issue a new certificate. No changes or alterations shall be made on a certificate.
F. A weight certificate shall state:
1. The date of issuance;
2. The name of the declared owner, agent, or consignee of the material weighed;
3. The accurate weight of the material weighed or counted;
4. The means by which the material is being transported at the time it is weighed or counted;
5. An identification number of the transporting unit, including a license number; and
6. The following statement: "PUBLIC WEIGHMASTER'S CERTIFICATE OF WEIGHT AND MEASURE. This is to certify that the described merchandise was weighed, counted, or measured by a public or deputy public weighmaster, and when properly signed and sealed, is prima facie evidence of the accuracy of the weight, count, or measure shown as prescribed by law."
7. The printed name, signature, and license number of the public weighmaster or deputy public weighmaster issuing the weight ticket.

G. A public weighmaster shall maintain a legible copy of each weight certificate issued at each scale location, for a minimum of one year. A weighmaster also shall ensure that weight certificates are consecutively numbered and filed numerically, including voids. A weighmaster shall not use another filing system without ~~Department~~ Division approval.
H. A public weighmaster is liable for any forged signatures or electronic signatures.

R3-7-506. Seal of Authority
A. A weighmaster shall obtain a seal for the certification of weight certificates at cost through the ~~Department~~ Division.
B. The ~~Department~~ Division shall assign a number to a seal identifying the ~~public weighmaster and the~~ specific location for which the seal is issued.
C. A seal is the property of the state. A weighmaster shall surrender a seal to the ~~Department~~ Division within 30 days after the weighmaster no longer operates as a licensed public weighmaster if the seal contains the public weighmaster's name. If the seal was issued under R3-7-506(B) and only contains the location identification, it may be retained for use by the next licensed public weighmaster if it is still legible. Illegible seals shall be surrendered to the Division.
D. A public weighmaster shall have one seal for use at each scale location.
E. A seal shall be accessible to the weighmaster and authorized deputies during all business hours at the scale location for the timely and proper certification of weight certificates.
F. A public weighmaster shall keep a seal of authority at each scale location and make it available for inspection by the ~~Department~~ Division during all business hours.
G. A public weighmaster may recreate the state-assigned seal in an electronic format for use as provided under subsection R3-7-505(D). The Division shall provide a template of seal.

R3-7-507. Prohibited Acts
A. A person shall not:
1. Issue a certified weight certificate without being a licensed public weighmaster or a person properly authorized to act for a public weighmaster;
2. Procure, print, or cause to be printed any public weighmaster weight certificate without being a licensed public weighmaster or a ~~person~~ deputy public weighmaster authorized to act for a public weighmaster;
3. Possess unfilled or unused public weighmaster weight certificate forms without being a licensed public weighmaster or a ~~person~~ deputy public weighmaster authorized to act for a public weighmaster;
4. Furnish or give false information to a weighmaster for use in the completion of a weight certificate;
5. Present a certificate for payment falsified by the insertion of any weight, measure, or count not determined by the issuing weighmaster;

6. Use without authorization the title "licensed public weighmaster" or any similar title;
7. Represent oneself to be a public weighmaster without holding a license issued by the ~~Department~~ Division;
8. Engage in public weighing without holding a valid license as a public weighmaster, or acting under the authority of a licensed public weighmaster;
9. Use an unlicensed scale in the performance of public weighmaster duties; or
10. Operate a scale for public weighing unless that person is licensed as a public or deputy public weighmaster.
11. Nothing in this subsection shall be construed to prevent administrative staff of the public or deputy public weighmaster from performing administrative duties such as filing weight tickets.

B. People engaged in the business of printing weight certificate forms, their representatives, and the ~~Department~~ Division are exempt from the prohibitions specified in subsections (A)(2) and (3).

ARTICLE 6. REGISTERED SERVICE AGENCIES AND REPRESENTATIVES

R3-7-601. Qualifications; License and Renewal Application Process

A. Registered service agency.
1. To obtain a license as a registered service agency, an applicant shall provide evidence that:
   a. The applicant's registered service representative has a thorough knowledge of all appropriate laws within A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, ~~Handbook 112,~~ CARB Executive Orders, and this Chapter;
   b. The applicant provided its representative with a copy of the portions of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, ~~Handbook 112,~~ CARB Executive Orders, and this Chapter relating to registered service representative duties;
   c. The applicant:
      i. Possesses the necessary certified standards and testing equipment to service commercial devices; and
      ii. Possesses the necessary test equipment calibrated ~~annually by the~~ in the time-frame required by the equipment manufacturer or CARB Executive Orders to perform ~~an air to liquid (A/L) test~~ the required testing of a vapor recovery system or vapor recovery component properly; or
      iii. Has access to the necessary standards and testing equipment belonging to another registered service agency and has written approval from that agency to use its standards and testing equipment; and
   d. The applicant shall ensure that its registered service representative operates the equipment according to A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, ~~Handbook 112,~~ CARB Executive Orders, and this Chapter.
2. The ~~Department~~ Division shall not issue a registered service agency license until at least one of the applicant's employees passes a registered service representative competency exam.
3. An applicant for a registered service agency license shall submit an application form, obtained from the ~~Department~~ Division that provides:
   a. Name, address, telephone number, electronic mail address, and facsimile number;
   b. License information from other states;
   c. Types of devices serviced, repaired, or installed, or vapor recovery systems or components repaired or tested;
   d. A list of all of the applicant's devices and testing equipment with corresponding serial or identification numbers;
   e. Branch office information;
   f. Names of registered service representatives and their experience with other registered service agencies or states;
   g. License and disciplinary history; and
   h. Applicant's signature.

B. Third-party registered service agency. In addition to complying with the requirements in subsection (A), a third-party registered service agency shall provide the ~~Department~~ Division with evidence that the third-party registered service agency:
1. Holds a valid license issued by the Arizona Registrar of Contractors,
2. Complies with workers' compensation insurance laws, and
3. Maintains liability insurance sufficient to cover the value of work to be performed.

C. Registered service representative.
1. To obtain a license as a registered service representative, an applicant shall provide evidence that:
   a. The applicant has a thorough knowledge of all appropriate laws within A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, ~~Handbook 112,~~ CARB Executive Orders, and this Chapter;
   b. The applicant possesses the necessary training or experience regarding appropriate standards and testing equipment to service the specific commercial device, vapor recovery system, or vapor recovery system component indicated on the application;
   c. The applicant will operate according to appropriate laws within A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, ~~Handbook 112,~~ CARB Executive Orders; and this Chapter; and
   d. The applicant has passed the competency examination specified in subsection (D).
2. An applicant for a registered service representative license shall submit an application on a form obtained from the ~~Department~~ Division that provides:
   a. Name, address, telephone number, and facsimile number;
   b. License information from other states;
   c. An indication of whether the applicant is applying to be a registered service representative~~,~~ or a vapor recovery service representative ~~No. 1, or vapor recovery service representative No. 2~~;
   d. Types of devices serviced, repaired, or installed, or vapor recovery systems or components repaired or tested;
   e. Work experience with other registered service agencies in Arizona or other states;
   f. License and disciplinary history; and
   g. Applicant's signature.

3. An applicant for a vapor recovery registered service representative ~~No. 1~~ license shall maintain and make available to the ~~Department~~ Division upon request evidence of being:
   a. Certified by the manufacturer to test or repair all vapor recovery systems and components, or
   b. Determined qualified by the ~~Department~~ Division to test or repair all vapor recovery systems and components.
4. An applicant shall submit information and documentation concerning lawful presence required by A.R.S. §41-1080.

D. Competency examination. Before being issued a registered service representative license, an applicant shall pass a ~~Department~~ Division-administered competency examination.
1. An applicant for a vapor recovery registered service representative license shall complete the ~~Department~~ Division's training class before taking the competency examination. The Division may waive the training class requirement for up to 12 months for new applicants.
2. An applicant shall bring a copy of Handbook 44 ~~and Handbook 112~~ to the examination site. An applicant for a vapor recovery registered service representative license shall additionally bring copies of CARB test procedures, Executive Orders, and Division Standard Operating Procedures.
3. An applicant shall complete the competency examination within the time specified by the ~~Department~~ Division and pass with a score of 75 percent or greater.
4. The ~~Department~~ Division shall not allow an applicant to take the competency examination more than ~~two~~ three times in six months and the applicant must wait 7 days prior to retaking the exam.
5. The associate director may contract with a 3rd party testing company to administer testing to provide added convenience to registered service representatives. Taking exams through the 3rd party is optional and the registered service representative shall be responsible for payment of any additional costs related to 3rd party testing.

E. As required under A.R.S. § ~~41-2094(G)~~ 3-3454(G), the ~~Department~~ Division shall specify on a registered service representative license the devices that the registered service representative may service, repair, or install or the vapor recovery systems or components that the vapor recovery registered service representative may test or repair. A registered service representative shall perform only the services approved by the ~~Department~~ Division for the registered service representative.

F. Renewal of a registered service representative license. Under A.R.S. § ~~41-2094(D)~~ 3-3454(D), a registered service representative license is valid for 12 months and expires unless renewed. To renew a registered service representative license, the registered service agency employing the registered service representative shall comply with R3-7-603(E). Before complying with R3-7-603(E), the registered service agency shall ensure that once every 36 months a vapor registered service representative completes the Division's training class and takes and passes the Division's written vapor recovery competency examination.
~~1. A vapor recovery registered service representative No. 1 or 2 completes the Department's training class, and~~
~~2. A vapor recovery registered service representative takes and passes the Department's written vapor recovery competency examination. as follows:~~
   ~~a. A vapor recovery service representative No. 1 shall pass the vapor recovery competency examination annually, and~~
   ~~b. A vapor recovery service representative No. 2 shall pass the vapor recovery competency examination biennially.~~

G. The ~~Department~~ Division does not charge a fee to process a change in business name or address.

R3-7-602. Duties

A. Registered service agency.
1. A registered service agency shall:
   a. Maintain all equipment used for commercial device certification according to standards traceable to NIST, and
   b. Maintain and use equipment for testing vapor recovery systems and vapor recovery system components according to this Chapter, CARB test procedures, and manufacturer specifications.
2. When a registered service agency restores or newly places in service a commercial device, the registered service agency shall complete a placed-in-service report form prescribed by the ~~Department~~ Division.
   ~~a. The registered service agency shall complete the placed-in-service report in triplicate;~~
   ~~b.~~a. Within seven calendar days after the commercial device is restored to service or newly placed in service, the registered service agency shall complete an online placed-in-service report ~~mail the original of the properly completed and signed placed-in-service report~~ to the ~~Department~~ Division. If an online placed-in-service report is not available for the device, a paper report shall be submitted;
   ~~c.~~b. The registered service agency shall give a copy of the placed-in-service report to the person who owns or operates the commercial device;
   ~~d.~~c. The registered service agency shall retain a copy of the placed-in-service report or any required vapor recovery report for one year;
   ~~e.~~d. The registered service agency shall ensure that the placed-in-service report contains the assigned license number of the registered service representative who installs or repairs the commercial device and completes the report;
   ~~f.~~e. The registered service agency shall ensure that the placed-in-service report is completed and signed by the registered service representative noting each rejected commercial device restored to service and each newly installed commercial device placed in service;
   ~~g.~~f. The registered service agency shall ensure that the placed-in-service report includes the serial or identification number of each standard used by the registered service representative to calibrate the commercial device for each rejected device restored to service and for each newly installed device placed in service; and
   ~~h. The registered service agency shall ensure that the placed-in-service report includes the license number of the registered service representative who installs or repairs the commercial device.~~
3. A registered service agency shall have all equipment used for commercial device certification ~~and A/L testing~~ certified annually by the manufacturer. Vapor recovery test equipment shall be certified as required by the CARB test procedure or this Chapter.
4. A registered service agency shall not use new equipment for commercial device certification until it is certified by a NIST-traceable laboratory.

5. A registered service agency shall ensure that employees do not perform registered service representative duties until licensed. A registered service agency may train an employee in registered service representative duties only if the employee is within the direct line of sight and hearing of a supervising licensed registered service representative.
6. A registered service agency shall use a form approved by the ~~Department~~ Division to record vapor recovery test results and violations. ~~The registered service agency shall submit to the Department the summary test report within 24 hours following the test. All other forms relating to the test~~ The test results shall be ~~mailed~~ e-mailed to the Division within seven days after completion of the test.
~~7. A registered service agency shall ensure that its registered service representative provides a copy of the Regulatory Bill of Rights, defined in A.R.S. § 41-1001.01, to the owner or operator of a vapor recovery system before beginning a vapor recovery test that is not witnessed by the Department.~~
~~8.~~ 7. A registered service agency shall ensure that its registered service representative provides a vapor recovery system owner or operator with written test preparation instructions, ~~approved by the Department,~~ at least ~~10~~ 5 business days before an initial or annual test.

B. Registered service representative.
1. A registered service representative shall:
   a. Install only commercial devices that meet the requirements of this Chapter;
   b. Perform all vapor recovery tests according to this Chapter;
   c. Perform all appropriate tests when repairing a commercial device or repairing or replacing a vapor recovery system or component to ensure that the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, this Chapter, Handbook 44, ~~Handbook 112,~~ and CARB Executive Orders are met;
   d. Report to the user equipment or commercial devices that do not conform to NIST standards; and
   e. Complete placed-in-service reports accurately.
   f. Report to the Division within 1 hour by e-mail or phone of finding a device that is not certified as part of the Certificate of Conformance under R3-7-203(A) and is installed to fraudulently obtain consumer credit card information. Additionally, the registered service representative shall contact the local law enforcement agency for collection of the device as evidence.
2. If a vapor recovery registered service representative cannot correct a violation and has to leave the vapor recovery site, the registered service representative shall secure the non-compliant vapor recovery system or component from commercial use. The non-compliant system or component shall not be used for commercial purposes until it is repaired and passes the test required by R3-7-910. The registered service representative shall notify the ~~Department~~ Division of the stop-sale, stop-use prior to leaving the site. The registered service representative shall notify the Division regarding retest of the site by 6:00 a.m. of the day after the non-compliant vapor recovery system or component is secured or one hour before the test, whichever is sooner, so that the ~~Department~~ Division ~~can~~ may witness the test.

R3-7-603. Grounds for Denying License or Renewal; Disciplinary Action; and Certification of Standards and Testing Equipment

A. The ~~Department~~ Division shall not issue a license or renewal until an applicant pays all appropriate fees.
B. Upon receipt and acceptance of all required documents, fees, and ~~Department~~ Division certification of standards, the ~~Department~~ Division shall issue the agency a license or renewal.
C. The ~~Department~~ Division shall include on a license an assigned number, that remains effective until either withdrawn by the ~~Department~~ Division or until it expires. The ~~Department~~ Division shall issue a license with the agency's assigned license number to each registered service representative employed by the agency who has passed the competency examination.
D. Neither a registered service agency nor a registered service representative shall transfer a license.
E. A registered service agency shall submit the renewal fee for the agency license and the agency's representatives' licenses by the first day of the month that each license expires.
F. The ~~Department~~ Division may deny a license or renewal for any of the following reasons:
1. Providing false or misleading information;
2. Failure to meet annual certification requirements for standards or testing equipment;
3. Failure to meet the requirements stated in this Article; or
4. For any reason that would be grounds for suspension, revocation, or refusal to renew.

G. The ~~Department~~ Division may suspend, revoke, or refuse to renew a license if the applicant is not qualified to perform those duties required or has been found to have violated any provision of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Chapter.
H. Every registered service agency and representative shall comply with the ~~Department~~ Division's metrology laboratory annual schedule for certification of field standards contained in A.R.S. § ~~412067(F)~~ 3-3416(F).

R3-7-604. Prohibited Acts

A. A person shall not:
1. Perform any duty or do any act required to be done by a registered service agency or registered service representative without holding a registered service agency or registered service representative license issued by the ~~Department~~ Division;
2. Use the title of registered service agency or registered service representative, any similar title, or hold oneself out as a registered service agency or representative without a valid license; or
3. Remove an official out-of-service, warning, or stop-sale, stop-use tag except as authorized in this Chapter, or by the ~~Department~~ Division.

B. A registered service agency or registered service representative shall not:
1. Fraudulently complete or file a placed-in-service report;
2. Delegate licensed authority or responsibility to an unlicensed person;
3. Perform a function without certified equipment;
4. Install or place in service a commercial device before satisfying all of the statutory and rule requirements;

5. Fail to report a commercial device to the ~~Department~~ Division that is found to be out of compliance under R3-7-602 ~~within two business days of finding that device is out of compliance~~;
6. Install, calibrate, or repair a commercial device without placing a ~~sequentially numbered~~ decal or label on the device as prescribed by the associate director ~~Director~~;
7. Leave a location where there is a non-compliant commercial device without securing the commercial device from commercial use; or
8. Leave a vapor recovery site where there is a non-compliant system or component without securing the system or component from commercial use.

ARTICLE 7. MOTOR FUELS AND PETROLEUM PRODUCTS

R3-7-701. Definitions

In addition to the definitions in A.R.S. §3-3401 and R3-7-101, the following definitions apply to this Article unless the context otherwise requires:

"Address" means a street number, street name, city, state, and zip code.

"Area A" has the same meaning as in A.R.S. ~~§ 49-541~~ § 3-3401.

"Area B" has the same meaning as in A.R.S. ~~§ 49-541~~ § 3-3401.

"Area C" has the same meaning as in A.R.S. § 3-3401.

"Arizona Cleaner Burning Gasoline" or "Arizona CBG" means a gasoline blend that meets the requirements of this Article for gasoline produced and shipped to or within Arizona and sold or offered for sale for use in motor vehicles within the CBG-covered area, except as provided under A.R.S. § ~~41-2124(J)~~ 3-3493(I).

"AST" means aboveground storage tank.

"AZRBOB" or "Arizona Reformulated Blendstock for Oxygenate Blending" means a combination of gasoline blendstocks that is intended to be or represented to constitute Arizona CBG upon the addition of a specified amount (or range of amounts) of fuel ethanol after the blendstock is supplied from the facility at which it was produced or imported.

"Batch" means a quantity of motor fuel or AZRBOB that is homogeneous for motor fuel properties specific for the motor fuel standards applicable to that motor fuel or AZRBOB.

"Beginning of transport" means the point at which:

A registered supplier relinquishes custody of Arizona CBG or AZRBOB to a transporter or third-party terminal; or

A registered supplier that retains custody of Arizona CBG or AZRBOB begins transfer of the Arizona CBG or AZRBOB into a vessel, tanker, or other container for transport to the CBG-covered area.

~~*"Biodiesel" means a diesel fuel substitute that is produced from nonpetroleum renewable resources as defined by the United States environmental protection agency and meets the registration requirements for fuels and fuel additives established by the United States environmental protection agency pursuant to § 211 of the clean air act as defined in section 49-401.01.* A.R.S. § 41-2051~~ "Biodiesel" has the same meaning as prescribed under A.R.S. § 3-3401.

~~*"Biodiesel blend" means a motor fuel that is comprised of biodiesel and diesel fuel and that is designated by the letter "B," followed by the numeric value of the volume percentage of biodiesel in the blend. 41-2051*~~ "Biodiesel blend" has the same meaning as prescribed under A.R.S. § 3-3401. Per ASTM D975, diesel fuel may contain 5 percent or less biodiesel and is not considered to be a biodiesel blend.

~~"Biodiesel (mono-alkyl ester)" means a biodiesel or fuel additive that:~~

~~Is registered as a motor vehicle fuel or fuel additive under 40 CFR 79,~~

~~Is a mono-alkyl ester,~~

~~Meets the standards in ASTM D6751,~~

~~Is intended for use in some engines designed to run on conventional diesel fuel, and~~

~~Is derived from nonpetroleum renewable resources.~~

~~"Biodiesel (mono-alkyl ester) blend" means a motor fuel composed of biodiesel (mono-alkyl ester) and diesel fuel and identified by the letter "B" and a numeric value indicating the volume percentage of biodiesel (mono-alkyl ester) in the blend.~~

~~"Biofuel" means a solid, liquid, or gaseous fuel that is derived from biomass or nonpetroleum renewable resources and can be used directly for heating or power or as a blend component in motor fuel~~ "Biofuel" has the same meaning as prescribed under A.R.S. § 3-3401.

~~"Biofuel blend" means a motor fuel composed of biofuel and petroleum-based motor fuel and identified by the letter "C" and a numeric value indicating the volume percentage of biofuel in the blend.~~ "Biofuel blend" has the same meaning as prescribed under A.R.S. § 3-3401.

"Biofuel blender" means a person that modifies a motor fuel by adding a biofuel.

"Biofuel producer" means a person that owns, leases, operates, controls, or supervises a facility at which biofuel is produced.

"Biofuel Supplier" means a marketer or jobber of a biofuel or biofuel blend.

~~"Biomass" means biological material, such as animal or plant matter, that can be transformed into biofuel, excluding biological material that has been transformed by geological processes into a substance such as coal petroleum or a derivative of a substance resulting from geological processes.~~ "Biomass" has the same meaning as prescribed under A.R.S. § 3-3401.

"Biomass-based diesel" has the same meaning as prescribed under A.R.S. § 3-3401.

"Biomass-based diesel blend" has the same meaning as prescribed under A.R.S. § 3-3401.

"Blendstock" means any liquid compound that is blended with another liquid compound to produce a motor fuel, including Arizona CBG. A deposit-control or similar additive registered under 40 CFR 79 is not a blendstock.

~~"BQ9000" means the cooperative and voluntary program, implemented by the National Biodiesel Accreditation Commission, to accredit producers and marketers of biodiesel fuel using a combination of the ASTM standard for biodiesel (ASTM D6751) and a quality systems program of fuel management practices regarding storing, sampling, testing, blending, shipping, and distributing biodiesel fuel.~~

"CARB" means the California Air Resources Board.

"CARBOB Model" means the procedures incorporated by reference in R3-7-702(11).

"CARB Phase 2 gasoline" means gasoline that meets the specifications incorporated by reference in R3-7-702(8).

"CBG-covered area" means a county with a population of 1,200,000 or more persons according to the most recent United States decennial census and any portion of a county within area A.

"Conventional gasoline" means gasoline that conforms to the requirements of this Chapter for sale or use in Arizona, but does not meet the requirements of Arizona CBG or AZRBOB.

~~*"Diesel" or "diesel fuel" means a refined middle distillate that is used as a fuel in a compression-ignition internal combustion engine and that meets the specifications of ASTM D975.* A.R.S. § 41-2051~~ "Diesel fuel" or "Diesel" has the same meaning as prescribed under A.R.S. § 3-3401. Per ASTM D975, diesel fuel may contain 5 percent or less biodiesel.

"Duplicate" means a portion of a sample that is treated the same as the original sample to determine the accuracy and precision of an analytical method.

~~"E85" means a fuel ethanol gasoline blend that meets the specifications in ASTM D5798, which is incorporated by reference in R3-7-702~~.

"EPA" means the United States Environmental Protection Agency.

"EPA waiver" means a waiver granted by the Environmental Protection Agency as described in "Waiver Requests under Section 211(f) of the Clean Air Act," which is incorporated by reference in R3-7-702.

"Ethanol flex fuel" has the same meaning as prescribed under A.R.S. § 3-3401.

"Final destination" means the name and address of the location to which a transferee will deliver motor fuel for further distribution or final consumption.

"Final distribution facility" means a stationary motor-fuel transfer point at which motor fuel or AZRBOB is transferred into a cargo tank truck, pipeline, or other delivery vessel from which the motor fuel or AZRBOB will be delivered to a motor-fuel dispensing site. A cargo tank truck is a final distribution facility if the cargo tank truck transports motor fuel or AZRBOB and carries documentation that the type and amount or range of amounts of oxygenates designated by the registered supplier will be or have been blended directly into the cargo tank truck before delivery of the resulting motor fuel to a motor-fuel dispensing site.

"Fleet" means at least 25 motor vehicles owned or leased by the same person.

"Fleet vehicle fueling facility" means a facility or location where a motor fuel is dispensed for final use by a fleet.

"Fuel ethanol" means denatured ethanol that meets the ~~specifications~~ requirements in ASTM D4806, which is incorporated by reference in R3-7-702.

~~"Gasoline" means a volatile, highly flammable liquid mixture of hydrocarbons that does not contain more than .05 grams of lead for each United States gallon, is produced, refined, manufactured, blended, distilled, or compounded from petroleum, natural gas, oil, shale oils or coal, and other flammable liquids free from undissolved water, sediment, or suspended matter, with or without additives, and is commonly used as a fuel for spark-ignition internal combustion engines. Gasoline does not include diesel fuel or E85 ethanol flex fuel.~~ "Gasoline" has the same meaning as prescribed under A.R.S. § 3-3401.

"Jobber" means a person that distributes a motor fuel from a bulk storage plant to the owner or operator of a UST or AST or purchases a motor fuel from a terminal for distribution to the owner or operator of a UST or AST.

~~"Manufacturer's proving ground" means a facility used only to develop complete motor vehicles, which are not currently available on the retail market, for an automotive manufacturer.~~ "Manufacturer's proving ground" has the same meaning as prescribed under A.R.S. § 3-3401.

"Marketer" means a person engaged in selling or offering for sale motor fuels.

~~*"Motor fuel" means a petroleum or a petroleum based substance that is motor gasoline, aviation gasoline, number one or number two diesel fuel or any grade of oxygenated gasoline typically used in the operation of a motor engine, including biodiesel blends, biofuel blends and the ethanol blend E85 as defined in ASTM D5798. A.R.S. § 41-2051*~~ "Motor Fuel" has the same meaning as prescribed under A.R.S. § 3-3401.

"Motor fuel dispensing site" means a facility or location where a motor fuel is dispensed into commerce for final use.

"Motor fuel property" means any characteristic listed in R3-7-751(A)(1) through (7), R3-7-751(B)(1) through (7), Table 1, Table 2, or any other motor fuel standard referenced in this Article.

"Motor vehicle" means a vehicle equipped with a spark-ignited or compression-ignition internal combustion engine except:

A vehicle that runs on or is guided by rails, or

A vehicle designed primarily for travel through air or water.

~~"Motor vehicle racing event" means a competition, including related practice and qualifying and demonstration laps that uses unlicensed motor vehicles designed and manufactured specifically for racing and is conducted on a public or private racecourse for the entertainment of the general public.~~ "Motor vehicle racing event" has the same meaning as prescribed under A.R.S. § 3-3401.

"MTBE" means methyl tertiary butyl ether.

"Neat" means pure or 100 percent~~, not blended with motor fuel~~.

"NOx" means oxides of nitrogen.

"Octane," "octane number," or "octane rating" mean the anti-knock characteristic of gasoline as determined by the resultant arithmetic test average of ASTM D2699 and ASTM D2700.

~~*"Oxygenate" means any oxygen-containing ashless, organic compound, including aliphatic alcohols and aliphatic ethers, that may be used as a fuel or as a gasoline blending component and is approved as a blending agent under the provisions of a waiver issued by the United State environmental protection agency pursuant to 42 United States Code §7545(f).*~~ A.R.S. § 41-2121 "Oxygenate" has the same meaning as prescribed under A.R.S. § 3-3401.

"Oxygenate blender" means a person that owns, leases, operates, controls, or supervises an oxygenate-blending facility, or that owns or controls the blendstock or gasoline used, or the gasoline produced, at an oxygenate-blending facility.

"Oxygen content" means the percentage by weight of oxygen contained in a gasoline oxygenate blend as determined under ASTM D4815.

~~"Petroleum-based renewable diesel" means diesel fuel or fuel additive that meets all of the following:~~

~~Is registered as a motor vehicle fuel or fuel additive under 40 CFR 79,~~

~~Is not a mono-alkyl ester,~~

~~Is intended for use in engines designed to run on diesel fuel,~~

~~Is derived from petroleum and nonpetroleum renewable resources,~~

~~Meets the requirements of ASTM D975, and~~

~~Is identified by the letter "R" and a numeric value indicating the volume percentage of the nonpetroleum renewable resources component in the blend.~~

"Pipeline" means a transporter that owns or operates an interstate common-carrier pipe or is subject to Federal Energy Regulatory Commission tariffs to transport motor fuels into Arizona.

~~"Pressurant" means a blendstock component of an E85 blend for sale within the CBG-covered area added specifically to ensure that the vapor pressure meets ASTM D5798 requirements.~~

"Premium Diesel" means a diesel fuel meeting the requirements in ASTM D975 and in Handbook 130, Uniform Engine Fuels and Automotive Lubricants Regulations, Section 2.2.1(a) through 2.2.1(d).

"Producer" means a refiner, blender, or other person that produces a motor fuel, including Arizona CBG or AZRBOB.

"Production facility" means a facility at which a motor fuel, including Arizona CBG or AZRBOB, is produced. Upon request of a producer, the associate director ~~Director~~ may designate, as part of the producer's production facility, a physically separate bulk storage facility that:

Is owned or leased by the producer;

Is operated by or at the direction of the producer; and

Is used to store or distribute motor fuels, including Arizona CBG or AZRBOB, that are supplied only from the production facility.

~~"Product transfer document" means a bill of lading, loading ticket, manifest, delivery receipt, invoice, or other paper that is provided by the transferor at the time motor fuel is delivered and evidences that custody or title of the motor fuel is transferred to the transferee. A product transfer document is not required when motor fuel is sold or dispensed at a motor fuel dispensing site or fleet vehicle fueling facility.~~ "Product transfer document" has the same meaning as prescribed under A.R.S. § 3-3401.

"Refiner" means a person that owns, leases, operates, controls, or supervises a refinery in the United States, including its trust territories.

"Refinery" means a facility that produces a liquid fuel, including Arizona CBG or AZRBOB, by distilling petroleum, or a transmix facility that produces a motor fuel offered for sale or sold into commerce as a finished motor fuel.

"Reproducibility" means the testing method margin of error as provided in the ASTM specification or other testing method required under this Article.

~~"Supplier" means a marketer or jobber of a biofuel or biofuel blend.~~

"Supply" means to provide or transfer motor fuel to a physically separate facility, vehicle, or transportation system.

"Terminal" means an owner or operator of a motor fuel storage tank facility that accepts custody, but not necessarily ownership, of a motor fuel from a registered supplier, oxygenate blender, pipeline, or other terminal and relinquishes custody of the motor fuel to a transporter or another terminal.

"Test result" means any document that contains a result of testing including all original test measures, all subsequent test measures that are not identical to the original test measure, and all worksheets on which calculations are performed.

"Transferee" means a person that receives title to or custody of a motor fuel.

"Transferor" means a person that relinquishes title to or custody of a motor fuel to a transporter, marketer, jobber, or motor fuel dispensing site.

"Transmix" means a mixture of petroleum distillate fuel and gasoline that does not meet the Arizona standards for either petroleum distillate fuels or gasoline.

"Transmix facility" means a facility at which transmix is processed into its components and then the components either are combined with a finished product or further processed to produce a finished motor fuel.

"Transporter" means a person that causes motor fuels, including Arizona CBG or AZRBOB, to be transported into or within Arizona.

"UST" means underground storage tank.

"Vapor pressure" means dry vapor pressure equivalent of gasoline or blendstock as measured according to ASTM D5191.

~~"Vehicle emissions control area" has the same meaning as in A.R.S. § 49-541 except that a vehicle emissions control area does not include a manufacturer's proving ground that is located in the vehicle emissions control area.~~ "Vehicle emissions control area" has the same meaning as prescribed under A.R.S. § 3-3401.

"VOC" means volatile organic compound.

R3-7-702. Material Incorporated by Reference

A. The following documents are incorporated by reference and on file with the ~~Department~~ Division. The documents incorporated by reference contain no future editions or amendments.

1. 16 CFR 306 - Automotive Fuel Ratings, Certification and Posting, January 14, 2016 ~~1, 1998~~ Edition, Government ~~Printing~~ Publishing Office, ~~P.O. Box 979050, St. Louis, MO 63197-9000~~ 732 North Capitol Street, NW, Washington, D.C. 20401-0001 or bookstore.gpo.gov.
2. API Recommended Practice 1637 (API RP 1637), "Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Gasoline Dispensing Facilities and Distribution Terminals," published July 2006, Reaffirmed May 2012, American Petroleum Institute (API), 6300 Interfirst Drive, Ann Arbor, MI, 48108.
3. ~~2.~~ ASTM Standard D975, ~~2010~~ 2016a (ASTM D975-~~10~~ 16a), "Standard Specification for Diesel Fuel Oils," published ~~April 2010~~ 2016, ASTM International ~~(formerly American Society for Testing and Materials)~~, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.
4. ~~3.~~ ASTM Standard D4806, ~~2009~~ 2016a (ASTM D4806-~~09~~ 16a), "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel," published ~~July 2009~~ 2016, ASTM International ~~(formerly American Society for Testing and Materials)~~, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.
5. ~~4.~~ ASTM Standard D4814, ~~2009b~~ 2016ee1 (ASTM D4814-~~09b~~ 16ee1), "Standard Specification for Automotive Spark-Ignition Engine Fuel," published ~~September 2009~~ 2016, ASTM International ~~(formerly American Society for Testing and Materials)~~, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.
6. ~~5.~~ Waiver Requests under Section 211(f) of the Clean Air Act, (August 22, 1995 edition), United States Environmental Protection Agency, Transportation and Regional Programs Division, Fuels Program Support Group, Mail Code 6406-J, Washington, D.C. 20460.
7. ~~6.~~ ASTM Standard D5798, ~~2009b~~ 2015 (ASTM D5798-~~09b~~ 15), "Standard Specification for ~~Fuel~~ Ethanol Fuel Blends ~~(Ed75-Ed85)~~ for Flexible-Fuel Automotive Spark-Ignition Engines," published ~~May 2009~~ 2015, ASTM International ~~(formerly American Society for Testing and Materials)~~, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.
8. ~~7.~~ ASTM Standard D6751, ~~2009a~~ 2015ce1 (ASTM D6751-~~09a~~ 15ce1), "Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels," published ~~February 2010~~ 2015, ASTM International ~~(formerly American Society for Testing and Materials)~~, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.
9. ~~8.~~ California Air Resources Board, "California Procedures for Evaluating Alternative Specifications for Phase 2 Reformulated Gasoline Using the California Predictive Model," adopted April 20, 1995. A copy may be obtained at: CARB, P.O. Box 2815, Sacramento, CA 95812 or www.arb.ca.gov.
10. ~~9.~~ The Federal Complex Model ~~as~~ contained in 40 CFR 80.45, January 1, 1999. A copy may be obtained at: Government ~~Printing~~ Publishing Office, ~~P.O. Box 979050, St. Louis, MO 63197-9000~~ 732 North Capitol Street, NW, Washington, D.C. 20401-0001 or bookstore.gpo.gov.
11. ~~10.~~ California Air Resources Board, The California Reformulated Gasoline Regulations, Title 13, California Code of Regulations, Section 2266.5 (Requirements Pertaining to California Reformulated Gasoline Blendstock for Oxygen Blending (CARBOB) and Downstream Blending), as of April 9, 2005. A copy may be obtained at: CARB, P.O. Box 2815, Sacramento, CA 95812 or www.arb.ca.gov.
12. ~~11.~~ California Air Resources Board, Procedures for Using the California Model for California Reformulated Gasoline Blendstocks for Oxygenate Blending (CARBOB), adopted April 25, 2001. A copy may be obtained at: CARB, P.O. Box 2815, Sacramento, CA 95812 or www.arb.ca.gov.
13. ~~12.~~ ASTM Standard D7467, ~~2009a~~ 2015ce1 (ASTM D7467-~~09a~~ 15ce1), "Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20)," published ~~June 2009~~ 2015, ASTM International ~~(formerly American Society for Testing and Materials)~~, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.
14. SAE International, SAE J285, "Dispenser Nozzle Spouts for Liquid Fuels Intended for Use with Spark Ignition and Compression Ignition Engines," published May 5, 2012, SAE International, 400 Commonwealth Drive, Warrendale, PA 15096-0001 or www.sae.org.

B. Subsection (A)(11) will not become effective until Arizona's revised State Implementation Plan submitted by ADEQ to EPA in August 2013 and subsequent supplement submitted July 2014 is approved by EPA.

R3-7-703. Volumetric Inspection of Motor Fuels and Motor Fuel Dispensers

A. After completing an inspection, the ~~Department~~ Division shall return all motor fuel to the owner or operator of ~~the service station~~ a motor fuel dispensing site at the site where the ~~Department~~ Division collected the motor fuel.

B. After completing an inspection, if a motor fuel cannot be returned to the owner or operator of ~~the service station~~ a motor fuel dispensing site at the site where the ~~Department~~ Division collected the motor fuel, the ~~Department~~ Division shall transport the motor fuel to another site of the owner or operator's choice and within a 20-mile radius of the inspection site.

R3-7-704. Motor Fuel Dispensing Site Price and Grade Posting on External Signs

A. A person who owns or operates a ~~service station~~ motor fuel dispensing site that has an external sign shall ensure that the sign:

1. Identifies whether the price differs depending on whether the payment is cash, credit, or debit;
2. Identifies the self-service and full-service prices, if different;
3. Discloses the full price of motor fuel including fractions of a cent and all federal and state taxes, if the sign displays the motor fuel price. A decimal point shall be used in the displayed price when a dollar sign precedes the posted price;
4. Displays lettering at a height of at least 1/5 of the letter height of the motor fuel price displayed on the external sign or 2 1/2", whichever is larger, and is visible from the road;
5. States the terms of any condition if the displayed price is conditional upon the sale of another product or service. The terms of any condition shall comply with the letter height requirement in subsection (A)(4);
6. Describes ~~diesel~~ the motor fuel that meets ASTM D975 as No. 1 ~~diesel~~Diesel, #1 ~~diesel~~Diesel, No. 2 ~~diesel~~Diesel, #2 ~~diesel~~ Diesel, or premium diesel. Describes other fuel for use in compression ignition engines as biodiesel, or biodiesel blend. Diesel fuel No. 2 may be labeled on dispensers as diesel fuel without indication of the fuel grade; ~~and~~
7. Describes motor fuel with an ethanol concentration of 51 to 83 volume percent as ethanol flex fuel;
8. Identifies the unit of measure of the price, if it is other than per gallon~~.~~; and
9. Sites that sell Ethanol Flex Fuel previously labeled as "E-85" shall update the signage to reflect the sale of Ethanol Flex Fuel no later than January 1, 2018. In no case shall signage with an incorrect ethanol content be advertised at the motor fuel dispensing site.

B. ~~If~~ For the following terms ~~are~~ used ~~in~~ on a sign to describe a gasoline grade or gasoline-oxygenate blend, the grade or blend shall meet the following minimum antiknock index as determined by the test average of ASTM D 2699 and ASTM D 2700, also known as the (R+M)/2 method:

	Term	Minimum Antiknock Index
1.	Regular, Reg, Unleaded, UNL, or UL	87
2.	Midgrade, Mid, or Plus	89
3.	Premium, PREM, Super, Supreme, High, or High Performance	91

C. A person may use an alternative to the descriptions provided in subsection (B) upon receipt of written approval by the associate director.

R3-7-705. ~~Price, Octane, and Lead-substitute Notification on Dispensers~~ Dispenser Labeling at Motor Fuel Dispensing Sites

The owner or operator of a motor fuel dispensing site shall label dispensers in accordance with the following provisions:

A. Pricing, motor fuel grade, octane rating, and lead substitute. A ~~service~~ motor fuel dispensing station owner or operator shall ensure that information regarding pricing, motor fuel grade, octane rating, and lead-substitute addition displayed on a ~~service station~~ motor fuel dispenser:

~~1. Is clean, legible, and visible at all times;~~
~~2. Is displayed electronically or with a sign or label on the upper 60 percent of each face of the dispenser;~~
~~3.~~1. Lists the full price of the motor fuel including fractions of a cent and all federal and state taxes;
~~4.~~2. Displays the highest price of motor fuel sold from the dispenser prior to any deliberate action of the customer resulting in a discounted price being displayed, provided ~~if~~ the dispenser is capable of dispensing and computing the price of ~~multiple grades of~~ motor fuel at more than one price;
~~5. Displays a discount, if offered, in letters at least ¼" in height on each face of the dispenser and next to the undiscounted price;~~
~~6. Displays both a cash and credit price on a dispenser that is capable of electronically displaying both cash and credit prices;~~
~~7. Posts both a cash and credit price on each face of a dispenser that is preset by the cashier if the dispenser is unable to display electronically and simultaneously both cash and credit prices;~~
~~8. Posts a price-per-gallon sign next to or on a non-price computing dispenser for a retail only sale of liquefied petroleum gas used as an alternative motor fuel; and~~
~~9.~~3. Complies with the requirements of R3-7-704(A)(1), (A)(2), (A)(3), (A)(5), (A)(6), ~~and~~ (A)(7), (A)(8), (A)(9) and (B).

~~**B.** A person who owns or operates a service station shall ensure that:~~
~~1.~~4. Displays the~~The~~ octane rating of each grade of gasoline ~~is displayed on the upper 60 percent of each face of each dispenser, as prescribed by16 CFR 306~~; ~~and~~

~~2.~~5. Displays the ~~The~~ signs required by Handbook 130~~,~~ for ~~gasoline~~ motor fuel dispensers that dispense gasoline with lead substitute, ~~are displayed on the upper 60 percent of each face of each dispenser~~ in letters at least 1/4" in height~~.~~; and

6. Sites that sell ethanol flex fuel previously labeled as "E-85" shall update the signage to reflect the sale of ethanol flex fuel no later than January 1, 2018. In no case shall signage with an incorrect ethanol content be advertised at the motor fuel dispensing site.

B. All motor fuels shall meet the labeling requirements of 16 CFR 306. Additionally, the following requirements apply:

1. Gasoline containing fuel ethanol.
   a. Gasoline containing greater than 1.5 percent by weight oxygen or 4.3 percent by volume fuel ethanol shall be labeled with the following statement to indicate the maximum percent by volume of fuel ethanol contained in the gasoline: "May contain up to ____% fuel ethanol."
   b. Within the CBG-covered area and area B, gasoline containing fuel ethanol shall be labeled with the following statement: "This gasoline is oxygenated with fuel ethanol and will reduce carbon monoxide emissions from motor vehicles."
   c. Gasoline for sale outside of the CBG-covered area with an ethanol content greater than 10 volume percent and less than or equal to 15 volume percent shall additionally be labeled in accordance with 40 CFR 80.1501, as it existed on July 18, 2014, is incorporated by reference and on file with the Division. A copy may be obtained at the Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov.
2. Gasoline containing an oxygenate other than fuel ethanol. Gasoline containing greater than 1.5 percent by weight shall be labeled with the following statement to indicate the type and maximum percent by volume of oxygenate contained in the gasoline: "May contain up to ____% _____."
3. The labels in subsection B(1) and (B)(2) shall be printed in black and white block letters on a sharply contrasting background with lettering no smaller than ¼ inch. The statements in subsection (B)(1)(i) and (B)(1)(ii) may be printed on the same label or on separate labels if the statements are displayed next to each other.
4. Non-oxygenated gasoline. It is prohibited to label a dispenser as containing no oxygenate if the gasoline contains more than 0.5 percent by volume of any oxygenates.
5. Biodiesel blends. The diesel grade component as contained within ASTM D975 for grades other than No. 2 diesel shall be identified.

C. Unattended retail motor fuel dispensers. In addition to all labeling and sign requirements in this Article, the owner or operator of a motor fuel dispensing site that is unstaffed shall post on or next to each motor fuel dispenser a sign or label, in public view, that conspicuously lists the owner's or operator's name, address, and telephone number.

D. All dispensers shall have a decal that contains the Division's name and phone number. A template of the decal shall be placed on the Weights and Measures Services Division website for use by retailers. The seal placed by the Division under A.R.S. § 3-3414(A)(13) satisfies this requirement.

E. All labels required under this section shall be in the upper 50 percent of the front panel of each motor fuel dispenser and shall be clean, legible, and visible at all times.

R3-7-706. ~~Unattended Retail Dispensers~~ Repealed

~~In addition to all labeling and sign requirements in this Article, an owner or operator of an unstaffed service station shall post on or next to each motor fuel dispenser a sign or label, in public view, that conspicuously lists the owner's or operator's name, address, and telephone number.~~

R3-7-707. Product Transfer Documentation and Record Retention for Motor Fuel other than Arizona CBG and AZRBOB

A. When a transferor transfers custody or title to a motor fuel that is not Arizona CBG or AZRBOB, and the motor fuel is not sold or dispensed at a motor fuel dispensing site or fleet vehicle fueling facility, the transferor shall provide to the transferee documents that include the following information:

1. The grade of the motor fuel;
2. The volume of each grade of motor fuel being transferred;
3. The date of the transfer;
4. Product transfer document number;
5. For conventional gasoline, the minimum octane rating of each grade as prescribed by 16 CFR 306;
6. For conventional gasoline, the type and maximum volume of oxygenate contained in each grade;
7. For conventional gasoline transported in or through the CBG-covered area, the statement, "This gasoline is not intended for use inside the CBG-covered area";
8. If ~~Whether~~ a lead substitute is present in the gasoline~~, and~~ the type of lead substitute present;
9. For ~~a~~ the following biofuel or biofuel ~~blend~~blends; ~~the percentage of biofuel in the finished product;~~
   a. Ethanol Flex Fuel shall contain a declaration of the volume percent of ethanol in the blend; or
   b. Biodiesel and biomass-based diesel blends containing more than 5 percent biodiesel or biomass-based diesel shall contain a declaration of the volume percent biodiesel or biomass-based diesel in the blend, as well as the grade of diesel in the blend; and
   c. All other biofuel or biofuel blends shall contain the percentage of biofuel in the finished product.
10. The final destination:
    a. When a terminal is the transferor, the owner or operator of the terminal shall include on the product transfer document the terminal name and address~~,~~ and the transporter name and address~~, and the final destination, which may be a final distribution facility, jobber, marketer, or motor fuel dispensing site~~;
    b. When a transporter is the transferor, the transporter shall include on the product transfer document the name and address of the transporter and the final destination, which is the location at which the motor fuel will be delivered and off loaded from the truck; and

c. When a jobber or marketer is the transferor, the jobber or marketer shall include on the product transfer document the name and address of the jobber or marketer and the final destination, which may be a final distribution facility or a motor fuel dispensing site.

B. To enable a transferor to comply fully with the requirement in subsection ~~(A)(10)~~ (A)(10)(b) and (A)(10)(c), the transferee shall supply to the transferor information regarding the final destination.

C. A registered supplier, third-party terminal, or pipeline may use standardized product codes on pipeline tickets as the product transfer documentation.

D. A person identified in subsection (A) shall retain product transfer documentation for each shipment delivered for 12 months. This documentation shall be available within two working days from the time of the ~~Department~~ Division's request.

E. A person identified in subsection (A) shall maintain product transfer documentation for a transfer or delivery during the preceding 30 days at that person's address listed on the product transfer documentation.

F. An owner or operator of a motor fuel dispensing site or fleet owner shall maintain product transfer documentation for the three most recent deliveries of each grade of motor fuel on the premises of the motor fuel dispensing site owner or operator or fleet owner. This documentation shall be available for ~~Department~~ Division review.

G. The ~~Department~~ Division shall accept a legible photocopy of a product transfer document instead of the original.

H. A person transferring custody or title of Arizona CBG or AZRBOB shall comply with R3-7-757.

R3-7-708. Gasoline ~~Ethanol~~ Oxygenate Blends

A. A person that has custody of gasoline blended with an oxygenate shall ensure that the amount of oxygenate does not exceed the amount allowed by EPA waivers, Section 211(f) of the Clean Air Act, and A.R.S. § ~~41-2122~~ 3-3491. ~~The maximum oxygen content of gasoline oxygenate blends shall not exceed 4.0 percent by weight for fuel ethanol oxygenate and as specified in A.R.S. § 41-2122 3-3491 for other oxygenates~~.

B. Special provisions for gasoline ethanol blends.

1. A gasoline ethanol blend that meets the requirements in subsections (B)(1)(a) and (b) shall not exceed the vapor pressure specified in ASTM D4814 by more than 1 psi:
   a. ~~The gasoline ethanol blend shall contain fuel ethanol.~~ The concentration of the ~~fuel~~ ethanol, excluding the required denaturing agent, shall be:
      i. From May 1 through September 15, at least nine percent and no more than 10 percent by volume of the gasoline ethanol blend; and
      ii. From September 16 through April 30, at least 1.5 percent by weight and no more than 10 percent by volume of the gasoline ethanol blend; and
   b. The ~~fuel~~ ethanol content of the gasoline ethanol blend shall:
      i. Be determined using the appropriate test method listed in ASTM D4814, and
      ii. Not exceed any applicable waiver condition under Section 211(f) of the Clean Air Act.
2. The provision in subsection (B)(1) is effective for gasoline ethanol blends sold:
   a. Outside the CBG-covered area year around, and
   b. Within the CBG-covered area during April.
3. Gasoline blended with no more than 10 percent by volume of fuel ethanol shall be blended using one of the following alternatives:
   a. The base gasoline complies with the standards in ASTM D4814, the fuel ethanol complies with the standards in ASTM D4806, and the finished blend complies with the standards in ASTM D4814 with the following permissible exceptions:
      i. The distillation minimum temperature at the 50 volume percent evaporated point is not less than 66°C (150°F), and
      ii. The minimum test temperature at which the vapor/liquid ratio is equal to 20 is waived;
   b. The finished blend complies with the standards in ASTM D4814; or
   c. The base gasoline complies with the standards in ASTM D4814 except distillation and the finished blend complies with the standards in ASTM D4814 with the following permissible exceptions:
      i. The distillation minimum temperature at the 50 volume percent evaporated point is not less than 66°C (150°F), and
      ii. The minimum test temperature at which the vapor/liquid ~~ration~~ratio is equal to 20 is waived.
4. A gasoline ethanol blend shall meet the standards specified in ASTM D4814.

C. In addition to complying with the requirements in R3-7-707, the transferor of a gasoline ethanol blend shall ensure that the product transfer document contains a legible and conspicuous statement that the gasoline being transferred contains fuel ethanol and the percentage concentration of fuel ethanol.

D. Nothing in this subsection shall preclude the sale of gasoline with an ethanol content greater than 10 percent by volume and less than or equal to 15 percent by volume of ethanol outside of the CBG-covered area.

R3-7-709. ~~Retail Oxygenated Fuel Labeling~~ Repealed

~~A.~~ ~~The owner or operator of a motor fuel dispensing site shall ensure that a motor fuel dispenser that offers gasoline containing fuel ethanol that results in a gasoline blend containing 1.5 percent or more by weight of oxygen is clearly labeled with the fuel ethanol volume information. Each face of each motor fuel dispenser shall be clearly labeled with the oxygenate volume information if the percent by volume is more than 4.3 percent by volume of fuel ethanol.~~

~~B.~~ ~~The owner or operator of a motor fuel dispensing site shall ensure that labels required under subsection (A) are displayed on the upper 60 percent of each face of each motor fuel dispenser. The label indicating the maximum percent by volume of oxygenate contained in the oxygenated fuel shall state: "May contain up to _____% fuel ethanol."~~

~~C.~~ ~~In the CBG-covered area and area B, the owner or operator of a motor fuel dispensing site shall ensure that a label displayed on each face of each motor fuel dispenser contains the following statement: "This gasoline is oxygenated with fuel ethanol and will reduce carbon monoxide emissions from motor vehicles." The statement may be printed on the label required in subsection (B) or on a separate label. If the statement is printed on a separate label, the label shall be displayed next to the label required in subsection (B).~~

~~D. The owner or operator of a motor fuel dispensing site shall ensure that:~~
~~1. The label required by subsection (B) is clean, legible, and visible at all times;~~
~~2. The label is printed in black or white block letters on a sharply contrasting background; and~~
~~3. The lettering on labels required by subsections (B) and (C) is no less than 1/4".~~

R3-7-710. Blending Requirements

A. A person that has custody of or transports an oxygenated gasoline blend shall ensure that no neat oxygenate blending occurs at a motor fuel dispensing site or fleet vehicle fueling facility.

B. If a motor fuel dispensing site storage tank contains an oxygenated gasoline blend that does not contain the amount of oxygen required by A.R.S. §§ ~~41-2122~~ 3-3491, ~~41-2123~~ 3-3492, ~~41-2125~~ 3-3495, or R3-7-751, the owner or operator of the motor fuel dispensing site shall do one of the following:
~~1. Add gasoline that contains no more than 20 percent by volume of the same oxygenate to the non-compliant oxygenated gasoline blend;~~
~~2.~~ 1. Add a gasoline blend that dilutes the non-compliant oxygenated gasoline blend to the level of oxygen content required by A.R.S. §§ ~~41-2122~~ 3-3491, ~~41-2123~~ 3-3492, ~~41-2125~~ 3-3495, or R3-7-751; ~~or~~
~~3.~~ 2. Empty the storage tank and replace the non-compliant oxygenated gasoline blend with a required oxygenate blend;~~.~~
3. Upon written permission of the associate director, add gasoline that contains no more than 20 percent by volume of the same oxygenate to the non-compliant oxygenated gasoline blend.

R3-7-711. ~~Alcohol-oxygenated~~ Gasoline~~-~~Alcohol Blend Storage Tank Requirements

A. Before a person adds ~~an alcohol-oxygenated~~ the initial gasoline~~-~~alcohol blend into a storage tank, the person shall:
1. Test the storage tank for the presence of water and, if any water is detected, remove the water from the storage tank; and
2. Install a fuel filter designed for use with ~~alcohol-oxygenated~~ gasoline~~-~~alcohol blends in the fuel line of all motor fuel dispensers that dispense ~~alcohol-oxygenated~~ gasoline~~-~~alcohol blends.

B. If water is detected in a storage tank ~~or in an alcohol-oxygenated~~ containing a gasoline~~-~~alcohol blend ~~in a storage tank~~, the owner or operator shall empty the storage tank.

R3-7-712. Water in ~~Service Station~~ Motor Fuel Dispensing Site Storage Tanks

A ~~service station~~ motor fuel dispensing site owner or operator shall ensure that water in a ~~service station~~ motor fuel storage tank other than an alcohol gasoline blend, does not exceed 1" in depth when measured from the bottom through the fill pipe. The ~~service station~~ owner or operator shall remove all water from the tank before delivery or sale of motor fuel from that tank.

R3-7-713. Motor Fuel Storage Tank Labeling

A. An owner or operator of a motor fuel dispensing site shall ensure that all motor fuel storage tank fill pipes and gasoline vapor return lines located at the motor fuel dispensing site are labeled to identify the contents accurately as:
1. Unleaded gasoline,
2. Unleaded midgrade gasoline,
3. Unleaded premium gasoline,
4. No. 1 or #1 diesel fuel,
5. No. 2, ~~or~~ #2 diesel fuel, or diesel fuel,
6. Premium diesel,
~~6.~~ 7. Gasoline vapor return,
~~7.~~ 8. Biodiesel or biodiesel blend, for blends containing more than 5 percent by volume, ~~or~~
~~8.~~ 9. E85 or Ethanol flex fuel~~-~~, or
10. Other fuel as designated on the product transfer document.

B. An owner or operator of a motor fuel dispensing site shall ensure that the label required under subsection (A) is at least 1 1/2" x 5" with at least 1/4" black or white block lettering on a sharply contrasting background and that the label is clean, visible, and legible at all times.

C. An owner or operator of a motor fuel dispensing site may display other information on the reverse side of a two-sided label.

D. An owner or operator of a motor fuel dispensing site shall not put motor fuel into storage tanks without attaching the proper label.

E. A person shall not deliver motor fuel to a motor fuel dispensing site unless the product transfer documents confirm the motor fuel is the correct type as indicated on the tank fill pipes labeled under subsection (A) or the product being delivered meets or exceeds the standards.

F. If tank manhole covers are color-coded, the color coding shall comply with API 1637.

R3-7-714. Additional Requirements for Motor Fuels ~~Other than Arizona CBG~~

A. A person that owns or operates a motor fuel dispensing site, ~~or~~ transmix, or production facility outside the CBG-covered area shall ensure that a motor fuel offered for sale ~~at the motor fuel dispensing site or transmix or production facility~~ meets ~~all~~ the ~~appropriate~~ requirements of the applicable specifications in R3-7-702 except that the maximum vapor pressure from May 1 through September 30~~, gasoline shall meet the specifications requirements in ASTM D4814 except maximum vapor pressure~~ shall be 9.0 pounds per square inch or as allowed under R3-7-708(B).

B. The owner or operator of a motor fuel dispensing site shall ensure that the finished gasoline is visually free of water, sediment, and suspended matter and is clear and bright at ambient temperature or 70° F (21° C), whichever is greater.

~~C. The owner or operator of a motor fuel dispensing site or transmix or production facility shall ensure that the minimum octane rating determined by the test average of ASTM D 2699 and ASTM D 2700, also known as the (R+M)/2 method, is:~~
~~1. 87 for unleaded, or regular;~~
~~2. 88 for mid-grade, extra, or any other gasoline with an octane rating of 88 or higher; and~~
~~3. 90 for super, high performance, premium, or any other gasoline with an octane rating of 90 or higher.~~

~~D.~~C. Prohibited activities regarding a motor fuel sold or offered for sale ~~outside the CBG-covered area~~.

1. The owner or operator of a motor fuel dispensing site shall not sell or offer for sale from the motor fuel dispensing site storage tank a product that is not a motor fuel~~.~~.
2. The owner or operator of a motor fuel dispensing site or transmix or production facility shall not sell or offer for sale a motor fuel that contains more than 0.3 volume percent MTBE or more than 0.1 weight percent oxygen from all other ethers or alcohols as listed in A.R.S. § ~~41-2122~~ 3-3491.
3. A transporter shall not deliver to a motor fuel dispensing site or place in a motor fuel dispensing site storage tank a product that is not motor fuel.

D. Biofuels and biofuel blends. Biofuel producers, biofuel blenders, and biofuel suppliers and owners or operators of motor fuel dispensing sites shall comply with the requirements in R3-7-718.

R3-7-715. Motor Fuel ~~Quality~~ Testing Methods and Requirements

A. Unless otherwise required in A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Chapter, the producer of a motor fuel shall test and certify the motor fuel for its motor fuel properties using the methodologies in R3-7-702~~ and ensure that the motor fuel meets the applicable specifications in the material incorporated by reference in R3-7-702~~.

~~**B.** Unless otherwise required in A.R.S. Title 41 3, Chapter 15, or this Chapter, a person testing #1 or #2 diesel fuel shall use the methodologies and meet the specifications of ASTM D975.~~

~~C.~~**B.** The ~~owner or operator of a transmix or production facility shall ensure that all gasoline sold or offered for sale outside the CBG-covered area has its~~ octane rating shall be determined and certified in accordance with 16 CFR 306 using the average of ASTM D2699 and ASTM D2700, also known as the (R+M)/2 method. ~~The owner or operator of a motor fuel dispensing site shall ensure that all gasoline sold or offered for sale outside the CBG-covered area has its octane rating posted in accordance with 16 CFR 306.~~

R3-7-716. Sampling and Access to Records

A. The ~~Department~~ Division shall obtain motor fuel samples for testing from:

1. The same motor fuel dispenser used for sales to customers;
2. The same motor fuel dispenser used for dispensing motor fuel into fleet vehicles;
3. A bulk storage facility;
4. A pipeline having custody of motor fuel, including Arizona CBG or AZRBOB;
5. A transporter of motor fuel, including Arizona CBG or AZRBOB;
6. A final distribution facility;
7. A third-party terminal having custody of motor fuel, including Arizona CBG or AZRBOB;
8. An oxygenate blender or registered supplier; or
9. A transmix or production facility.

B. An owner or operator of a motor fuel dispensing site, pipeline, third-party terminal, or storage, transmix, production, or distribution facility, or a transporter, registered supplier, or oxygenate blender shall maintain for five years records relating to producing, importing, blending, transporting, distributing, delivering, testing, or storing motor fuels, including Arizona CBG or AZRBOB, and shall make the records available for ~~Department~~ Division inspection upon request.

R3-7-717. ~~Hold-open Latch Exception~~ Motor Fuel Dispensing Site Equipment

A. Hold-open latch. If an owner or operator of a motor fuel dispensing site has a dispensing device with a motor fuel nozzle equipped with a hold-open latch, the owner or operator shall ensure that the latch operates according to the manufacturer's specifications.

B. Nozzle requirements for diesel fuel. An owner or operator of a motor fuel dispensing site with a dispensing device from which diesel fuel is sold at retail shall ensure that the dispensing device has a nozzle spout with a diameter that conforms to SAE J285, "Dispenser Nozzle Spouts for Liquid Fuels Intended for Use with Spark Ignition and Compression Ignition Engines."

C. Motor fuel dispenser filters. An owner or operator of a motor fuel dispensing site shall ensure that:

1. All gasoline, gasoline-alcohol blends, and ethanol flex fuel dispensers have a 10 micron or smaller nominal pore-sized filter;
2. Dispensers that dispense gasoline-alcohol blends shall have fuel filters designed for use with gasoline-alcohol blends;
3. All biodiesel, biodiesel blends, diesel, and kerosene dispensers have a 30 micron or smaller nominal pore-sized filter; or
4. In the event a fuel dispenser is not manufactured to be equipped to use fuel filters, they shall be installed in line with the fuel dispensing hose at the base of the dispenser. If this is not feasible, the motor fuel dispensing site owner may provide evidence that fuel filters cannot be installed at the site due to the configuration and apply for a waiver from these requirements from the Associate Director.

D. From and after September 30, 2018, all retail diesel fuel dispensers shall be equipped with nozzles that have a green grip guard and ethanol flex fuel dispensers shall be equipped with nozzles that have a yellow grip guard. No other nozzles shall be equipment with these color grip guards.

E. Motor fuel dispensers shall meet appropriate UL ratings and be compatible with the motor fuel being dispensed.

R3-7-718. Additional Requirements for Production, Transport, Distribution, and Sale of Biofuels and Biofuel Blends

A. ~~General~~ Registration and reporting requirements for biofuel blenders, biofuel producers, and biofuel suppliers of biofuel or biofuel blends in Arizona.

1. Registration requirement.
   a. A biofuel producer, biofuel supplier, or ~~person required to register with the EPA under 40 CFR 80, Subpart K or M,~~ biofuel blender shall register with the associate director ~~Director~~, using a form prescribed by the associate director ~~Director~~, before producing or supplying biofuel or biofuel blend in Arizona.
   b. A person required to register under subsection (A)(1)(a) shall notify the associate director ~~Director~~ within 10 days after the effective date of a change in any of the information provided under subsection (A)(1)(a).
   c. ~~Consequences of failing~~ If a biofuel producer, biofuel supplier, or biofuel blender fails to register under subsection (A)(1)(a), the associate director shall take action as allowed under A.R.S. § 3-3475 and R3-7-762.

~~i. If a producer fails to register, the Department shall presume that all biofuel or biofuel blend produced is noncompliant with the requirements of this Chapter from the date that registration should have occurred; and~~
~~ii. If a supplier or person required to register with the EPA fails to register, the Director shall take action as allowed under A.R.S. § 41-2115 and R3-7-762.~~

d. The ~~Department~~ Division shall maintain and make available to the public a list of all persons registered under this Section.

2. Reporting requirement.
   a. A person required to register under subsection (A)(1)(a) shall report to the ~~Department~~ Division by ~~the 15th of the month after producing or supplying biofuel or biofuel blend~~ January 30th of each year for the previous calendar year. The person shall:
      i. Report on a form or in a format prescribed by the associate director ~~Director~~;
      ii. Provide the ~~information specified in subsections (B) and (C), as applicable~~ total amount of biofuel or biofuel blend produced or supplied for the previous calendar year, including the total amount of each blend component;
      iii. Attest to the truthfulness and accuracy of the information submitted;
      iv. ~~Consent to the Department or its authorized agent collecting samples and accessing records as provided in this Article;~~ and
      ~~v.~~ Ensure that the report form is signed or submitted electronically by a corporate officer, or the officer's designee, responsible for operations at the facility at or from which the biofuel or biofuel blend was produced or supplied.
   b. The ~~Department~~ Division shall classify the information submitted under subsection (A)(2)(a) as confidential and protected under A.R.S. § 44-1374 if the person that submits the information expressly designates the information as confidential.

~~3.~~ **B.** Quality Assurance and Quality Control (QA/QC) program ~~requirement~~ requirements.

~~a.~~ 1. A ~~person required to register under subsection (A)(1)(a)~~ biofuel producer or biofuel blender shall ~~develop~~ implement a QA/QC program to ensure the quality of a biofuel or biofuel blend produced in or supplied in or into Arizona~~.~~;

~~b.~~ 2. ~~A person required to develop a QA/QC program under subsection (A)(3)(a) shall summarize the~~ The QA/QC program ~~in a manual and submit the manual to the Director for approval at least three months before the person plans to produce or supply a biofuel or biofuel blend. The person shall ensure that the manual~~ implemented by a biofuel producer shall include the following minimum requirements:

~~i.~~ a. ~~Documents the manner in which the QA/QC program ensures that a biofuel or biofuel blend produced or supplied conforms to applicable ASTM specifications, is appropriately blended, and meets all customer-specific requirements~~ A sampling and testing program to certify that the biofuel meets applicable ASTM requirements. All samples shall be collected following addition of any applicable blend components in accordance with ASTM methods. The plan shall include a policy for sample retention;

~~ii.~~ b. ~~Contains a policy and objectives that expressly commit the producer or supplier to ensure the quality of the biofuel or biofuel blend produced or supplied~~ A Certificate of Analysis with a unique identification number generated for each batch produced and indicated on the product transfer document;

~~iii.~~ c. ~~Contains procedures that will be used to determine and document that operational quality requirements are met; and~~ The Certificate of Analysis required under subsection (B)(2)(b) and any other supporting sampling and testing documentation required under this Section is made available to the Division within 24 hours of a request; and

~~iv.~~ d. ~~Contains a provision for making, maintaining, and controlling documents and records regarding the QA/QC program.~~ Any storage tank containing biofuel that is inactive for more than 30 days is resampled and analyzed to verify the fuel meets ASTM standards.

~~e. A person that submits a manual under subsection (A)(3)(b) shall not produce or supply a biofuel or biofuel blend until the manual is approved by the Director.~~

~~d. The Director shall approve a manual submitted under subsection (A)(3)(b) only if the Director determines that the QA/QC program sufficiently ensures the quality of a biofuel or biofuel blend produced or supplied.~~

3. The QA/QC program implemented by a biofuel blender shall include the following minimum requirements:
   a. Retention of:
      i. Documentation that demonstrates the applicable biofuel blend components were received from a facility registered with the EPA under 40 CFR 80, subpart K or M;
      ii. Certificates of Analysis for the biofuel used as a blend component in the blending process; and
      iii. Documentation such as a product transfer document that demonstrates the diesel fuel used in the blending process meets the requirements of ASTM D975;
   b. For biodiesel blending, all diesel fuel used as a blend component is analyzed to verify the biodiesel content before blending if the initial volume percent of biodiesel content in the diesel fuel component is unknown; alternatively, for biodiesel blends blended at a motor fuel dispensing site, the biofuel blender may assume the diesel contains 5% biodiesel and prepare and maintain calculations demonstrating the biodiesel content of the final biodiesel blend if it is advertised to consumers as a B6 to B20 biodiesel blend and the calculations demonstrate the biodiesel blend will be compliant with the biodiesel content advertised;
   c. Any storage tank containing biofuel that is inactive for more than 30 days is resampled and analyzed to verify the fuel meets ASTM standards; and
   d. All biodiesel used as a blend component in biodiesel blends consists of at least 99 percent biodiesel unless approved by the Division.
4. All records required under this subsection are maintained either onsite or at an offsite location for at least five years and made available to the Division upon request.
5. In the event the Division identifies biofuel or biofuel blends that do not meet ASTM requirements, the producer or biofuel blender shall evaluate the QA/QC program and make any additional changes that may be required to bring the fuel into compliance.

B. Specific requirements for producers or suppliers of E85.

1. The owner or operator of a motor fuel dispensing site at which E85 is dispensed shall ensure that:
   a. Both the motor fuel dispenser and nozzle from which E85 is dispensed have labels affixed that:
      i. Indicate E85 is not gasoline,
      ii. Indicate E85 is intended for use only in a flexible-fuel vehicle, and
      iii. State "Check your owner's manual to ensure that this fuel can be used in your vehicle," and
   b. Any motor fuel dispenser from which E85 is dispensed is compatible with E85 and meets the requirements of this Chapter and A.R.S. § 41-2083.
2. Additional requirement for producing E85 for sale in the CBG-covered area. A producer of E85 for sale in the CBG-covered area shall:
   a. Use Arizona CBG or AZRBOB and pressurant as needed to meet the hydrocarbon requirement of ASTM D5798; and
   b. Ensure that the fuel ethanol used meets the standards in this Chapter.
3. Reporting requirement for a producer of E85. A producer of E85 intended as a final product for the fueling of motor vehicles shall submit the report required under subsection (A)(2) and ensure that the report includes the following information regarding the E85 produced:
   a. The amount of fuel ethanol used to produce E85 in the previous month,
   b. The amount of gasoline used to produce E85 in the previous month,
   c. The total amount of E85 produced during the previous month,
   d. The following fuel quality properties for the finished E85:
      i. Appearance,
      ii. American Petroleum Institute gravity,
      iii. Organic chloride,
      iv. Water content,
      v. Vapor pressure, and
      vi. Sulfur content.
4. Reporting requirement for a supplier of E85. A supplier of E85 intended as a final product for the fueling of motor vehicles shall submit the report required under subsection (A)(2) and ensure that the report includes the following:
   a. The amount of E85 sold during the previous month; and
   b. A certification by the supplier of E85 that the E85 sold, offered for sale, or dispensed was received from or traceable to a person registered with the Department under subsection (A)(1).
5. Quality Assurance and Quality Control (QA/QC) program for a producer of E85. A producer of E85 shall comply with the QA/QC requirements specified in subsection (A)(3). Additionally, the producer shall ensure that the manual submitted to the Director under subsection (A)(3)(b) contains a description of a QA/QC sampling and testing protocol to be implemented at each facility within the person's operation at which E85 is produced. The producer shall ensure that the sampling and testing protocol meets the following minimum standards:
   a. All samples of E85 are collected after any applicable blend component is added,
   b. All samples of E85 are collected using approved ASTM methods,
   c. Sampling is done at one of the following rates:
      i. If E85 is produced in a single storage tank by batch, a rate of at least one sample per tank. For the purpose of this subsection, a storage tank is a stationary tank and does not include a transport trailer;
      ii. If E85 is blended or transferred into a delivery truck through the use of computer-controlled in-line blending equipment, a rate of at least one sample for every 500 times E85 is blended or transferred or one sample per week, whichever is more frequent;
      iii. If E85 is blended or transferred into a delivery truck without the use of computer-controlled in-line blending equipment, a rate of at least one sample every 250 times E85 is blended or transferred or two samples per week, whichever is more frequent;
   d. All testing of E85 is conducted using the appropriate ASTM test method outlined in ASTM D5798,
   e. Test results are used to certify the quality of the E85 produced,
   f. Sample handling and storage procedures are specified, and
   g. Sample retention time-frames are specified.
6. Non-compliant E85. If test results for E85 shipped from a facility indicate that the E85 does not comply with the requirements of this Chapter, the producer of the E85 shall immediately:
   a. Notify the Director of the test results,
   b. Take all reasonable steps to stop the sale of the non-compliant E85, and
   c. Take steps reasonably calculated to determine the cause of the noncompliance and to prevent future occurrences of noncompliance.

C. Specific requirements for producers or suppliers of biodiesel and biodiesel blends.

1. A person shall not sell or offer or expose for sale:
   a. Neat biodiesel unless the neat biodiesel meets all specifications established by ASTM D6751,
   b. Diesel fuel containing up to five percent by volume biodiesel unless the diesel fuel meets all specifications established by ASTM D975, and
   c. A blend containing six percent through 20 percent biodiesel and diesel fuel unless the blend meets all specifications established by ASTM D7467.
2. The owner or operator of a motor fuel dispensing site shall ensure that:
   a. Any motor fuel dispenser from which a biodiesel or biodiesel blend is dispensed:
      i. Meets the labeling requirements established by A.R.S. § 41-2083(L),

ii. Is compatible with biodiesel or biodiesel blend, and
iii. Meets all requirements in this Chapter and A.R.S. § 41-2083; and
b. Any biodiesel or biodiesel blend sold, offered for sale, or dispensed was received from or traceable to a person registered with the Department under subsection (A)(1).

3. Additional requirement for producing biodiesel or biodiesel blend for sale in the CBG-covered area. A producer of biodiesel or biodiesel blend for sale in the CBG-covered area shall ensure that the diesel fuel used contains no more than 15 ppm of sulfur.
4. Reporting requirement for a producer of a biodiesel or biodiesel blend. A producer of a biodiesel or biodiesel blend intended as a final product for the fueling of motor vehicles shall submit the report required under subsection (A)(2) and ensure that the report includes the following information regarding the biodiesel or biodiesel blend produced:
a. The total amount of biodiesel or biodiesel blend produced in the previous month;
b. The amount of biodiesel used to produce a biodiesel blend in the previous month;
c. The following fuel quality properties, established by ASTM D6751, for the finished biodiesel:
i. Flash point;
ii. Water sediment;
iii. Sulfur content,
iv. Cold soak filterability;
v. Cloud point;
vi. Acid number;
vii. Free glycerin;
viii. Total glycerin; and
ix. Distillation, 90 percent; and
d. The following fuel quality properties, established by ASTM D7467, for the finished biodiesel blend that contains six percent through 20 percent biodiesel:
i. Sulfur content,
ii. Aromatic hydrocarbon content,
iii. Cetane index,
iv. Acid number,
v. Distillation, and
vi. American Petroleum Institute gravity.
5. Reporting requirement for a supplier of a biodiesel or biodiesel blend. A supplier of a biodiesel or biodiesel blend intended as a final product for the fueling of motor vehicles shall submit the report required under subsection (A)(2) and ensure that the report includes the following:
a. The amount of biodiesel or biodiesel blend sold during the previous month; and
b. A certification by the supplier of biodiesel or biodiesel blend that the biodiesel or biodiesel blend sold, offered for sale, or dispensed was received from or traceable to a person registered with the Department under subsection (A)(1).
6. Quality Assurance and Quality Control (QA/QC) program for a producer of biodiesel or a biodiesel blend. Except as specified in subsection (C)(7), a producer of biodiesel or a biodiesel blend shall comply with the QA/QC requirements specified in subsection (A)(3). Additionally, the producer shall ensure that the manual submitted to the Director under subsection (A)(3)(b) contains a description of a QA/QC sampling and testing protocol to be implemented at each facility within the person's operation at which biodiesel or a biodiesel blend is produced. The producer shall ensure that the sampling and testing protocol meets the following minimum standards:
a. All samples of biodiesel or biodiesel blend are collected after any applicable blend component is added;
b. All samples of biodiesel or biodiesel blend are collected using approved ASTM methods;
c. Sampling is done at one of the following rates:
i. If biodiesel or a biodiesel blend is produced in a single storage tank by batch, a rate of at least one sample per tank. For the purpose of this subsection, a storage tank is a stationary tank and does not include a transport trailer;
ii. If biodiesel or a biodiesel blend is blended or transferred into a delivery truck through the use of computer-controlled in-line blending equipment, a rate of at least one sample for every 20 times biodiesel or biodiesel blend is blended or transferred or one sample every two weeks, whichever is more frequent;
iii. If biodiesel or a biodiesel blend is blended or transferred into a delivery truck without the use of computer-controlled in-line blending equipment, a rate of at least one sample every 10 times biodiesel or biodiesel blend is blended or transferred or one sample per week, whichever is more frequent;
d. All testing of biodiesel or biodiesel blend is conducted using the appropriate ASTM test method outlined in ASTM D6751, D975, or D7467;
e. Test results are used to certify the quality of the biodiesel or biodiesel blend produced;
f. Sample handling and storage procedures are specified; and
g. Sample retention time-frames are specified.
7. A producer of biodiesel or a biodiesel blend that is accredited under the BQ9000 program shall, at least three months before planning to produce or supply a biodiesel or biodiesel blend, submit to the Director the quality manual developed and implemented under the BQ9000 program instead of the QA/QC manual required under subsection (C)(6). A producer of biodiesel or a biodiesel blend that is BQ9000 accredited shall not produce or supply a biodiesel or biodiesel blend until the quality manual developed under the BQ9000 program is approved by the Director. A producer of biodiesel or a biodiesel blend that is BQ9000 accredited shall, upon request, provide the Director with access to records relating to the accreditation and documentation relating to the precision and accuracy of any alternative test method used to meet the requirements of this Section. The Director has authority under A.R.S. §§ 41-2065(A)(4) and 41-2083(N) to audit the quality manual submitted under this subsection.

~~8. Non-compliant biodiesel or biodiesel blend. If test results for biodiesel or a biodiesel blend shipped from a facility indicate that the biodiesel or biodiesel blend does not comply with the requirements of this Chapter, the producer of the biodiesel or biodiesel blend shall immediately:~~
~~a. Notify the Director of the test results,~~
~~b. Take all reasonable steps to stop the sale of the non-compliant biodiesel or biodiesel blend, and~~
~~c. Take steps reasonably calculated to determine the cause of the noncompliance and to prevent future occurrences of non-compliance.~~

~~D. Specific requirements for producers or suppliers of petroleum-based renewable diesel. A producer or supplier of petroleum-based renewable diesel that is intended as a final product for the fueling of motor vehicles shall ensure that the petroleum-based renewable diesel:~~
~~1. Meets the standards in ASTM D975, and~~
~~2. Is identified as specified in R3-7-701.~~

C. Ethanol flex fuel sold or offered for sale within the CBG-covered area shall:
1. Use fuel ethanol that meets the standards in this Chapter, and
2. Have a maximum vapor pressure that does not exceed the maximum vapor pressure requirements in R3-7-751(A)(6).

D. Requirements for motor fuel dispensing sites. The owner or operator of a motor fuel dispensing site at which ethanol flex fuel is dispensed shall ensure that any ethanol flex fuel, biodiesel or biodiesel blend sold, offered or exposed for sale, or dispensed was received from and traceable to a person registered with the Division under subsection (A)(1) and the Environmental Protection Agency under 40 CFR 80, subparts K or M.

E. Exemptions.
1. A biofuel producer, biofuel supplier, or biofuel blender located outside of Arizona and supplying biofuel to a registered biofuel producer, biofuel supplier, or biofuel blender located within Arizona is not required to register under subsection (A)(1)(a);
2. Diesel fuel containing five percent by volume or less biodiesel is exempt from this Section if the following conditions are met:
   a. The diesel fuel meets the standards of ASTM D975; and
   b. If the initial volume percent of biodiesel content is unknown, the person blending the biodiesel into diesel fuel analyzes the diesel fuel to verify the initial biodiesel content and ensure the resulting blend meets the requirements in ASTM D975.
3. A biofuel producer, biofuel supplier, or biofuel blender who produces, supplies, or blends diesel fuel blended with a biomass-based diesel where the resulting fuel meets the requirements in ASTM D975 is exempt from this section.
4. Gasoline containing up to 10 percent ethanol is exempt from this section.

R3-7-749. Definitions Applicable to Arizona CBG and AZRBOB

The following definitions apply only to R3-7-750 through R3-7-762, including Tables A, 1, and 2:

"Designated alternative limit" means a motor fuel property specification, expressed in the nearest part per million by weight for sulfur content, nearest 10th percent by volume for aromatic hydrocarbon content, nearest 10th percent by volume for olefin content, and nearest degree Fahrenheit for T90 and T50, that is assigned by a registered supplier to a final blend of Type 2 Arizona CBG or AZRBOB for purposes of compliance with the Predictive Model Procedures.

"Downstream oxygenate blending" means combining AZRBOB and fuel ethanol to produce fungible Arizona CBG.

"Importer" means any person that assumes title or ownership of Arizona CBG or AZRBOB produced by an unregistered supplier.

"Oxygenate-blending facility" means any location (including a truck) where fuel ethanol is added to Arizona CBG or AZRBOB and the resulting quality or quantity of Arizona CBG is not altered in any other manner except for the addition of a deposit-control or similar additive registered under 40 CFR 79.

"Oxygenated Arizona CBG" means Arizona CBG with a maximum oxygen content of 4.0 wt. percent or another oxygen content approved by the associate director ~~Director~~ under A.R.S. § ~~41-2124~~ 3-3493, that is produced and shipped to or within Arizona and sold or offered for sale for use in motor vehicles in the CBG-covered area from November 1 through March 31 of each year.

"Performance standard" means the VOC and NOx emission reduction percentages in R3-7-751(A)(8) and Table 1.

"PM" or "Predictive Model Procedures" means the California Predictive Model and CARB's "California Procedures for Evaluating Alternative Specifications for Phase 2 Reformulated Gasoline Using the California Predictive Model," as adopted April 20, 1995, which is incorporated by reference in R3-7-702.

"PM alternative gasoline formulation" means a final blend of Arizona CBG or AZRBOB that is subject to a set of PM alternative specifications.

"PM alternative specifications" means the specifications for the following fuel properties, as determined using a testing methodology in R3-7-759:

Maximum vapor pressure, expressed in the nearest 100th of a pound per square inch;
Maximum sulfur content, expressed in the nearest part per million by weight;
Maximum olefin content, expressed in the nearest 10th of a percent by volume;
Minimum and maximum oxygen content, expressed in the nearest 10th of a percent by weight;
Maximum T50, expressed in the nearest degree Fahrenheit;
Maximum T90, expressed in the nearest degree Fahrenheit; and
Maximum aromatic hydrocarbon content, expressed in the nearest 10th of a percent by volume.

"PM averaging compliance option" means, with reference to a specific fuel property, the compliance option for PM alternative gasoline formulations by which final blends of Arizona CBG and AZRBOB are assigned designated alternative limits under R3-7-751(G), (H), and (I).

"PM averaging limit" means a PM alternative specification that is subject to the PM averaging compliance option.

"PM flat limit" means a PM alternative specification that is subject to the PM flat limit compliance option.

"PM flat limit compliance option" means, with reference to a specific fuel property, the compliance option that each gallon of gasoline must meet for that specified fuel property as contained in the PM alternative specifications.

"Produce" means:

Except as otherwise provided, to convert a liquid compound that is not Arizona CBG or AZRBOB into Arizona CBG or AZRBOB.

If a person blends a blendstock that is not Arizona CBG or AZRBOB with Arizona CBG or AZRBOB acquired from another person, and the resulting blend is Arizona CBG or AZRBOB, the person conducting the blending produces only the portion of the blend not previously Arizona CBG or AZRBOB. If a person blends Arizona CBG or AZRBOB with other Arizona CBG or AZRBOB in accordance with this Article, without the addition of a blendstock that is not Arizona CBG or AZRBOB, that person is not a producer of Arizona CBG or AZRBOB.

If a person supplies Arizona CBG or AZRBOB to a refiner that agrees in writing to further process the Arizona CBG or AZRBOB at the refiner's refinery and be treated as the producer of Arizona CBG or AZRBOB, the refiner is the producer of the Arizona CBG or AZRBOB.

If an oxygenate blender blends oxygenates into AZRBOB supplied from a gasoline production or import facility, and does not alter the quality or quantity of the AZRBOB or the quality or quantity of the resulting Arizona CBG certified by a registered supplier in any other manner except for the addition of a deposit-control or similar additive, the producer or importer of the AZRBOB, rather than the oxygenate blender, is considered the producer or importer of the full volume of the resulting Arizona CBG.

"Registered supplier" means a producer or importer that supplies Arizona CBG or AZRBOB and is registered with the associate director ~~Director~~ under R3-7-750.

"Third-party terminal" means an owner or operator of a gasoline storage tank facility that accepts custody, but not ownership, of Arizona CBG or AZRBOB from a registered supplier, oxygenate blender, pipeline, or other third-party terminal and relinquishes custody of the Arizona CBG or AZRBOB to a transporter or other terminal.

"Type 1 Arizona CBG" means a gasoline that meets the standards contained in R3-7-751(A) and Table 1.

"Type 2 Arizona CBG" means a gasoline that meets the standards contained in Table 2 or is certified using the PM according to the requirements of R3-7-751(G), (H), and (I), and meets the requirements in:

R3-7-751(A) beginning April 1 through October 31 of each year, and

R3-7-751(B) beginning November 1 through March 31 of each year.

"Winter" means November 1 through March 31.

R3-7-750. Registration Relating to Arizona CBG or AZRBOB

A. Each of the following shall register with the associate director ~~Director~~ before producing, importing, or obtaining custody of Arizona CBG or AZRBOB:
1. A refiner that produces Arizona CBG or AZRBOB;
2. An importer that imports Arizona CBG or AZRBOB;
3. An oxygenate blender that blends oxygenate with AZRBOB to produce Arizona CBG; or
4. A pipeline or third-party terminal that has custody of Arizona CBG or AZRBOB.

B. A person listed in subsection (A) shall register on a form prescribed by the associate director ~~Director~~ and include the following information:
1. Business name, business address, and contact name or position title and telephone number;
2. For each refinery or oxygenate blending facility, the facility name, physical location, contact name or position title and telephone number, and type of facility;
3. For each refinery, oxygenate blending facility, or importer:
   a. The location of the records required under this Article. If records are kept off-site, the primary off-site storage facility name, physical location, and contact name or position title and telephone number; and
   b. If an independent laboratory is used to meet the requirements of R3-7-752(F), the name and address of the independent laboratory, and contact name or position title and telephone number;
4. If required under 40 CFR 80.76(d), the EPA registration number; and
5. A statement of consent permitting the ~~Department~~ Division or its authorized agent to collect samples and access records as provided in R3-7-716.

C. A person registered under subsection (B) shall notify the associate director ~~Director~~ within 10 days after the effective date of a change in any of the information provided under subsection (B).

D. If a refiner, importer, or oxygenate blender fails to register under this Section, all Arizona CBG or AZRBOB produced by the refiner or oxygenate blender or imported by the importer and transported to the CBG-covered area is presumed to be noncompliant from the date that registration should have occurred.

E. The ~~Department~~ Division shall maintain a list of all registered suppliers.

R3-7-751. Arizona CBG Requirements

A. General fuel property and performance requirements. In addition to the other requirements of this Article and except as provided in subsection (B), all Arizona CBG shall meet the following requirements and for any fuel property not specified, shall meet the requirements in ASTM D4814. The dates in this subsection are compliance dates for the owner or operator of a motor fuel dispensing site or a fleet vehicle fueling facility.
1. Sulfur: ~~500~~ 95 ppm by weight (max).
2. Aromatics: 50 percent by volume (max).
3. Olefins: 25 percent by volume (max).
4. E200: 70-30 percent volume.
5. E300: 100-70 percent volume.
6. Maximum vapor pressure:
   a. October: 9.0 psi.

b. November 1 - March 31: 9.0 psi.
c. April: 10.0 psi.
d. May: 9.0 psi.
e. June 1 - September 30: 7.0 psi.
f. A gasoline ethanol blend in the CBG-covered area is subject to the 1 psi vapor pressure waiver, as described in R3-7-708(B), during April only.

7. Oxygen and oxygenates:
   a. Minimum content:
      i. November 1 - March 31: 10 percent fuel ethanol by volume. If A.R.S. § ~~41-2124(E)~~ 3-3493(C) petition in effect: 2.7 percent oxygen by weight as approved by the associate director ~~Director~~.
      ii. April 1 - October 31: 0 percent by weight (any oxygenate).
   b. The maximum oxygen content shall not exceed 4.0 percent by weight for fuel ethanol and as specified in A.R.S. § ~~41-2122~~ 3-3491 for other oxygenates, and shall comply with the requirements of A.R.S. § ~~41-2123~~ 3-3492.
   c. Arizona CBG shall not contain more than 0.3 volume percent MTBE nor more than 0.1 weight percent oxygen from all other ethers or alcohols listed in A.R.S. § ~~41-2122~~ 3-3491.
8. Type 1 Arizona CBG shall meet the Federal Complex Model VOC emissions reduction percentage May 1 through September 15: 27.5 percent (Federal Complex Model settings: Summer, Area Class B, Phase 2). Type 2 Arizona CBG shall meet CARB Phase 2 requirements.

B. Wintertime requirements. In addition to the other requirements of this Article, the owner or operator of a motor fuel dispensing site or a fleet vehicle fueling facility shall ensure that beginning November 1 through March 31 of each year, all Arizona CBG meets the following fuel property requirements.
1. Sulfur: 80 ppm by weight (max),
2. Aromatics: 30% by volume (max),
3. Olefins: 10% by volume (max),
4. 90% Distillation Temp. (T90): 330° F (max),
5. 50% Distillation Temp. (T50): 220° F (max),
6. Vapor Pressure: 9.0 psi (max), and
7. Oxygenate - Ethanol;
   a. Minimum oxygenate content - 10 percent fuel ethanol by volume;
   b. Maximum oxygen content - 4.0 percent oxygen by weight, and shall comply with the requirements of A.R.S. § ~~41-2123~~ 3-3492; and
   c. Alternative minimum fuel ethanol content may be used if approved by the associate director ~~Director~~ under A.R.S. § ~~41-2124(D)~~ 3-3493(C).

C. Fuel ethanol specifications. A person that uses fuel ethanol as a blending component with AZRBOB or Arizona CBG shall ensure that the fuel ethanol meets the requirements in ASTM D4806 and the following:
1. A sulfur content not exceeding 10 ppm by weight,
2. An olefins content not exceeding 0.5 percent by volume, and
3. An aromatic hydrocarbon content not exceeding 1.7 percent by volume.

D. General elections. Except as provided in subsection (E), a registered supplier shall make an initial election, and a subsequent election each time a change occurs, before beginning to transport Arizona CBG or AZRBOB. A registered supplier shall make the election with the associate director ~~Director~~ on a form or in a format prescribed by the associate director ~~Director~~. The election shall state:
1. Whether the registered supplier (at each point where the Arizona CBG or AZRBOB is certified) will supply Arizona CBG or AZRBOB that complies with Type 1 Arizona CBG, Type 2 Arizona CBG, or the PM alternative gasoline formulation requirements and, if the registered supplier will supply Arizona CBG or AZRBOB that complies with the PM alternative gasoline formulation requirements, whether the registered supplier will certify using the CARB Phase 2 model; and
2. For each applicable fuel property or performance standard in the election under subsection (D)(1), whether the Arizona CBG or AZRBOB will comply with the average standards or per-gallon standards. A registered supplier shall not elect to comply with average standards unless the registered supplier is in compliance with R3-7-760. A registered supplier shall not elect to comply with Type 1 Arizona CBG average standards in Table 1, columns B and C, from September 16 through October 31 and February 1 through April 30.

E. Winter elections. Beginning November 1 through March 31 of each year, a registered supplier shall ensure that all Arizona CBG or AZRBOB complies with Type 2 Arizona CBG requirements or the PM alternative gasoline formulation requirements under Table 2. A registered supplier shall make an initial election, and a subsequent election each time a change occurs, before beginning to transport Arizona CBG or AZRBOB. A registered supplier shall make the election with the associate director ~~Director~~ on a form or in a format prescribed by the associate director ~~Director~~. The election shall state:
1. Whether the registered supplier (at each point where the Arizona CBG or AZRBOB is certified) will supply Arizona CBG or AZRBOB that complies with the Type 2 Arizona CBG or the PM alternative gasoline formulation requirements; and
2. For each applicable fuel property, whether the Arizona CBG or AZRBOB will comply with the average standards or per-gallon standards.

F. A registered supplier may elect and produce Type 1 Arizona CBG from December 1 through March 31 but the registered supplier shall not distribute the Arizona CBG to a motor fuel dispensing site within the CBG-covered area before April 1.

G. Certification as Type 1 Arizona CBG or Type 2 Arizona CBG. A registered supplier shall certify Arizona CBG or AZRBOB under R3-7-752 as meeting all requirements of the election made in subsection (D) or (E). For each fuel property, Type 1 Arizona CBG shall comply with the requirements in either column A or columns B through D of Table 1, and shall be certified using the Federal Complex Model, which is incorporated by reference in R3-7-702. For each fuel property, Type 2 Arizona CBG shall comply with the requirements of columns A and B (averaging option), or column C in Table 2. The PM alternative gasoline formulation shall meet the

requirements of subsections (H), (I), and (J), and column A of Table 2. A registered supplier may certify Arizona CBG or AZRBOB using an equivalent test method that the ~~Department~~ Division approves using the criteria stated in R3-7-759.

H. Certification and use of Predictive Model for alternative PM gasoline formulations.

1. Except as provided in subsections (H)(4) and (J), a registered supplier shall use the PM as provided in the Predictive Model Procedures.
2. A registered supplier shall certify a PM alternative gasoline formulation with the associate director ~~Director~~ by either:
   a. Submitting to the associate director ~~Director~~ a complete copy of the documentation provided to the executive officer of CARB according to 13 California Code of Regulations, Section 2264 and subsection (J); or
   b. Notifying the associate director ~~Director~~, on a form prescribed by or in a format acceptable to the associate director ~~Director~~, of:
      i. The PM alternative specifications that apply to the final blend, including for each specification whether it is a PM flat limit or a PM averaging limit; and
      ii. The numerical values for percent change in emissions for oxides of nitrogen and hydrocarbons determined in accordance with the Predictive Model Procedures.
3. A registered supplier shall deliver the certification required under subsection (H)(2) to the associate director ~~Director~~ before transporting the PM alternative gasoline formulation.
4. Restrictions for elections to sell or supply final blends as PM alternative gasoline formulations.
   a. A registered supplier shall not make a new election to sell or supply from its production or import facility a final blend of Arizona CBG as a PM alternative gasoline formulation if the registered supplier has an outstanding requirement under subsection (K) to provide offsets for fuel properties at the same production or import facility.
   b. If a registered supplier elects to sell or supply from its production or import facility a final blend of Arizona CBG as a PM alternative gasoline formulation subject to a PM averaging compliance option for one or more fuel properties, the registered supplier shall not elect any other compliance option, including another PM alternative gasoline formulation, if an outstanding requirement to provide offsets for fuel properties exists under the provisions of subsection (K). This subsection does not preclude a registered supplier from electing another PM alternative gasoline formulation if:
      i. The PM flat limit for one or more fuel properties is changed to a PM averaging limit, or a single PM averaging limit for which there is no outstanding requirement to provide offsets is changed to a PM flat limit;
      ii. There are no changes to the PM alternative specifications for remaining fuel properties; and
      iii. The new PM alternative formulation meets the criteria in the Predictive Model Procedures.
   c. If a registered supplier elects to sell or supply from the registered supplier's production or import facility a final blend of Arizona CBG as a PM alternative gasoline formulation, the registered supplier shall not use a previously assigned designated alternative limit for a fuel property to provide offsets under subsection (K).
   d. If a registered supplier notifies the associate director ~~Director~~ under subsection (D) or (E) that a final blend of Arizona CBG is sold or supplied from a production or import facility as a PM alternative gasoline formulation, all final blends of Arizona CBG or AZRBOB subsequently sold or supplied from that production or import facility are subject to the same PM alternative specifications until the registered supplier either:
      i. Designates a final blend at that facility as a PM alternative gasoline formulation subject to different PM alternative specifications; or
      ii. Elects, under subsection (D) or (E), a final blend at that facility subject to a flat limit compliance option or an averaging compliance option.

I. Prohibited activities regarding PM alternative gasoline formulations. A registered supplier shall not sell, offer for sale, supply, or offer to supply from the registered supplier's production or import facility Arizona CBG that is reported as a PM alternative gasoline formulation under R3-7-752 if any of the following occur:

1. The elected PM alternative specifications do not meet the criteria for approval in the Predictive Model Procedures,
2. The registered supplier is prohibited by subsection (H)(4)(a) from electing to sell or supply the gasoline as a PM alternative gasoline formulation,
3. The gasoline fails to conform with any PM flat limit in the PM alternative specifications election, or
4. With respect to any fuel property for which the registered supplier elects a PM averaging limit:
   a. The gasoline exceeds the applicable PM average limit in Table 2, column B, and no designated alternative limit for the fuel property is established for the gasoline in accordance with subsection (H)(2); or
   b. A designated alternative limit for the fuel property is established for the gasoline in accordance with subsection (H)(2), and either the gasoline exceeds the designated alternative limit for the fuel property or the designated alternative limit for the fuel property exceeds the PM averaging limit and the exceedance is not fully offset in accordance with subsection (K).

J. Oxygen content requirements for PM alternative gasoline formulations. A registered supplier shall ensure that from November 1 through March 31, all alternative PM gasoline formulations comply with oxygen content requirements for the CBG-covered area. Regardless of the oxygen content, a registered supplier shall certify the final alternative PM gasoline formulation using the PM with a minimum oxygen content of 2.0 percent by weight. A registered supplier may use the CARBOB Model as a substitute for the preparation of a fuel ethanol hand blend and use the fuel qualities calculated under the CARBOB Model for compliance and reporting purposes.

K. Offsetting fuel properties and performance standards. A registered supplier that elects to comply with the averaging standards for any of the fuel properties or performance standards contained in Tables 1 and 2, or the PM, shall, from a single production or import facility, complete physical transfer of certified Arizona CBG or AZRBOB in sufficient quantity to offset the amount by which the Arizona CBG or AZRBOB exceeds the averaging standard according to the following schedule:

1. A registered supplier that elects to comply with the averaging standards contained in Table 2 or the PM shall offset each exceeded average standard within 90 days before or after beginning to transport any final blend of Arizona CBG or AZRBOB from the production or import facility;

2. A registered supplier that elects to comply with the averaging standard for the VOC Emission Reduction Percentage in Table 1, column B, shall offset an exceedance of the standard that occurs from May 1 ~~to~~ through September 15 during that same period; and
3. A registered supplier that elects to comply with the averaging standard for the NOx Emission Reduction Percentage contained in Table 1, column B, shall offset an exceedance of the standard that occurs from May 1 ~~to~~ through September 15 during that same period.

L. Consequence of failure to comply with averages.
1. In addition to a penalty under R3-7-762, if any, a registered supplier that fails to comply with a requirement of subsection (K) shall meet the applicable per-gallon standards contained in Table 1, Table 2, or an alternative PM gasoline formulation, for a probationary period as follows:
   a. For a registered supplier that elects to comply with the standards contained in Table 1, the probationary period begins on the first day of the next averaging season and ends on the last day of that averaging season if the conditions of subsection (L)(2) are met;
   b. For a registered supplier that elects to comply with the standards contained in Table 2 or the PM, the probationary period begins no later than 90 days after the registered supplier determines, or receives a notice from the associate director ~~Director~~, that the registered supplier did not comply with the requirements of subsection (K). Before the probationary period begins, the registered supplier shall notify the associate director ~~Director~~ in writing of the beginning date of the probationary period. The probationary period ends 90 days after its beginning date.
2. A registered supplier shall not produce or import Arizona CBG or AZRBOB under an averaging compliance election until:
   a. The registered supplier submits a compliance plan to the associate director ~~Director~~ that includes:
      i. An implementation schedule for actions to correct noncompliance, and
      ii. Reporting requirements that document implementation of the compliance plan,
   b. The associate director ~~Director~~ approves the plan,
   c. The registered supplier implements the plan, and
   d. The registered supplier achieves compliance.
3. If a registered supplier fails to comply with the requirements of subsection (K) within one year of the end of a probationary period under subsection (L)(1), the registered supplier shall comply with applicable per-gallon standards for a subsequent probationary period of two years, or until the conditions in subsection (L)(2) are satisfied, whichever is later.
   a. If a registered supplier elects to comply with the Table 1 standards, the probationary period begins on the first day of the next averaging season.
   b. If a registered supplier elects to comply with the Table 2 standards or the PM, the probationary period begins no later than 90 days after the registered supplier determines, or receives notice from the associate director ~~Director~~, that the registered supplier did not comply with the requirements of subsection (K). Before the probationary period begins, the registered supplier shall notify the associate director ~~Director~~ in writing of the beginning date of the probationary period.
4. If a registered supplier fails to comply with the requirements of subsection (K) within one year after the end of a probationary period provided under subsection (L)(3), the registered supplier shall permanently comply with applicable per-gallon standards.

M. Effect of VOC survey failure. Each time a VOC survey conducted under R3-7-760 shows excess VOC emissions in the CBG-covered area, the VOC emissions performance reduction in R3-7-751(A)(8) and the minimum per-gallon VOC emission reduction percentage in Table 1, column C shall be increased by an absolute 1.0 percent, not to exceed the VOC percent emissions reduction percentage per-gallon standard in Table 1, column A.

N. Effect of NOx survey failure. Each time a NOx survey conducted under R3-7-760 shows excess NOx emissions in the CBG-covered area, the NOx average emission reduction percentage applicable to the period of May 1 through September 15 in Table 1, column B shall be increased by an absolute 1.0 percent.

O. Subsequent survey compliance. If the minimum VOC or average NOx emissions reduction percentage has been made more stringent according to subsection (M) or (N) and all emissions reduction surveys for VOC or NOx for two consecutive years show emissions within the applicable adjusted reduction percentage in the CBG-covered area, the applicable VOC or NOx emissions adjusted reduction percentage shall be reduced by an absolute 1.0 percent beginning in the year following the year in which the second compliant survey is conducted. Each emissions reduction percentage adjusted under this subsection shall not be decreased below the following:
1. >27 percent for the VOC emissions reduction percentage, May 1 - through September 15, Table 1, column C; and
2. >6.8 percent for the NOx emissions reduction percentage, May 1 - through September 15, Table 1, column B.

P. Subsequent survey failures. If a VOC or NOx emissions reduction percentage is made less stringent under subsection (O) and a subsequent VOC or NOx survey shows excess VOC or NOx emissions in the CBG-covered area:
1. For a VOC survey failure, the Federal Complex Model VOC emissions reduction percentage in R3-7-751(A)(8) and the minimum per gallon VOC emission reduction percentage in Table 1, column C shall be increased by an absolute 1.0 percent, not to exceed the VOC percent emissions reduction percentage per gallon standard in Table 1, column A;
2. For a NOx survey failure, the NOx average emission reduction percentage applicable May 1 through September 15 in Table 1, column B shall be increased by an absolute 1.0 percent; and
3. If the VOC or NOx emission reduction percentage is increased under subsection (P)(1) or (2), the VOC or NOx emission reduction percentage shall not be made less stringent regardless of the result of subsequent surveys for VOC or NOx emissions.

Q. Effective date for adjusted standards. If a performance standard is adjusted by operation of subsection (M), (N), (O), or (P), the effective date for the change is the beginning of the next averaging season for which the standard is applicable.

R3-7-752. General Requirements for Registered Suppliers

A. A registered supplier shall certify that each batch of Arizona CBG or AZRBOB transported for sale or use in the CBG-covered area meets the standards in this Article.

B. A registered supplier shall make the certification on a form or in a format prescribed by the associate director ~~Director~~. The registered supplier shall include in the certification information on shipment volumes, fuel properties as determined under R3-7-759, and perfor-

mance standards for each batch of Arizona CBG or AZRBOB. The registered supplier shall submit the certification to the associate director ~~Director~~ on or before the 15th day of each month for each batch of Arizona CBG or AZRBOB transported during the previous month.

C. Recordkeeping and records retention.

1. A registered supplier that samples and analyzes a final blend or shipment of Arizona CBG or AZRBOB under this Section shall maintain, for five years from the date of each sampling, records of the following:
   a. Sample date;
   b. Identity of blend or product sampled;
   c. Container or other vessel sampled;
   d. The final blend or shipment volume; and
   e. The test results for sulfur, aromatic hydrocarbon, olefin, oxygen, vapor pressure, and as applicable, T50, T90, E200, and E300 as determined under R3-7-759.
2. If Arizona CBG or AZRBOB produced or imported by a registered supplier is not tested and documented as required by this Section, the associate director ~~Director~~ shall deem the Arizona CBG or AZRBOB to have a vapor pressure, sulfur, aromatic hydrocarbon, olefin, oxygen, T50, and T90 that exceeds the standards specified in R3-7-751 or the comparable PM averaging limits, unless the registered supplier demonstrates to the associate director ~~Director~~ that the Arizona CBG or AZRBOB meets all applicable fuel property limits and performance standards.
3. A registered supplier shall provide to the associate director ~~Director~~ any records maintained by the registered supplier under this Section within 20 days of a written request from the associate director ~~Director~~. If a registered supplier fails to provide records for a blend or shipment of Arizona CBG or AZRBOB, the associate director ~~Director~~ shall deem the final blend or shipment of Arizona CBG or AZRBOB in violation of R3-7-751, unless the registered supplier demonstrates to the associate director ~~Director~~ that the Arizona CBG or AZRBOB meets all applicable fuel property limits and performance standards.

D. Notification requirement. A registered supplier shall notify the associate director ~~Director~~ by fax or e-mail before transporting Arizona CBG or AZRBOB into the CBG-covered area by a means other than a pipeline.

E. Quality Assurance and Quality Control (QA/QC) Program. A registered supplier shall develop a QA/QC program to demonstrate the accuracy and effectiveness of the registered supplier's laboratory testing of Arizona CBG or AZRBOB. The registered supplier shall submit the QA/QC program to the associate director ~~Director~~ for approval at least three months before the registered supplier transports Arizona CBG or AZRBOB. The associate director ~~Director~~ shall approve a QA/QC program only if the associate director ~~Director~~ determines that the QA/QC program ensures that the registered supplier's laboratory testing procedures comply with R3-7-759 and the data generated by the registered supplier's laboratory are complete, accurate, and reproducible. If the registered supplier makes significant changes to the QA/QC program, the registered supplier shall resubmit the QA/QC program to the associate director ~~Director~~ for review and approval. Within 30 days of receiving the changed QA/QC program, the associate director ~~Director~~ shall determine whether the changed QA/QC program meets the original quality objectives. The associate director ~~Director~~ shall approve the changed QA/QC program if it meets the quality objectives. Instead of developing a QA/QC program, a registered supplier may comply with the independent testing requirements of subsection (F).

F. Independent testing.

1. A registered supplier of Arizona CBG or AZRBOB that does not develop a QA/QC program shall conduct a program of independent sample collection and analysis for the Arizona CBG or AZRBOB produced or imported, that complies with one of the following:
   a. Option 1. A registered supplier shall, for each batch of Arizona CBG or AZRBOB produced or imported, have an independent laboratory collect and analyze a representative sample from the batch using the methodology specified in R3-7-759 for compliance with each fuel property and performance standard for which the Arizona CBG or AZRBOB is certified.
   b. Option 2. A registered supplier shall have an independent testing program for all Arizona CBG or AZRBOB that the registered supplier produces or imports that consists of the following:
      i. An independent laboratory shall collect a representative sample from each batch;
      ii. The associate director ~~Director~~ or designee shall identify up to 10% of the samples collected under subsection (F)(1)(b)(i) for analysis; and
      iii. The independent laboratory shall, for each sample identified by the associate director ~~Director~~ or designee, analyze the sample using the methodology specified in R3-7-759 for compliance with each fuel property and performance standard for which the Arizona CBG or AZRBOB is certified.
2. The associate director ~~Director~~ or designee may request in writing a duplicate of the batch sample collected under subsection (F)(1)(a) or (b) for analysis by a laboratory selected by the associate director ~~Director~~ or designee. The registered supplier shall submit a duplicate of the sample to the associate director ~~Director~~ within 24 hours of the written request.
3. Designation of independent laboratory.
   a. A registered supplier that does not develop a QA/QC program shall designate one independent laboratory for each production or import facility at which the registered supplier produces or imports Arizona CBG or AZRBOB. The independent laboratory shall collect samples and perform analyses according to subsection (F).
   b. A registered supplier shall identify the designated independent laboratory to the associate director ~~Director~~ under the registration requirements of R3-7-750.
   c. A laboratory is considered independent if:

i. The laboratory is not operated by a registered supplier or the registered supplier's subsidiary or employee,
ii. The laboratory does not have any interest in any registered supplier, and
iii. The registered supplier does not have any interest in the designated laboratory.

   d. Notwithstanding the restrictions in subsection (F)(3)(c), the associate director ~~Director~~ shall consider a laboratory independent if it is owned or operated by a pipeline owned or operated by four or more registered suppliers.

e. A registered supplier shall not use a laboratory that is debarred, suspended, or proposed for debarment according to the Government-wide Debarment and Suspension regulations, 40 CFR 32, or the Debarment, Suspension and Ineligibility provisions of the Federal Acquisition Regulations, 48 CFR 9.4.

4. A registered supplier shall ensure that its designated independent laboratory:
   a. Records the following at the time the designated independent laboratory collects a representative sample from a batch of Arizona CBG or AZRBOB:
      i. The producer's or importer's assigned batch number for the batch sampled;
      ii. The volume of the batch;
      iii. The identification number of the gasoline storage tank in which the batch is stored at the time the sample is collected;
      iv. The date and time the batch became Arizona CBG or AZRBOB;
      v. The date and time the sample is collected;
      vi. The grade of the batch (for example, unleaded premium, unleaded mid-grade, or unleaded); and
      vii. For Arizona CBG or AZRBOB produced by computer-controlled in-line blending, the date and time the blending process began and the date and time the blending process ended, unless exempt under subsection (G);
   b. Retains each sample collected under this subsection for at least 45 days, unless this time is extended by the associate director ~~Director~~ for up to 180 days;
   c. Submits to the associate director ~~Director~~ a quarterly report on or before the 15th day of January, April, July, and October of each year that includes, for each sample of Arizona CBG or AZRBOB analyzed under subsection (F):
      i. The results of the independent laboratory's analyses for each fuel property, and
      ii. The information specified in subsection (F)(4)(a) for each sample; and
   d. Supplies to the associate director ~~Director~~, upon request, a duplicate of the sample.

G. Exemptions to QA/QC and independent laboratory testing requirements. A registered supplier that produces or imports Arizona CBG or AZRBOB using computer-controlled in-line blending equipment and operates under an exemption from EPA under 40 CFR 80.65(f)(iv), is exempt from the requirements of subsections (E) and (F), if reports of the results of the independent audit program of the registered supplier's computer-controlled in-line blending operation, which are submitted to EPA under 40 CFR 80.65(f)(iv), are submitted to the associate director ~~Director~~ by March 1 of each year.

H. Use of laboratory analysis for certification of Arizona CBG and AZRBOB.

1. If both a registered supplier and an independent laboratory collect a sample from the same batch of Arizona CBG or AZRBOB and perform a laboratory analysis under subsection (F) to determine compliance of the sample with a fuel property, the registered supplier and independent laboratory shall use the same test methodology. The results of the analysis conducted by the registered supplier shall be used for certification of the Arizona CBG or AZRBOB under subsection (B), unless the absolute value of the difference between the two results is larger than one of the following:
   a. Sulfur content: 25 ppm by weight,
   b. Aromatics: 2.7% by volume,
   c. Olefins: 2.5% by volume,
   d. Fuel ethanol: 0.4% by volume,
   e. Vapor pressure: 0.3 psi,
   f. 50% distillation temperature: ASTM reproducibility for that sample using the slope from the registered supplier's results,
   g. 90% distillation temperature: ASTM reproducibility for that sample using the slope from the registered supplier's results,
   h. E200: 2.5% by volume,
   i. E300: 3.5% by volume, or
   j. API gravity: 0.3° API.
2. If the absolute value of the difference between the results of the analyses conducted by the registered supplier and independent laboratory is larger than one of the values specified in subsection (H)(1), the registered supplier shall use one of the following for certification of the batch of Arizona CBG or AZRBOB under subsection (B):
   a. The larger of the two values for each fuel property, except the smaller of the two values shall be used for measures of oxygenates; or
   b. Have a second independent laboratory analyze the Arizona CBG or AZRBOB for each fuel property. If the difference between the results obtained by the second independent laboratory and those obtained by the registered supplier are within the range listed in subsection (H)(1), the registered supplier's results shall be used for certifying the Arizona CBG or AZRBOB under subsection (B).

R3-7-753. General Requirements for Pipelines and Third-party Terminals

A. A pipeline or third-party terminal shall not accept Arizona CBG or AZRBOB for transport unless:
1. The Arizona CBG or AZRBOB is physically transferred from an importer, refiner, oxygenate blender, pipeline, or third-party terminal registered with the ~~Department~~ Division under R3-7-750; and
2. The registered supplier provides written verification that the gasoline is Arizona CBG or AZRBOB and complies with the standards in R3-7-751(A) or (B), as applicable, without reproducibility or numerical rounding.

B. A pipeline or third-party terminal that transports Arizona CBG or AZRBOB shall collect a sample of each incoming batch. The pipeline or third-party terminal shall retain the sample for at least 30 days unless this time is extended for an individual sample for up to 180 days by the associate director ~~Director~~.

C. A pipeline shall conduct quality control testing of Arizona CBG or AZRBOB at a frequency of at least one sample from one batch completing shipment for each registered supplier each day at each input location.

D. A pipeline shall provide the associate director ~~Director~~ with a report summarizing the quality control testing results obtained under subsection (C) within 10 days of the end of each month. The report shall contain the quantity of Arizona CBG or AZRBOB, date tendered, whether the Arizona CBG or AZRBOB was transported by pipeline, present sample location, and laboratory analysis results.

E. If a batch does not meet the standards in R3-7-751(A) or (B), as applicable, but is within reproducibility, the pipeline shall notify the associate director ~~Director~~ by fax or e-mail within 48 hours of the batch volume and date tendered, proposed shipment date, whether the batch was transported by the pipeline, present batch location, and laboratory analysis results.

F. If a batch does not meet the standards in R3-7-751(A) or (B), as applicable, including reproducibility, the pipeline or third-party terminal shall notify the associate director ~~Director~~ by fax or e-mail within 24 hours of the batch quantity and date tendered, proposed shipment date, whether the batch was transported by the pipeline, present batch location, and laboratory analysis results. If the batch is in the pipeline's or third-party terminal's control, the pipeline or third-party terminal shall prevent release of the batch from a distribution point until the batch is certified as meeting the standards in R3-7-751(A) or (B), as applicable.

G. A pipeline or third-party terminal shall develop a QA/QC program to demonstrate the accuracy and effectiveness of the pipeline's or third-party terminal's laboratory testing. The QA/QC program for a pipeline or third-party terminal shall include a description of the laboratory testing protocol used to verify that Arizona CBG or AZRBOB transported to the CBG-covered area meets the standards in R3-7-751(A) or (B). A pipeline or third-party terminal shall submit the QA/QC program to the associate director ~~Director~~ for approval at least three months before the pipeline or third-party terminal begins to transport Arizona CBG or AZRBOB. The associate director ~~Director~~ shall approve a QA/QC program only if the associate director ~~Director~~ determines that the QA/QC program ensures that the pipeline's or third-party terminal's laboratory testing produces data that are complete, accurate, and reproducible. If a pipeline or third-party terminal makes significant changes to the QA/QC program, the pipeline or third-party terminal shall resubmit the QA/QC program to the associate director ~~Director~~ for review and approval. Within 30 days of receiving the changed QA/QC program, the associate director ~~Director~~ shall determine whether the changed QA/QC program meets the quality objectives originally approved by the ~~Department~~ Division. The associate director ~~Director~~ shall approve the changed QA/QC program if it meets the quality objectives.

H. A portion of a facility that a third-party terminal uses for production, import, or oxygenate blending is exempt from this Section, but the third-party terminal shall operate the exempt portion of the facility in compliance with requirements for registered suppliers in R3-7-752 and oxygenate blenders in R3-7-755, as applicable.

I. A pipeline is not liable under R3-7-761 if it follows all of the procedures in this Section.

R3-7-754. Downstream Blending Exceptions for Transmix

A. A pipeline or third-party terminal may blend transmix into Arizona CBG or AZRBOB at a rate not to exceed 1/4 of one percent by volume. Each pipeline or third-party terminal shall document the transmix blending (recording each batch and volume of transmix blended) and maintain the records at the third-party terminal for two years from the date of blending.

B. One of two methods shall be used to measure the transmix as it is blended into the product stream:

1. Meters, calibrated at least twice each year; or
2. Tank gauge as per American Petroleum Institute (API) Manual of Petroleum Measurement Standards, Chapters 3.1A (1st edition, December 1994) and 3.1B (1st edition, April 1992), incorporated by reference and on file with the ~~Department~~ Division. A copy may also be obtained at American Petroleum Institute, 1220 L St., N.W., Washington, D.C. 20005-4070. This incorporation by reference contains no future editions or amendments.

R3-7-755. Additional Requirements for AZRBOB and Downstream Oxygenate Blending

A. Application of Arizona CBG standards to AZRBOB.

1. Determining whether AZRBOB complies with Arizona CBG standards.
   a. If a registered supplier designates a final blend as AZRBOB and complies with the provisions of this Section, the fuel properties and performance standards of the AZRBOB, for purposes of compliance with Table 2, are determined by adding the specified amount of fuel ethanol to a representative sample of the AZRBOB and testing the resulting gasoline using the test methods in R3-7-759 or certifying the ~~ARZBOB~~ AZRBOB using the CARBOB model. If the registered supplier designates a range of amounts of fuel ethanol to be added to the AZRBOB, the minimum designated amount of fuel ethanol shall be added to the AZRBOB to determine the fuel properties and performance standards of the resulting Arizona CBG. If a registered supplier does not comply with this subsection, the ~~Department~~ Division shall determine whether the AZRBOB complies with applicable fuel properties and performance standards, excluding requirements for vapor pressure, without adding fuel ethanol to the AZRBOB.
   b. In determining whether AZRBOB complies with the Arizona CBG standards, the registered supplier shall ensure that the fuel ethanol added to the representative sample under subsection (A)(1)(a) is representative of the fuel ethanol the registered supplier reasonably expects will be subsequently added to the AZRBOB.
2. Calculating the volume of AZRBOB. If a registered supplier designates a final blend as AZRBOB and complies with this Section, the volume of AZRBOB is calculated for compliance purposes under R3-7-751 by adding the minimum amount of fuel ethanol designated by the registered supplier. If a registered supplier fails to comply with this subsection, the ~~Department~~ Division shall calculate the volume of AZRBOB for purposes of compliance with applicable fuel properties and performance standards without adding the amount of fuel ethanol to the AZRBOB.

B. Restrictions on transferring AZRBOB.

1. A person shall not transfer ownership or custody of AZRBOB to any other person unless the transferee notifies the transferor in writing that:
   a. The transferee is a registered oxygenate blender and will add fuel ethanol in the amount (or within the range of amounts) designated in R3-7-757 before the AZRBOB is transferred from a final distribution facility, or
   b. The transferee will take all reasonably prudent steps necessary to ensure that the AZRBOB is transferred to a registered oxygenate blender that adds the amount (or within the range of amounts) of fuel ethanol designated in R3-7-757 to the AZRBOB before the AZRBOB is transferred from a final distribution facility.
2. A person shall not sell or supply Arizona CBG from a final distribution facility if the amount or range of amounts of fuel ethanol designated in R3-7-757 has not been added to the AZRBOB.

C. Restrictions on blending AZRBOB with other products. A person shall not combine AZRBOB supplied from the facility at which the AZRBOB is produced or imported with any other AZRBOB, gasoline, blendstock, or oxygenate, except for:
1. Fuel ethanol in the amount (or within the range of amounts) specified by the registered supplier at the time the AZRBOB is supplied from the production or import facility, or
2. Other AZRBOB for which the same fuel ethanol amount (or range of amounts) is specified by the registered supplier at the time the AZRBOB is supplied from the production or import facility.

D. Quality assurance sampling and testing requirements for a registered supplier supplying AZRBOB from a production or import facility. A registered supplier supplying AZRBOB from a production or import facility shall use an independent third-party quality assurance sampling and testing program as described in subsection (E) or conduct a quality assurance sampling and testing program that meets the requirements of 40 CFR 80.69(a)(7), as it existed on July 1, 1996, except for the changes listed in subsections (D)(1) through (3). 40 CFR 80.69(a)(7), July 1, 1996, is incorporated by reference and on file with the ~~Department~~ Division. A copy may be obtained at the Government ~~Printing~~ Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov. The material incorporated includes no future editions or amendments.
1. 40 CFR 80.69(a)(7). The word "RBOB" is changed to read "AZRBOB";
2. 40 CFR 80.69(a)(7). "...using the methodology specified in § 80.46..." is changed to read "...using the methodology specified in R3-7-759...;" and
3. 40 CFR 80.69(a)(7)(ii). "(within the correlation ranges specified in § 80.65(e)(2)(i))" is changed to read "(within the ranges of the applicable test methods).

E. General requirements for an independent third-party quality assurance sampling and testing program. A registered supplier may contract with an independent third party that conducts a quality assurance sampling and testing program for one or more registered suppliers. The registered supplier shall ensure that the quality assurance sampling and testing program:
1. Is designed and conducted by a third party that is independent of the registered supplier. To be considered independent:
   a. The third party shall not be an employee of a registered supplier,
   b. The third party shall not have an obligation to or interest in any registered supplier, and
   c. The registered supplier shall not have an obligation to or interest in the third party;
2. Is conducted from November 1 through March 31 on all samples collected under the program design previously approved by the associate director ~~Director~~ under subsection (G);
3. Involves sampling and testing that is representative of all Arizona CBG dispensed in the CBG-covered area;
4. Analyzes each sample for oxygenate according to the methodologies specified in R3-7-759;
5. Bases results on an analysis of each sample collected during the sampling period unless a specific sample does not comply with the applicable per gallon maximum or minimum standards for the fuel property being evaluated in addition to any reproducibility applicable to the fuel property;
6. Participates in a correlation program with the associate director ~~Director~~ to ensure the validity of analysis results;
7. Does not provide advance notice, except as provided in subsection (F), of the date or location of any sampling;
8. Provides a duplicate of any sample, with information regarding where and the date on which the sample was collected, upon request of the associate director ~~Director~~, within 30 days after submitting the report required under subsection (E)(10);
9. Permits a ~~Department~~ Division official to monitor sample collection, transportation, storage, and analysis at any time; and
10. Prepares and submits a report to the associate director ~~Director~~ within 30 days after the sampling is completed that includes the following information:
    a. Name of the person collecting the samples;
    b. Attestation by an officer of the third party that the sampling and testing was done according to the program plan approved by the associate director ~~Director~~ under subsection (G) and the results are accurate;
    c. Identification of the registered supplier for whom the sampling and testing program was conducted if the sampling and testing program was conducted for only one registered supplier;
    d. Identification of the area from which the samples were collected;
    e. Address of each motor fuel dispensing site from which a sample was collected;
    f. Dates on which the samples were collected;
    g. Results of the analysis of the samples for oxygenate type and oxygen weight percent, aromatic hydrocarbon, and olefin content, E200, E300, and vapor pressure, and the calculated VOC or NOx emissions reduction percentage, as applicable;
    h. Name and address of each laboratory at which the samples were analyzed;
    i. Description of the method used to select the motor fuel dispensing sites from which a sample was collected;
    j. Number of samples collected at each motor fuel dispensing site; and
    k. Justification for excluding a collected sample if one was excluded.

F. An independent third party that contracts with one or more registered suppliers to conduct a quality assurance sampling and testing program shall begin the sampling on the date selected by the associate director ~~Director~~. The associate director ~~Director~~ shall inform the third party of the date selected at least 10 business days before sampling is to begin.

G. To obtain the associate director's ~~Director's~~ approval of an independent third-party quality assurance sampling and testing program plan, the person seeking the approval shall:
1. Submit the plan to the associate director ~~Director~~ no later than January 1 to cover the sampling and testing period from November 1 through March 31 of each year, and
2. Have the plan signed by an officer of the third party that will conduct the sampling and testing program.

H. No later than September 1 of each year, a registered supplier that intends to meet the requirements in subsection (D) by contracting with an independent third party to conduct quality assurance sampling and testing from November 1 through March 31 shall enter into the contract and pay all of the money necessary to conduct the sampling and testing program. The registered supplier may pay the money necessary to conduct the sampling and testing program to the third party or to an escrow account with instructions to the escrow agent to release the money to the third party as the testing program is implemented. No later than September 15, the registered

supplier shall submit to the associate director ~~Director~~ a copy of the contract with the third party, proof that the money necessary to conduct the sampling and testing program has been paid, and, if applicable, a copy of the escrow agreement.

I. Requirements for oxygenate blenders.

1. Requirement to add fuel ethanol to AZRBOB. If an oxygenate blender receives AZRBOB from a transferor to whom the oxygenate blender represents that fuel ethanol will be added to the AZRBOB, the oxygenate blender shall add fuel ethanol to the AZRBOB in the amount (or within the range of amounts) identified in the documentation accompanying the AZRBOB.
2. Additional requirements for oxygenate blending at terminals. An oxygenate blender that makes Arizona CBG by blending fuel ethanol with AZRBOB in a motor fuel storage tank, other than a truck used to deliver motor fuel to a retail outlet or bulk-purchaser consumer facility, shall determine the oxygen content and volume of the Arizona CBG before shipping, by collecting and analyzing a representative sample of the Arizona CBG, using the methodology in R3-7-759.
3. Additional requirements for oxygenate blending in trucks. An oxygenate blender that blends AZRBOB in a motor fuel delivery truck shall conduct quality assurance sampling and testing that meets the requirements in 40 CFR 80.69(e)(2), as it existed on July 1, 1996, except for the changes listed in subsections (I)(3)(a) through (c). 40 CFR 80.69(e)(2), July 1, 1996, is incorporated by reference and on file with the ~~Department~~ Division. A copy may be obtained at the Government ~~Printing~~ Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov. The material incorporated includes no future editions or amendments.
   a. 40 CFR 80.69(e)(2). The word "RBOB" is changed to read "AZRBOB;"
   b. 40 CFR 80.69(e)(2)(iv). "... using the testing methodology specified at § 80.46 ..." is changed to read "... using the testing methodology specified in R3-7-759...;" and
   c. 40 CFR 80.69(e)(2)(v). "(within the ranges specified in § 80.70(b)(2)(I))" is changed to read "(within the ranges of the applicable test methods)."
4. Additional requirements for in-line oxygenate blending in pipelines using computer-controlled blending.
   a. An oxygenate blender that produces Arizona CBG by blending fuel ethanol with AZRBOB into a pipeline using computer-controlled in-line blending shall, for each batch of Arizona CBG produced:
      i. Obtain a flow proportional composite sample after the addition of fuel ethanol and before combining the resulting Arizona CBG with any other Arizona CBG;
      ii. Determine the oxygen content of the Arizona CBG by analyzing the composite sample within 24 hours of blending using the methodology in R3-7-759; and
      iii. Determine the volume of the resulting Arizona CBG.
   b. If the test results for the Arizona CBG indicate that it does not contain the amount of fuel ethanol specified by the ranges of the applicable test methods, the oxygenate blender shall:
      i. Notify the pipeline to downgrade the Arizona CBG to conventional gasoline or transmix upon arrival in Arizona;
      ii. Begin an investigation to determine the cause of the noncompliance;
      iii. Collect a representative sample every two hours during each in-line blend of AZRBOB and fuel ethanol, and analyze the samples within 12 hours of collection, until the cause of the noncompliance is determined and corrected; and
      iv. Notify the associate director ~~Director~~ in writing within one business day that the Arizona CBG does not comply with the requirements of this Article.
   c. The oxygenate blender shall comply with subsection (I)(4)(b)(iii) until the associate director ~~Director~~ determines that the corrective action has remedied the noncompliance.
5. Recordkeeping and records retention.
   a. An oxygenate blender shall maintain, for five years from the date of each sampling, records of the following:
      i. Sample date,
      ii. Identity of blend or product sampled,
      iii. Container or other vessel sampled,
      iv. Volume of final blend or shipment,
      v. Oxygen content as determined under R3-7-759, and
      vi. Results from all testing.
   b. The associate director ~~Director~~ shall deem that Arizona CBG blended by an oxygenate blender and not tested and documented as required by this Section has an oxygen content that exceeds the standards specified in R3-7-751 or exceeds the comparable PM averaging limits, if applicable, unless the oxygenate blender demonstrates to the associate director ~~Director~~ that the Arizona CBG meets the standards in R3-7-751.
   c. Within 20 days of the associate director's ~~Director's~~ written request, an oxygenate blender shall provide any records maintained by the oxygenate blender under this Section. If the oxygenate blender fails to provide records requested for a blend or shipment of Arizona CBG, the associate director ~~Director~~ shall deem that the blend or shipment of Arizona CBG violates R3-7-751 or exceeds the comparable PM averaging limits, if applicable, unless the oxygenate blender demonstrates to the associate director ~~Director~~ that the Arizona CBG meets the standards and limits under R3-7-751.
6. Notification requirement. An oxygenate blender shall notify the associate director ~~Director~~ by fax or e-mail before transporting Arizona CBG or AZRBOB into the CBG-covered area by a means other than a pipeline.
7. Quality assurance and quality control (QA/QC) program. An oxygenate blender that conducts sampling and testing under subsection (I) in the oxygenate blender's own laboratory shall develop a QA/QC program to demonstrate the accuracy and effectiveness of the oxygenate blender's sampling and testing of Arizona CBG or AZRBOB. The oxygenate blender shall submit the QA/QC program to the associate director ~~Director~~ for approval at least three months before transporting Arizona CBG. The associate director ~~Director~~ shall approve a QA/QC program only if the associate director ~~Director~~ determines that the QA/QC program ensures that the oxygenate blender's sampling and testing produces data that are complete, accurate, and reproducible. Instead of developing a QA/QC program, an oxygenate blender may comply with the independent testing requirements of R3-7-752(F), except that, for sampling and testing conducted under subsection (I)(3), the minimum number of samples collected and

tested by the independent laboratory shall be 10% of the number of samples required to be collected and tested under subsection (I).

8. An oxygenate blender that does not conduct laboratory sampling and testing required under subsection (I) in its own laboratory shall designate an independent laboratory, as described in R3-7-752(F), to conduct the sampling and testing required under subsection (I)(7).
9. Within 24 hours of the associate director's ~~Director's~~ or designee's written request, an oxygenate blender shall submit a duplicate of any sample collected under subsection (I)(7).

J. Subsection (A)(1)(a) will not become effective until Arizona's revised State Implementation Plan submitted by ADEQ to EPA in August 2013 and subsequent supplement submitted July 2014 is approved by EPA.

R3-7-756. Downstream Blending of Arizona CBG with Nonoxygenate Blendstocks

A. A person shall not combine Arizona CBG supplied from a production or import facility with any nonoxygenate blendstock, other than vapor recovery condensate, unless the person demonstrates to the associate director ~~Director~~:

1. The blendstock added to the Arizona CBG meets all of the Arizona CBG standards regardless of the fuel properties and performance standards of the Arizona CBG to which the blendstock is added;
2. The person meets the requirements in this Article applicable to producers of Arizona CBG; and
3. The resulting fuel blend is not used within the CBG-covered area.

B. Notwithstanding subsection (A), a person may add nonoxygenate blendstock to a previously certified batch or mixture of certified batches of Arizona CBG that does not comply with one or more of the applicable per-gallon standards contained in R3-7-751(A) or (B) if the person obtains prior written approval from the associate director ~~Director~~ based on a demonstration that adding the blendstock will bring the previously certified Arizona CBG into compliance with the applicable per-gallon standards for Arizona CBG. The oxygenate blender or registered supplier shall certify the re-blended Arizona CBG to the ~~Department~~ Division.

R3-7-757. Product Transfer Documentation; Records Retention

A. If a person transfers custody or title to Arizona CBG or AZRBOB, other than when Arizona CBG is sold or dispensed at a motor fuel dispensing site or fleet vehicle fueling facility, the transferor shall provide to the transferee documents that include the following:

1. Volume of Arizona CBG or AZRBOB being transferred;
2. Location of the Arizona CBG or AZRBOB at the time of transfer;
3. Date of the transfer;
4. Product transfer document number;
5. Identification of the gasoline as Arizona CBG or AZRBOB;
6. Minimum octane rating of the Arizona CBG or AZRBOB;
7. For oxygenated Arizona CBG designated for sale for use in motor vehicles from November 1 through March 31, the minimum quantity of fuel ethanol contained in the Arizona CBG;
8. If the product transferred is AZRBOB for which fuel ethanol blending is intended:
   a. Identification of the fuel as AZRBOB and a statement that the "AZRBOB does not comply with the standards for Arizona CBG without the addition of fuel ethanol";
   ~~b. Designation of the AZRBOB as suitable for blending with fuel ethanol;~~
   ~~e~~.b. Fuel ethanol amount or range of amounts that the AZRBOB requires to meet the fuel properties or performance standards claimed by the registered supplier of the AZRBOB, and the applicable specifications for volume percent fuel ethanol and weight percent oxygen content; and
   ~~d.~~c. Instructions to the transferee that the AZRBOB may not be combined with any other AZRBOB unless the other AZRBOB has the same requirements for fuel ethanol amount or range of amounts; and
9. The final destination:
   a. When a terminal is the transferor, the owner or the operator of the product transfer document the terminal name and address~~,~~ and the transporter name and address~~, and the final destination, which may be a final distribution facility, jobber, marketer, or motor fuel dispensing site~~;
   b. When a transporter is the transferor, the transporter shall include on the product transfer document the name and address of the transporter and the final destination, which is the location at which the motor fuel will be delivered and off loaded from the truck; and
   c. When a jobber or marketer is the transferor, the jobber or marketer shall include on the product transfer document the name and address of the jobber or marketer and the final destination, which may be a final distribution facility or a motor fuel dispensing site.

B. To enable a transferor to comply fully with the requirement in subsection (A)(9), the transferee shall supply to the transferor information regarding the final destination.

C. A registered supplier, third-party terminal, or pipeline may comply with subsection (A) by using standardized product codes on pipeline tickets if the codes are specified in a manual distributed by the pipeline to transferees of the Arizona CBG or AZRBOB, and the manual includes all required information for the Arizona CBG or AZRBOB.

D. Any transferee in subsection (A), other than a registered supplier, oxygenate blender, third-party terminal, pipeline, motor fuel dispensing site, or fleet vehicle fueling facility shall retain product transfer documents for each shipment of Arizona CBG or AZRBOB transferred during the 24 months before the most recent transfer. The transferee shall maintain product transfer documents for the 30 days before the most recent transfer at the business address listed on the product transfer document. The transferee may maintain all remaining product transfer documents for the preceding 24 months elsewhere.

E. A motor fuel dispensing site or fleet vehicle fueling facility shall retain product transfer documents for each shipment of Arizona CBG transferred during the 12 months before the most recent transfer. The motor fuel dispensing site or fleet vehicle fueling facility shall maintain product transfer documents for the three most recent transfers on the premises. The motor fuel dispensing site or fleet vehicle fueling facility may maintain the remaining product transfer documents for the preceding 12 months elsewhere.

F. A registered supplier, oxygenate blender, third-party terminal, or pipeline shall retain product transfer documents for each shipment of Arizona CBG or AZRBOB transferred during the 60 months before the most recent transfer. The transferee shall maintain product transfer documents for each shipment of Arizona CBG or AZRBOB transferred during the 30 days preceding the most recent transfer at the business address listed on the product transfer document. The transferee may maintain all remaining product transfer documents for the preceding 60 months elsewhere.

G. When a person transfers custody or title of fuel ethanol that is intended for use ~~as a blend component~~ in AZRBOB or Arizona CBG, the person shall provide the transferee a document that prominently states that the fuel ethanol complies with the standards for fuel ethanol intended for use ~~as a blend component~~ in AZRBOB or Arizona CBG.

H. Upon request by the associate director ~~Director~~ or designee, a person shall present product transfer documents to the ~~Department~~ Division within two working days of the request. Legible photocopies of the product transfer documents are acceptable.

R3-7-759. Testing Methodologies

A. Except as provided in subsection (C), a registered supplier or importer certifying Arizona CBG or AZRBOB as meeting the requirements of this Article shall use one of the methods listed in Table A. A copy of the EPA- or CARB-approved ASTM methods may be obtained at: ASTM International (formerly American Society for Testing and Materials), 100 Bar Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org. A copy of the CARB methods may be obtained at: California Air Resources Board, P.O. Box 2815, Sacramento, CA 95812 or www.arb.ca.gov.

B. An oxygenate blender or third-party terminal certifying Arizona CBG or AZRBOB before transport to the CBG-covered area shall measure fuel ethanol in accordance with the oxygenate blender's or third-party terminal's approved QA/QC program or in accordance with one of the methods listed in Table A.

C. Rather than using a method listed in Table A to certify Arizona CBG or AZRBOB, a registered supplier may use the CARBOB Model and use the fuel-quality measures calculated using the CARBOB Model for compliance and reporting purposes.

D. A test method that the ~~Department~~ Division determines is equivalent to those listed in Table A may be used to certify Arizona CBG or AZRBOB. The ~~Department~~ Division has determined that test methods approved by either the EPA or CARB are equivalent test methods. To determine whether a proposed test method is equivalent to those listed in Table A, the ~~Department~~ Division shall thoroughly review data from both the proposed and designated test methods and assess whether the accuracy and precision of the proposed method is equal to or better than the accuracy and precision of the designated method and whether there is significant bias between the two methods. The ~~Department~~ Division shall approve a proposed test method only if the ~~Department~~ Division determines that the accuracy and precision of the proposed test method is equal to or better than the accuracy and precision of the designated method and receives the concurrence of the EPA Regional Administrator. A correlation equation may be required to align the two methods. If a correlation equation is required to align the two methods, the correlation equation becomes part of the equivalent method.

E. Subsections (C) and (D) will not become effective until Arizona's revised State Implementation Plan submitted by ADEQ to EPA in August 2013 and subsequent supplement submitted July 2014 is approved by EPA.

Table A. Arizona ~~Department of~~ Weights and Measures Services Division Test Methods for Arizona CBG and AZRBOB

Fuel Parameter	Units	EPA-approved Test Method	EPA-approved Reproducibility	CARB-approved Test Method	CARB-approved Reproducibility
Aromatics	V%	D5769-04			
	V%	D1319-02a (2003)[A]	1.65	D5580-00	1.4
Benzene	V%	D3606-99 (2007)	0.21	D5580-00	0.1409 (X) $^{1.133}$
Olefins	V%	D1319-02a (2003)	0.32 (x)$^{0.5}$	D6550-00 (2005) if correlated to D1319	0.32 (X) $^{0.5;}$ Footnote 1
Oxygenates	W%	D5599-00	See test method	D4815-99 (2004)	See test method
	W%	D4815-99 (2004)[B]	See test method		
Vapor Pressure (Correlation Equation) Footnote 2	psi	D5191-01 (2007)	0.3	13 CCR Section 2297	0.21
Sulfur	wppm	D2622-98 (2005)		D5453-93	0.2217 (x)$^{0.92}$ wppm
				D2622-94 (modified)	10-30 wppm R=0.405 (x) > 30 wppm R =0.192 (x)
Distillation T50	deg F	D86-01 (2007b)	See test method	D86-99ae1	See test method
Distillation T90	deg F	D86-01 (2007b)	See test method	D86-99ae1	See test method

[A] A refinery or importer may determine aromatics content using ASTM D1319-02a (2003) if the result is correlated to ASTM D5769-98 (2004).
[B] A refinery or importer may determine oxygenate content using ASTM D4815-99 (2004) if the result is correlated to ASTM D5599-00 (2005).
Footnotes:
1. Replace the last sentence in ASTM D6550-00 (2005) Section 1.1 with the following: "The application range is from 0.3 to 25 mass percent total olefin, as defined in Section 2263(b), Title 13, California Code of Regulations. If olefin concentrations are not detected, substitute one-half of the detection limit."
2. When determining vapor pressure, the only correlation equation to be used is equation 1 in ASTM D5191-07, Section 14.2, ASTM equation ((.965X)-A).

R3-7-760. Compliance Surveys

A. A registered supplier that elects to certify that Arizona CBG or AZRBOB meets an averaging standard under R3-7-751 shall ensure that compliance surveys are conducted in accordance with a compliance survey program plan approved by the associate director ~~Director~~. The associate director ~~Director~~ shall approve a compliance survey program plan if it:
1. Consists of at least four VOC and NOx surveys conducted at least one per month between May 1 through September 15 of each year, and
2. Complies with subsection (J).

B. If a registered supplier fails to ensure that an approved compliance survey program is conducted, the associate director ~~Director~~ shall issue an order requiring the registered supplier to comply with all applicable fuel property and performance standards on a per-gallon basis for six months or through the end of the survey period identified in subsection (A)(1), whichever is longer. Regardless of when a failure to survey occurs, the associate director's ~~Director's~~ order shall require compliance with per-gallon standards from the beginning of the survey period during which the failure to survey occurs.

C. General compliance survey requirements. A registered supplier shall ensure that a compliance survey conforms to the following:
1. Consists of all samples that are collected under an approved survey program plan during any consecutive seven days and that are not excluded under subsection (C)(4);
2. Is representative of all Arizona CBG being dispensed in the CBG-covered area as provided in subsection (G);
3. Analyzes each sample included in the compliance survey for oxygenate type and content, olefins, sulfur, aromatic hydrocarbons, E200, E300, and vapor pressure according to the test methods in R3-7-759. Vapor pressure is required to be analyzed only from May 1 through September 15;
4. Bases the results of the compliance survey upon an analysis of each sample collected during the course of the compliance survey, unless a sample does not comply with the applicable per gallon maximum or minimum fuel property standard being evaluated in addition to any reproducibility that applies to the fuel property standard; and
5. If a laboratory analyzes the compliance survey samples, the laboratory participates in a correlation program with the associate director ~~Director~~ to ensure the validity of analysis results.

D. If the associate director ~~Director~~ determines that a sample used in a compliance survey does not comply with R3-7-751 or another requirement under this Article, the associate director ~~Director~~ shall take enforcement action against the registered supplier.

E. A registered supplier shall comply with the following VOC and NOx compliance survey requirements:

1. For each compliance survey sample, determine the VOC and NOx emissions reduction percentage based upon the tested fuel properties for that sample using the methodology for calculating VOC and NOx emissions reductions at 40 CFR 80.45, as incorporated by reference in R3-7-702;
2. The CBG-covered area fails a VOC compliance survey if the VOC emissions reduction percentage average of all samples collected during the compliance survey is less than the per-gallon standard for VOC emissions reduction percentage in Table 1, column A.
3. The CBG-covered area fails a NOx compliance survey if the NOx emissions reduction percentage average of all samples collected during the compliance survey is less than the per-gallon standard for NOx emissions reduction percentage in Table 1, column A.

F. A registered supplier shall determine the result of the series of NOx compliance surveys conducted ~~between~~ May 1 ~~and~~ through September 15 as follows:
1. For each compliance survey sample, the NOx emissions reduction percentage is determined based upon the tested fuel properties for that sample using the methodology for calculating NOx emissions reduction at 40 CFR 80.45, as incorporated by reference in R3-7-702; and
2. The CBG-covered area fails the NOx series of compliance surveys conducted ~~between~~ May 1 ~~and~~ through September 15 if the NOx emissions reduction percentage average for all compliance survey samples collected during that time is less than the Federal Complex Model per-gallon standard for the NOx emissions reduction percentage in Table 1, column A.

G. General requirements for an independent surveyor conducting a compliance survey. A registered supplier may have the compliance surveys required by this Section conducted by an independent surveyor. The associate director ~~Director~~ shall approve a compliance survey program conducted by an independent surveyor if the compliance survey program:
1. Is designed and conducted by a surveyor that is independent of the registered supplier. To be considered independent:
   a. The surveyor shall not be an employee of any registered supplier,
   b. The surveyor shall not have an obligation to or interest in any registered supplier, and
   c. The registered supplier shall not have an obligation to or interest in the surveyor;
2. Includes enough samples to ensure that the average levels of oxygen, vapor pressure, aromatic hydrocarbons, olefins, T50, T90, and sulfur are determined with a 95 percent confidence level, with error of less than 0.1 psi for vapor pressure, 0.1 percent for oxygen (by weight), 0.5 percent for aromatic hydrocarbons (by volume), 0.5 percent for olefins (by volume), 5°F for T50 and T90, and 10 wppm for sulfur;
3. Requires that the surveyor not provide advance notice, except as provided in subsection (H), of the date or location of any survey sampling;
4. Requires that the surveyor provide a duplicate of any sample taken during the survey, with information regarding the name and address of the facility from and the date on which the sample was taken, upon request of the associate director ~~Director~~, within 30 days following submission of the survey report required under subsection (G)(6);
5. Requires that the surveyor permit a ~~Department~~ Division official to monitor sample collection, transportation, storage, and analysis at any time;
6. Requires the surveyor to submit a report of each survey to the associate director ~~Director~~ within 30 days after sampling for the survey is completed that includes the following information:
   a. Name of the person conducting the survey;
   b. Attestation by an officer of the surveyor that the sampling and testing was conducted according to the compliance survey program plan and the results are accurate;
   c. Identification of the registered supplier for whom the compliance survey was conducted if the compliance survey was conducted for only one registered supplier;
   d. Identification of the area from which survey samples were selected;
   e. Dates on which the survey was conducted;
   f. Address of each facility at which a sample was collected, and the date of collection;
   g. Results of the analysis of samples for oxygenate type and oxygen weight percent, aromatic hydrocarbon, and olefin content, E200, E300, and vapor pressure, and the calculated VOC or NOx emissions reduction percentage, as applicable, for each survey conducted during the period identified in subsection (A)(1);
   h. Name and address of each laboratory at which samples were analyzed;
   i. Description of the method used to select the facilities from which a sample was collected;
   j. Number of samples collected from each facility;
   k. Justification for excluding a collected sample from the survey, if one was excluded; and
   l. Average VOC and NOx emissions reduction percentage.

H. An independent surveyor shall begin each survey on a date selected by the associate director ~~Director~~. The associate director ~~Director~~ shall notify the surveyor of the date selected at least 10 business days before the survey is to begin.

I. To obtain the associate director's ~~Director's~~ approval of a compliance survey program plan, the person seeking approval shall:
1. Submit the plan to the associate director ~~Director~~ no later than January 1 to cover the survey period of May 1 through September 15 of each year, and
2. Have the plan signed by a corporate officer of the registered supplier or by an officer of the independent surveyor.

J. No later than April 1 of each year, a registered supplier that intends to meet the requirements in subsection (A) by contracting with an independent surveyor to conduct the compliance survey plan for the next summer and winter season shall enter into the contract and pay all of the money necessary to conduct the compliance survey plan. The registered supplier may pay the money necessary to conduct the compliance survey plan to the independent surveyor or to an escrow account with instructions to the escrow agent to release the money to the independent surveyor as the compliance survey plan is implemented. No later than April 15, the registered supplier

shall submit to the associate director ~~Director~~ a copy of the contract with the independent surveyor, proof that the money necessary to conduct the compliance survey plan has been paid, and, if applicable, a copy of the escrow agreement.

R3-7-761. Liability for Noncompliant Arizona CBG or AZRBOB

A. Persons liable. If motor fuel designated as Arizona CBG or AZRBOB does not comply with R3-7-751, the following are liable for the violation:
1. Each person who owns, leases, operates, controls, or supervises a facility where the noncompliant Arizona CBG or AZRBOB is found;
2. Each registered supplier whose corporate, trade, or brand name, or whose marketing subsidiary's corporate, trade, or brand name, appears at a facility where the noncompliant Arizona CBG or AZRBOB is found; and
3. Each person who manufactured, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of any gasoline in a storage tank containing Arizona CBG or AZRBOB found to be noncompliant.

B. Defenses.
1. A person who is otherwise liable under subsection (A) is not liable if that person demonstrates:
   a. That the violation was not caused by the person or person's employee or agent;
   b. That product transfer documents account for all of the noncompliant Arizona CBG or AZRBOB and indicate that the Arizona CBG or AZRBOB complied with this Article; and
   c. That the person had a quality assurance sampling and testing program, as described in subsection (C) in effect at the time of the violation; except that any person who transfers Arizona CBG or AZRBOB, but does not assume title, may rely on the quality assurance program carried out by another person, including the person who owns the noncompliant Arizona CBG or AZRBOB, provided the quality assurance program is properly administered.
2. If a violation is found at a facility that operates under the corporate, trade, or brand name of a registered supplier, that registered supplier must show, in addition to the defense elements in subsection (B)(1), that the violation was caused by:
   a. A violation of law other than A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Article 6, this Article, or an act of sabotage or vandalism;
   b. A violation of a contract obligation imposed by the registered supplier designed to prevent noncompliance, despite periodic compliance sampling and testing by the registered supplier; or
   c. The action of any person having custody of Arizona CBG or AZRBOB not subject to a contract with the registered supplier but engaged by the registered supplier for transportation of Arizona CBG or AZRBOB, despite specification or inspection of procedures and equipment by the registered supplier designed to prevent violations.
3. To show that the violation was caused by any of the actions in subsection (B)(2), the person must demonstrate by reasonably specific showings, by direct or circumstantial evidence, that the violation was caused or must have been caused by another person.

C. Quality assurance sampling and testing program. To demonstrate an acceptable quality assurance program for Arizona CBG or AZRBOB, at all points in the gasoline distribution network, other than at a ~~service station~~ motor fuel dispensing site or fleet owner facility, a person shall present evidence:
1. Of a periodic sampling and testing program to determine compliance with the maximum or minimum standards in R3-7-751; and
2. That each time Arizona CBG or AZRBOB is noncompliant with one of the requirements in R3-7-751:
   a. The person immediately ceases selling, offering for sale, dispensing, supplying, offering for supply, storing, transporting, or causing the transportation of the noncompliant Arizona CBG or AZRBOB; and
   b. The person remedies the violation as soon as practicable.

R3-7-762. Penalties

Any person who violates any provision of this Article is subject to the following:
1. Prosecution for a Class 2 misdemeanor under A.R.S. § ~~41-2113(B)(4)~~ 3-3473(B)(4);
2. Civil penalties in the amount of $500 per violation under A.R.S. § ~~41-2115~~ 3-3475; and
3. Stop-use, stop-sale, hold, and removal orders under A.R.S. § ~~41-2066(A)(2)~~ 3-3415(A)(2).

Table 1. Type 1 Arizona CBG Standards

	Non-averaging Option	Averaging Option		
	A	B	C	D
Performance Standard/Fuel Property**	Per-Gallon (minimum)	Average	Minimum (per-gallon)	Maximum (per-gallon)
VOC Emission Reduction (%) May 1 -through Sept. 15	27.5	29.0	25.0	N/A
NOx Emission Reduction (%) May 1 -through Sept. 15	5.5	6.8	N/A	N/A
NOx Emission Reduction (%) Sept. 16 - October 31 and February 1 - April 30***	0.0	N/A	N/A	N/A
Oxygen content: fuel ethanol, (% by weight unless otherwise noted) November 1 - March 31*** April 1 - October 31	 N/A 0.0*	 N/A N/A	 N/A 0.0	 N/A 4.0
Oxygen content: other than fuel ethanol, (% by weight) November 1 - March 31*** April 1 - October 31	 N/A 0.0	 N/A N/A	 N/A 0.0	 N/A ****

* Maximum oxygen content shall comply with the EPA oxygenate waiver requirements and with A.R.S. § ~~41-2122~~ 3-3491.
** Dates represent compliance dates for the owner of a motor fuel dispensing site or a fleet vehicle fueling facility.
*** A registered supplier shall certify all Arizona CBG as Type 2 Arizona CBG meeting the standards in Table 2 beginning November 1 through March 31.
**** As specified in A.R.S. § ~~41-2122~~ 3-3491.

Table 2. Type 2 Arizona CBG Standards

	Averaging Option		Non-averaging Option	
	A	B	C	
Fuel Property	Maximum Standard (per gallon)	Averaging Standard*	Flat Standard * (per gallon maximum)	Units of Standard
Sulfur Content	80	30	40	Parts per million by weight
Olefin Content	10.0	4.0	6.0	% by volume
90% Distillation Temperature (T90)	330	290	300	Degrees Fahrenheit
50% Distillation Temperature (T50)	220	200	210	Degrees Fahrenheit
Aromatic Hydrocarbon Content	30.0	22.0	25.0	% by volume
Oxygen content: fuel ethanol** November 1 - March 31	10% fuel ethanol**	–	10% fuel ethanol**	% by vol.
April 1 - October 31		–		
The maximum oxygen content EtOH year around			4.0	% by weight

* Instead of the standards in columns B and C, a registered supplier may comply with the standards contained in column A, and R3-7-751(G), (H), and (I) for the use of the PM.
** Maximum oxygen content shall comply with the EPA oxygenate waiver requirements.
A registered supplier shall certify all Arizona CBG using fuel ethanol as the oxygenate beginning November 1 through March 31. Alternative fuel ethanol contents not less than 2.7% total oxygen may be used if approved by the associate director ~~Director~~ under A.R.S. § ~~41-2124(D)~~ 3-3493(C).
NOTE: Dates represent compliance dates for the owner of a motor fuel dispensing site or fleet vehicle fuel facility.

ARTICLE 9. GASOLINE VAPOR CONTROL

R3-7-901. Material Incorporated by Reference

The following documents are incorporated by reference and on file with the ~~Department~~ Division. The documents incorporated by reference contain no later amendments or editions:

1. Appendix J.5 of Technical Guidance – Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, Vol. II: Appendices, November 1991 edition (EPA450/391022b), published by the U.S. Environmental Protection Agency, Office of Air Quality, Planning and Standards, Research Triangle Park, North Carolina 27711.
2. *San Diego County Air Pollution Control District Test Procedure TP-96-1*, March 1996, Third Revision, Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123-1096.
3. The following CARB test procedures:
   a. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.4, Determination of Dynamic Pressure Performance of Vapor Recovery Systems of Dispensing Facilities, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
   b. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.5, Determination (by Volume Meter) of Air to Liquid Volume Ratio of Vapor Recovery Systems of Dispensing Facilities, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
   c. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.2C, Determination of Spillage of Phase II Vapor Recovery Systems of Dispensing Facilities, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
   d. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.6, Determination of Liquid Removal of Phase II Vapor Recovery Systems of Dispensing Facilities, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
   e. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.2B, Determination of Flow Versus Pressure for Equipment in Phase II Vapor Recovery Systems of Dispensing Facilities, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
   f. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.1B, Static Torque of Rotatable Phase 1 Adaptors, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
   g. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.1C, Leak Rate of Drop Tube/Drain Valve Assembly, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
   h. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.1E, Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.

R3-7-902. Exemptions

A. The owner or operator of a gasoline dispensing site that has decommissioned the site's stage II vapor recovery system in accordance with R3-7-913 or that is subject to A.R.S. § ~~41-2132~~ 3-3512, is exempt from the provisions of this Article but shall comply with the provisions of Article 10.

B. The owner or operator of a gasoline dispensing site that has a throughput that does not exceed the throughput specified in A.R.S. § ~~41-2135(B)~~ 3-3515(B) may obtain an exemption by submitting a written request to the ~~Department~~ Division attesting that throughput at the gasoline dispensing site is not in excess of that specified in A.R.S. § ~~41-2135(B)~~ 3-3515(B). By the 15th of each month, beginning the month after the ~~Department~~ Division approves the exemption, the person shall submit a written throughput report to the ~~Department~~ Division. If a person does not timely file a monthly throughput report or if a monthly throughput report reflects that the exemption limit is exceeded, the ~~Department~~ Division deems the exemption void.

C. To obtain an independent small business marketer exemption, a person shall derive at least 50 percent of the person's annual income from the sale of gasoline at each gasoline dispensing site for which an exemption is requested. The person shall submit a written request for exemption to the ~~Department~~ Division. The ~~Department~~ Division shall determine the percentage of total annual income represented by the sale of gasoline on the basis of the person's state and federal gross income for the preceding year for income tax purposes. The following items are excluded from income computations:
   1. Purchase and sale of diesel fuel, and
   2. State lottery sales net commissions and incentives.

D. Motor raceways, motor vehicle proving grounds, and marine and aircraft fueling facilities are exempt from stage II vapor recovery requirements.

R3-7-903. Equipment and Installation

A. A person subject to A.R.S. § ~~41-2135~~ 3-3515 shall install, maintain, and operate a stage I and stage II vapor recovery system and component as specified in this Article until the stage II vapor recovery system is decommissioned in accordance with R3-7-913.

B. The ~~Department~~ Division shall reject a vapor recovery system or component from future installation if:
   1. Federal regulations prohibit its use;
   2. The vapor recovery system or component does not meet the manufacturer's specifications as certified by CARB using test methods approved in R3-7-901; or

3. The vapor recovery system or component fails greater than 20% of ~~Department~~ Division inspections for that system or component or the ~~Department~~ Division receives equivalent failure results from a vapor recovery registered service agency or from another jurisdiction's vapor recovery program, and the ~~Department~~ Division provides at least 30 days public notice of its proposed rejection.

C. The piping of both a stage I and stage II vapor recovery system shall be designed and constructed as certified by CARB for that specific vapor recovery system. A person shall not alter a stage I and stage II vapor recovery system or component from the CARB-certified configuration without obtaining ~~Department~~ Division approval under R3-7-904.

D. If ~~Department~~ Division inspection or test data reveal a deficiency in a fitting, assembly, or component that cannot be permanently corrected, the deficient fitting, assembly, or component shall not be used in Arizona.

E. A stage I spill containment may have a plugged drain rather than a drain valve if a hand-operated pump is kept onsite for draining entrapped liquid. A stage II vapor recovery system shall have pressure/vacuum (P/V) threaded valves on top of the vent lines for gasoline storage tanks.

R3-7-904. Application Requirements and Process for Authority to Construct Plan Approval

A. A person shall not begin to construct a site requiring a vapor recovery system or to make a major modification of an existing vapor recovery system or component before obtaining approval of an authority to construct plan application. A major modification is:
1. Adding or replacing a gasoline storage tank that is equipped with a ~~Department~~ Division approved stage II vapor recovery system;
2. Adding or replacing underground piping, vapor piping within a dispenser, or a dispenser at an existing vapor recovery site unless the dispenser replacement is necessary due to unforeseen damage to the existing dispenser; or
3. Replacing a ~~Department~~ Division -approved stage II vapor recovery system of one certified configuration with an approved stage II vapor recovery system of a different certified configuration.

B. A person shall file with the ~~Department~~ Division a written change order to an authority to construct plan approval on a form provided by the ~~Department~~ Division if a modification of the approved vapor recovery system or component is needed after the ~~Department~~ Division issues an authority to construct plan approval. The person shall not make any modification until the ~~Department~~ Division approves the change order.

C. To obtain an authority to construct plan approval, a person shall submit to the ~~Department~~ Division, on a form provided by the ~~Department~~ Division, the following:
1. The name, address, and phone number of any owner, operator, and proposed contractor, if known;
2. The name of the stage I or stage II vapor recovery system or component to be installed along with the CARB certification for that system or component;
3. The street address of the site where construction or major modification will take place with an estimated timetable for construction or modification;
4. A copy of a blueprint or scaled site plan for the vapor recovery system or component including all equipment and piping detail; and
5. The application fee specified under R3-7-906.

D. After review and approval of the authority to construct plan, the ~~Department~~ Division shall issue the authority to construct plan approval and mail the plan approval to the address indicated on the application.
1. A copy of the authority to construct plan approval shall be maintained at the facility during construction so that it is accessible for ~~Department~~ Division review.
2. Construction of a stage II vapor recovery system or component at a site not having an approved authority to construct plan, shall be stopped and no further installation work done until an authority to construct plan approval is obtained.
3. An authority to construct plan approval is not transferable.

E. The ~~Department~~ Division shall deny an authority to construct plan for any of the following reasons:
1. Providing incomplete, false, or misleading information; or
2. Failing to meet the requirements stated in this Chapter.

F. If excavation is involved, the ~~Department~~ Division may visually inspect the stage II underground piping of a gasoline dispensing site before the pipeline is buried, for compliance with the authority to construct plan approval. A person who owns or operates a vapor recovery system or component shall give the ~~Department~~ Division notice by fax or e-mail at least two business days before the underground piping is complete. The ~~Department~~ Division shall require the owner or operator to excavate all piping not inspected before burial if the owner or operator does not give the required two business days' notice.

G. After construction is complete, a person who has a valid authority to construct plan approval may dispense gasoline for up to 90 days before final approval, if an initial inspection is scheduled according to R3-7-905.

H. An authority to construct plan approval expires one year from the date of issue or the completion of construction, whichever is sooner.

R3-7-905. Initial Inspection and Testing

A. Within 10 days after beginning the dispensing of gasoline at a site that requires an authority to construct plan approval, a person shall provide the ~~Department~~ Division with a written certification of completion by the contractor and schedule an inspection that includes tests and acceptance criteria specified in the authority to construct plan approval. The inspection shall be witnessed by the ~~Department~~ Division at a time approved by the ~~Department~~ Division and include any of the following relevant to the specific vapor recovery system installed:
1. A dynamic pressure performance test from each dispenser for each product grade to its associated underground storage tank;
2. A pressure decay test for each vapor control system including nozzles, underground storage tanks, and tank vents. This test shall be performed with caps removed from stage I fill and vapor risers. If the pressure decay test in R3-7-901(1) is used, the ~~Department~~ Division shall fail the vapor recovery system if gasoline storage tanks have less than 10 percent or greater than 60 percent vapor space. If the pressure decay test in R3-7-901(2) is used, the ~~Department~~ Division shall fail the vapor recovery system if

gasoline storage tanks have less than 15 percent or more than 30,000 gallons vapor space. The ~~Department~~ Division shall compute combined tank vapor space for manifolded systems;

3. Communication from dispenser to tanks for each product, using the San Diego TP-96-1 and CARB TP-201.4 test procedures;
4. Air to liquid volume ratio by volume meter of a vapor recovery system, using CARB TP-201.5 or CARB-endorsed equivalent procedures to determine air to liquid (A/L) ratios;
5. Spillage of a stage II vapor recovery system, using the CARB TP-201.2C procedure;
6. Liquid removal of a stage II vapor recovery system, using the CARB TP-201.6 procedure;
7. Flow versus pressure for components in a stage II vapor recovery system, using the CARB TP-201.2B procedure; and
8. Procedures specified by a manufacturer for testing the vapor recovery system.

B. If there is a difference between a testing contractor's and the ~~Department~~ Division's test results, the ~~Department~~ Division's test results prevail.

C. If a site fails to pass any of the tests required by subsection (A), the affected vapor recovery system or component shall remain out-of-service until the vapor recovery system and component pass all the appropriate tests in subsection (A).

D. A person who cancels an initial inspection shall notify the ~~Department~~ Division by calling the ~~Department~~ Division's designated telephone number at least one hour before the scheduled inspection and shall reschedule the inspection within 10 business days after this notification. The ~~Department~~ Division shall take enforcement action if a person fails to comply with this Section.

E. A person shall notify the ~~Department~~ Division when a vapor recovery system or component is repaired after failing an initial inspection. A registered service representative shall not proceed with a reinspection until the ~~Department~~ Division approves the reinspection date and time.

F. If a registered service representative does not start an initial inspection pressure decay test within 30 minutes of the scheduled start time, the ~~Department~~ Division shall fail the initial inspection of that site.

G. If a person cancels an initial inspection, the person shall reschedule the inspection within 90 days from the date gasoline was first dispensed.

1. The ~~Department~~ Division shall take enforcement action if the person fails to timely reschedule the inspection.
2. The registered service agency shall notify the ~~Department~~ Division in writing at least 10 business days before the inspection of the time, date, and location of the inspection.
3. The ~~Department~~ Division shall notify the registered service agency within five business days, by facsimile or electronic mail, whether it approves the inspection date and time.

R3-7-907. Operation

A. The owner or operator of a gasoline dispensing site with stage II vapor recovery shall not transfer or permit the transfer of gasoline into any motor vehicle fuel tank unless stage II vapor recovery equipment is installed, maintained, operating, and being used according to the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Article 7, and this Article.

B. The owner or operator of a gasoline dispensing site with stage II vapor recovery shall operate the stage II vapor recovery system and associated components in compliance with the CARB certification for that system and these rules.

C. The owner or operator of a gasoline dispensing site with stage II vapor recovery shall inspect the system and its components daily. Daily inspections shall include all nozzles, hoses with connecting hardware, stage I fittings, and spill containment.

D. The owner or operator of a gasoline dispensing site shall immediately stop using a stage II vapor recovery system or component if one or more of the following system or component defects occur:

1. A faceplate or facecone of a balance system nozzle does not make a good seal with a vehicle fill tube, or the accumulated damage to the faceplate or facecone is 1/4 or more of its circumference. These conditions also apply to a vacuum assist system that has a nozzle with a bellows and faceplate that seal with a vehicle fill pipe;
2. When more than 1/4 of the cone is missing for vapor assist systems having bellowless nozzles with flexible vapor deflecting cones;
3. A nozzle bellows has a triangular tear measuring 1/2 inch or more to a side, a hole measuring 1/2 inch or more in diameter, or a slit or tear measuring one inch or more in length;
4. A nozzle bellows is loosely attached to the nozzle body, attached by means other than that approved by the manufacturer, or a vapor check valve is frozen in the open position due to impaired motion of the bellows;
5. Any nozzle liquid shut-off mechanism malfunctions in any manner, the spring or latching knurl for holding the nozzle in place during vehicle fueling is damaged or missing, or a nozzle is without a functioning hold-open latch;
6. Any nozzle with a defective vapor check valve, or hose having a disengaged breakaway, when all other nozzles are capable of delivering the same grade of fuel from the same turbine pump;
7. Any vacuum assist nozzle having less than the acceptable number of open vapor collection holes specified by CARB for the particular model of nozzle in service, the nozzle spout rocks or rotates more than 1/8 inch, the spout shows heavy wear with the tip damaged in a way that the largest axis exceeds .84 inch, or the plastic insert in the tip of the spout is loose;
8. Any nozzle with a dispensing rate greater than 10 gallons per minute when only one nozzle associated with the product supply pump is operating, or a flow restrictor is improperly installed, leaking, or non-CARB approved;
9. Any nozzle with a physically damaged breakaway or a breakaway showing evidence of product leakage, or a breakaway not approved for the installed system;
10. A dispenser mounted vacuum pump that is not functioning;
11. Any vapor recovery hose and, as applicable, the accompanying whip hose, that:
    a. Is crimped, kinked, flattened, or damaged in any manner that constricts the return flow of vapor;
    b. For a balance hose, has any slits or tears greater than 1/4 inch in length, perforations greater than 1/8 inch in diameter, or assist system hoses that are cut, torn, or badly worn so as to cause a possible fuel leak;
    c. Does not fully retract, for approved dispenser configurations using hose retractors, or a balance system hose that exceeds the 10-inch loop requirement where required, or for a hose length that allows a balance hose to touch the ground, or for a vacuum assist hose having more than 6 inches in contact with the ground;

d. Does not swivel at the hose/nozzle connection; or
e. Does not have a required internal liquid pick-up or the hose with liquid pick-up is improperly assembled for the pick-up to properly function;

12. Tank vent pipes that are not the proper height, or are not properly capped with approved pressure and vacuum vent valve settings, or where required, vent pipes that do not meet the CARB-specified paint color code for the installed system;
13. The stage I installation is not properly installed or maintained, in that:
    a. Spill containment buckets are cracked, rusted, the sidewalls are not attached or otherwise improperly installed, or spill containment buckets are not clean and empty of liquid, or there are non-functioning drain valves, or drain valves that do not seal;
    b. A fill adaptor collar or vapor poppet (drybreak) that is loose or damaged, or with a fill or vapor cap that is not installed, is missing, broken, or without gaskets;
    c. Coaxial stage I that is not equipped with a functioning CARB-approved poppeted fill tube, or the coaxial cap is not installed, is missing, broken, or without gaskets; or
    d. A fill tube is missing, not sealed, has holes, broken or damaged overfill preventors, or if the high point of the bottom opening is more than 6 inches above the tank bottom;
14. The tank rise cap with instrument lead wire for an electronic monitoring system is not tightly installed, or any other tank riser is not securely sealed and capped;
15. The under-dispenser vapor recovery piping is not securely intact or is crimped, does not slope to the underground vapor pipe riser, hoses used for connection are deteriorated or not approved for use with gasoline, resettable impact type shear valves are closed, or there is any other valve or restriction to impede the vapor path;
16. An above-ground storage tank that does not display a permanently attached UL approval plaque;
17. A vacuum assist system with an inoperative central vacuum unit;
18. A vacuum assist system with an inoperative vapor processing (burner) unit;
19. A vacuum assist system with a monitoring system certified by CARB or the authority to construct that is not operational or malfunctions; or
20. Any other component identified in the diagrams, exhibits, attachments or other documents that are certified by CARB or required by the authority to construct for that system is missing, disconnected, or malfunctioning.

E. The owner or operator of a gasoline dispensing site shall inspect for the presence and proper placement of public information signs required by A.R.S. § ~~41-2135(E)~~ 3-3515(E) and this Article.

F. For a stage II vacuum assist vapor recovery system, the owner or operator of a gasoline dispensing site shall immediately place damaged or malfunctioning equipment out of service and shall notify the ~~Department~~ Division by fax or e-mail no more than one day after the malfunction of a central vacuum or processor unit. Once the equipment or system is repaired, the owner or operator shall provide written notice within five days of the repair to the ~~Department~~ Division.

G. For proper operation of a stage I system, under A.R.S. § ~~41-2132(C)(4)~~ 3-3512(C)(4), the owner or operator of a gasoline dispensing site shall recover vapors during pump-out from a gasoline storage tank to a mobile transporter.

H. The owner or operator of a gasoline dispensing site shall ensure that any underground tightness test is conducted in a manner that prevents gasoline vapors being emitted to the atmosphere.

R3-7-908. Training and Public Education

A. Each operator of a gasoline dispensing site using stage II vapor recovery shall obtain adequate training and written instructions to enable the system to be installed, operated and maintained properly in accordance with the manufacturer's specifications and CARB certification. The operator shall maintain documentation of this training onsite and make the documentation available to the ~~Department~~ Division on request.

B. In addition to the information required in A.R.S. § ~~41-2135(E)~~ 3-3515(E), an operator of a gasoline dispensing site with stage II vapor recovery shall display a ~~Department~~ Division telephone number that the public can call to report nozzle or other equipment problems. The operator shall place the required information on each face of each gasoline dispenser. The headings shall be at least 3/8 inches and shall be readable from up to 3 feet away for decal signs, and from up to 6 feet away for permanent (nondecal) signs. Decals shall be located on the upper 60% of each face of each dispenser.

R3-7-909. Recordkeeping and Reporting

A. The owner or operator of a gasoline dispensing site employing stage II vapor recovery shall maintain daily records of the inspections done under this Article.

B. The owner or operator of a gasoline dispensing site employing stage II vapor recovery shall maintain a log and related records of all regularly scheduled maintenance and any repairs that have been made to stage II equipment.

C. The owner or operator of a gasoline dispensing site that is exempt under A.R.S. § ~~41-2135(B)~~ 3-3515(B) from requirements to install and operate stage II vapor recovery equipment, shall maintain a log at the site showing monthly throughputs. The owner or operator shall submit throughput records to the ~~Department~~ Division as required under R3-7-902(B). If any throughput requirement provided in A.R.S. § ~~41-2135(B)~~ 3-3515(B) and this Article is exceeded for any month, the owner or operator shall notify the ~~Department~~ Division in writing within 30 days. The owner or operator shall within six months after the end of the month the throughput is exceeded, install and operate a stage II vapor recovery system conforming to this Article.

D. The owner or operator of a gasoline dispensing site shall keep all records required by this Article at the gasoline dispensing site for at least one year and shall make these records available to the ~~Department~~ Division upon request.

R3-7-910. Annual Inspection and Testing

A. A person shall ensure that an annual inspection is conducted by a registered service representative on or before the annual inspection date. The annual inspection date is the last day of the month in which the last scheduled annual inspection was performed. A registered service agency shall notify the ~~Department~~ Division in writing at least 10 business days before an annual inspection of the time,

date, and location of the inspection. The ~~Department~~ Division shall notify the registered service agency within five business days, by fax or e-mail, whether it approves the annual inspection date and time. The registered service agency shall not perform the annual inspection unless the ~~Department~~ Division approves the inspection date and time.

B. The annual inspection shall include the tests defined in R3-7-905(A)(1) through (8) that pertain to the specific vapor recovery system installed.

C. If there is a difference between a testing contractor's and the ~~Department~~ Division's test results, the ~~Department~~ Division's test results prevail.

D. If a site fails to pass any of the tests required by subsection (B), the affected vapor recovery system or component shall remain out-of-service until the vapor recovery system and component pass all appropriate tests in subsection (B).

E. After an annual inspection begins, a person shall not make a repair to the vapor recovery system or component until the results of the inspection are recorded.

F. A registered service representative shall perform all tests according to Article 9 and any other vapor recovery procedure that the ~~Department~~ Division issues to registered service agencies.

G. A person who cancels a witnessed inspection shall notify the ~~Department~~ Division by calling the ~~Department~~ Division's designated telephone number at least one hour before the scheduled inspection and shall reschedule the test to be completed by the annual inspection date. A registered service agency shall notify the ~~Department~~ Division in writing at least 10 business days before an annual inspection of the time, date, and location of the inspection. The ~~Department~~ Division shall notify the registered service agency within five business days, by fax or e-mail, of its approval of the inspection date and time. The ~~Department~~ Division shall take enforcement action if a person does not comply with this subsection.

R3-7-911. Compliance Inspections

The ~~Department~~ Division shall not announce when it plans to conduct a compliance inspection of a stage I or stage II vapor recovery system or component. If results of a compliance inspection reveal a violation of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Article, the ~~Department~~ Division shall require the vapor recovery system or component to undergo an appropriate test as specified in R3-7-910.

R3-7-912. Enforcement

If the ~~Department~~ Division finds that a stage II vapor recovery system or component is defective or non-compliant with one or more of the provisions of this Chapter or A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, the ~~Department~~ Division shall issue to the owner or operator an administrative order and place a stop-sale, stop-use tag on the non-compliant vapor recovery system or component. The owner or operator may be required to schedule an inspection for a stage II vapor recovery system or component to ensure that it meets all requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19 and this Chapter before the vapor recovery system or component is placed in service.

R3-7-913. Stage II Decommissioning

A. The owner or operator of a gasoline dispensing site with a stage II vapor recovery system shall decommission the stage II vapor recovery system in accordance with the following schedule:

1. If the owner or operator holds a license issued by the ~~Department~~ Division numbered BMF 13676 or less, the owner or operator shall decommission the stage II vapor recovery system between October 1, 2016 and September 30, 2017; or
2. If the owner or operator holds a license issued by the ~~Department~~ Division numbered BMF 13677 or more, the owner or operator shall decommission the stage II vapor recovery system between October 1, 2017 and September 30, 2018.

B. Request for alternate decommissioning plan. The following owners or operators may submit an alternate decommissioning plan requesting to decommission the stage II vapor recovery systems at a time other than would be required under subsection (A)(1) or (A)(2) but no sooner than October 1, 2016 and no later than September 30, 2018. The owner or operator shall submit the alternate decommissioning plan to the ~~Department~~ Division for approval ~~no later than December 31, 2015~~prior to decommissioning at an alternate time period.

1. An owner or operator that holds licenses issued by the ~~Department~~ Division for three or fewer gasoline dispensing sites if all the licenses are issued in the same business name and mailing address. The owner or operator shall ensure that the alternate decommissioning plan includes the information specified in subsections (C)(1) through (4); and
2. An owner or operator that holds licenses issued by the ~~Department~~ Division for four or more gasoline dispensing sites if all the licenses are issued in the same business name and mailing address. The owner or operator shall ensure that the alternate decommissioning plan includes the information specified in subsection (C).

C. An owner or operator that submits a request for approval of an alternate decommissioning plan shall include the following information as specified under subsection (B):

1. The business name and mailing address on all licenses;
2. The name and telephone number of an individual with whom the ~~Department~~ Division can communicate;
3. The license number and address of each gasoline dispensing site and a statement of whether the owner or operator proposes to decommission each vapor recovery system between October 1, 2016 and September 30, 2017, or October 1, 2017 and September 30, 2018;
4. A statement of whether all gasoline dispensers at the gasoline dispensing site will be replaced and if so, whether the owner or operator proposes to replace the gasoline dispensers between October 1, 2016 and September 30, 2017, or October 1, 2017 and September 30, 2018; and
5. If the owner or operator owns four or more gasoline dispensing sites, an alternate decommissioning plan that includes:
   a. The license numbers and addresses of 50 percent of the gasoline dispensing sites at which the vapor recovery systems will be decommissioned between October 1, 2016 and September 30, 2017; and
   b. The license numbers and addresses of the remaining 50 percent of the gasoline dispensing sites at which the vapor recovery systems will be decommissioned between October 1, 2017 and September 30, 2018.

D. The ~~Department~~ Division shall approve or reject, on a first-come-first-served basis, an alternate decommissioning plan within three months after the alternate decommissioning plan is submitted. The ~~Department~~ Division shall allow decommissioning of stage II

vapor recovery equipment at the time gasoline dispensers are replaced as indicated on the request for approval under subsection (C)(4). The ~~Department~~ Division may reject an alternate decommissioning plan if the information required under subsection (B) is not provided or if the year requested for decommissioning already has more than 60 percent of all gasoline dispensing sites scheduled for decommissioning;

E. The owner or operator of a gasoline dispensing site that is exempt under R3-7-902 shall decommission the site any time between October 1, 2016, and September 30, 2018;

F. The owner or operator of a gasoline dispensing site shall ensure that a Notice of Intent, using a form or format provided by the ~~Department~~ Division, is submitted to the ~~Department~~ Division at least 10 days before the planned decommissioning and includes the following information:
1. Name of the owner or operator of the gasoline dispensing site,
2. Address of the gasoline dispensing site,
3. Name of the decommissioning contractor,
4. Decommissioning dates,
5. Name of the vapor testing registered service representative, and
6. A statement indicating whether all gasoline dispensers at the gasoline dispensing site are being replaced.

G. If any of the information provided under subsection (F) changes, the owner or operator shall ensure that the ~~Department~~ Division receives the changed information at least 24 hours before the scheduled start of decommissioning.

H. The owner or operator of a gasoline dispensing site shall ensure that all stage II vapor recovery systems are decommissioned according to the material incorporated by reference in R3-7-901(4) with the following exceptions:
1. Liquid shall be purged from the vapor piping following disconnection in section 14.6.6;
2. Vapor piping that is not disconnected from the tank top in accordance with section 14.6.7 shall be disconnected in the future if construction involving excavation that renders the piping accessible is performed; and
3. The pressure decay test conducted under section 14.6.12 shall meet the requirements in R3-7-1005(A)(1).

I. The decommissioning contractor shall:
1. Complete a Decommissioning Checklist using a form or format provided by the ~~Department~~ Division,
2. Provide a copy of the completed Decommissioning Checklist to the owner or operator of the gasoline dispensing site at the time of decommissioning, and
3. Submit a copy of the completed Decommissioning Checklist to the ~~Department~~ Division within 10 days after decommissioning of the stage II vapor recovery system is complete. Decommissioning of a stage II vapor recovery system is complete on the date and at the time when the gasoline dispensing site resumes sales of motor fuel following decommissioning.

J. A gasoline dispensing site with a stage II vapor recovery system that is decommissioned is exempt from the annual inspection and testing required under R3-7-910 but shall be subject to the initial inspection and testing prescribed under R3-7-1005 within 60 days after decommissioning is complete.

K. The requirements in Article 10 apply to all gasoline dispensing sites at which stage II vapor recovery systems have been decommissioned.

L. The ~~Department~~ Division shall place out-of-service a gasoline dispensing site at which a stage II vapor recovery system is not decommissioned according to this Section until the gasoline dispensing site is decommissioned and impose civil penalties under A.R.S. § ~~41-2115~~ 3-3475 on the owner or operator of the gasoline dispensing site.

ARTICLE 10. STAGE I VAPOR RECOVERY

R3-7-1001. Material Incorporated by Reference

The following documents are incorporated by reference and on file with the ~~Department~~ Division. The documents incorporated by reference contain no later amendments or editions:

1. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.1B, Static Torque of Rotatable Phase 1 Adaptors, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
2. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.1C, Leak Rate of Drop Tube/Drain Valve Assembly, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
3. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.1D, Leak Rate of Drop Tube Overfill Protection Devices and Spill Container Drain Valves, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
4. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.1E, Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
5. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.3, Determination of 2 Inch WC Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities, July 26, 2012 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
6. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.3C, Determination of Vapor Piping Connections to Underground Gasoline Storage Tanks (Tie-Tank Test), March 17, 1999 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.

R3-7-1002. Exemptions

A. The owner or operator of a gasoline dispensing site at which the site's stage II vapor recovery system has not been decommissioned in accordance with R3-7-913 is exempt from the provisions of this Article but shall comply with the provisions of Article 9.

B. An owner or operator of a gasoline dispensing site with a gasoline throughput that does not exceed that specified in A.R.S. § ~~41-2132(B)~~ 3-3512(B) may file for an exemption from this Article. To obtain an exemption, the owner or operator of the gasoline dis-

pensing site shall submit an annual throughput report to the ~~Department~~ Division, using a form prescribed by the ~~Department~~ Division, no later than March 30 of each year and attest to the throughput during each month of the previous calendar year. If the owner or operator fails to file an annual throughput report timely or if the annual throughput report indicates the exemption limit specified in A.R.S. § ~~41-2132(B)~~ 3-3512(B) was exceeded, the ~~Department~~ Division shall deem the exemption void.

R3-7-1003. Equipment and Installation

A. The ~~Department~~ Division shall reject a vapor recovery system or component from future installation if:
1. Federal regulations prohibit its use;
2. The vapor recovery system or component does not meet the manufacturer's specifications as certified by CARB using test methods approved in R3-7-1001; or
3. The vapor recovery system or component fails greater than 20% of ~~Department~~ Division inspections for that system or component or the ~~Department~~ Division receives equivalent failure results from a vapor recovery registered service agency or from another jurisdiction's vapor recovery program, and the ~~Department~~ Division provides at least 30 days public notice of its proposed rejection.

B. The piping of a stage I vapor recovery system shall be designed and constructed as certified by CARB for that specific vapor recovery system. A person shall not alter a stage I vapor recovery system or component from the CARB-certified configuration without obtaining ~~Department~~ Division approval under R3-7-1004. All components installed with the stage I vapor recovery system shall be certified by CARB or approved by the ~~Department~~ Division as required under A.R.S. § ~~41-2132~~ 3-3512.

C. If ~~Department~~ Division inspection or test data reveal a deficiency in a fitting, assembly, or component that cannot be permanently corrected, the deficient fitting, assembly, or component shall not be used in Arizona.

D. A stage I liquid or vapor spill containment bucket may have a plugged drain rather than a drain valve if a hand-operated pump is kept onsite for draining entrapped liquid.

E. A stage I vapor recovery system shall have pressure/vacuum (P/V) threaded valves on top of the vent lines for gasoline storage tanks.

R3-7-1004. Application Requirements and Process for Authority to Construct Plan Approval

A. A person shall not begin to construct a site requiring a stage I vapor recovery system or to make a major modification of an existing vapor recovery system before obtaining approval of an authority to construct plan application. A major modification is:
1. Adding or replacing a gasoline storage tank that is equipped with a ~~Department~~ Division approved stage I vapor recovery system;
2. Modifying, adding, or replacing underground vent piping; or
3. Conducting construction under R3-7-913(H)(2).

B. A person shall file with the ~~Department~~ Division a written change order, using a form provided by the ~~Department~~ Division, to obtain a modification of the approved vapor recovery system or component if a modification is needed after the ~~Department~~ Division issues an authority to construct plan approval. The person shall not make any modification until the ~~Department~~ Division approves the change order.

C. To obtain an authority to construct plan approval, a person shall submit to the ~~Department~~ Division, on a form provided by the ~~Department~~ Division, the following:
1. The name, address, and telephone number of any owner, operator, and proposed contractor, if known;
2. The name of the stage I vapor recovery system or component to be installed along with the CARB certification for that system or component;
3. The street address of the site where construction or major modification will take place with an estimated timetable for construction or modification;
4. A copy of a blueprint or scaled site plan for the vapor recovery system or component including all stage I vapor recovery equipment and stage I vapor recovery piping detail; and
5. The application fee specified under R3-7-1006.

D. A person shall ensure that an installed or modified stage I vapor recovery system meets the following requirements:
1. Has CARB-certified product and vapor adaptors that prevent loosening or over-tightening of the stage I product and vapor adaptors;
2. Consists of a two-point stage I system with separate fill and vapor connection points. Coaxial stage I vapor recovery systems shall not be used;
3. Has a submerged fill pipe that has the fill pipe's highest point of discharge no more than six inches from the tank bottom;
4. Has no tank containing motor fuel other than gasoline connected to the vapor piping;
5. Uses cement that is resistant to deterioration from exposure to water, hydrocarbons, and alcohol to join all pipes;
6. Has tank vent pipes that extend at least 12 feet above the elevation of the stage I fill points;
7. Has tank vent pipes with a minimum inside diameter of:
   a. Two inches if the pipe is not manifolded, or
   b. Three inches from the point of manifold if the pipe is manifolded;
8. Has pressure vacuum vent valves that are attached to the tank vent pipes by a threaded connection;
9. If a gasoline tank is installed in an enclosed vault, has an emergency vent in addition to the pressure vacuum vent valve required under subsection (D)(8);
~~10. Has a one-eighth inch threaded tap on the vent pipe between six and eight feet above ground level;~~
~~11.~~10. Has risers into gasoline storage tanks that are capped with UL-approved caps;
~~12.~~11. Has lead wires for instrumentation that pass through a leak-tight grommet with a compression fitting suitable for exposure to gasoline vapors;
~~13.~~12. Has storage tank vent pipes and fill and vapor manhole tops that are painted a color that minimizes solar gain and has a reflective effectiveness of at least 55 percent. Reflectivity shall be determined by visually comparing the paint with paint-color cards obtained from a paint manufacturer that uses the Master Pallet Notation to specify the paint color (i.e. 58YY *88*/180 where the

number in italics is the paint reflectivity). Examples of colors have a reflective effectiveness of at least 55 percent include, but are not limited to, yellow, light gray, aluminum, tan, red iron oxide, cream or pale blue, light green, glossy gray, light blue, light pink, light cream, white, silver, beige, tin plate, and mirrored finish. A manhole cover that is color coded for product identification is exempt from this subsection; and

~~14.~~13. Complies with other requirements outlined in the authority to construct permit.

E. After review and approval of the authority to construct plan, the ~~Department~~ Division shall issue the authority to construct plan approval and mail, fax, or e-mail the plan approval to the address indicated on the application.

1. A copy of the authority to construct plan approval shall be maintained at the facility during construction so that it is accessible for ~~Department~~ Division review.
2. Construction of a stage I vapor recovery system or component at a site not having an approved authority to construct plan, shall be stopped and no further installation work done until an authority to construct plan approval is obtained.
3. An authority to construct plan approval is not transferable.

F. The ~~Department~~ Division shall deny an authority to construct plan for any of the following reasons:

1. Providing incomplete, false, or misleading information; or
2. Failing to meet the requirements stated in this Chapter.

G. If excavation is involved, the ~~Department~~ Division may visually inspect the stage I underground piping of a gasoline dispensing site before the piping is buried for compliance with the authority to construct plan approval. The owner or operator of a vapor recovery system or component shall give the ~~Department~~ Division notice by fax or e-mail at least two business days before the underground piping is complete to schedule the inspection. The ~~Department~~ Division may require the owner or operator to excavate all piping not inspected before burial if the owner or operator does not give the required two business days' notice.

H. After construction is complete, a person who has a valid authority to construct plan approval may dispense gasoline for up to 90 days before final approval if an initial inspection is scheduled according to R3-7-1005.

I. An authority to construct plan approval expires one year from the date of issue or the completion of construction, whichever is sooner.

R3-7-1005. Initial Inspection and Testing

A. Within 10 days after beginning the dispensing of gasoline at a site that requires an authority to construct plan approval, a person shall provide the ~~Department~~ Division with a written certification of completion by the contractor and schedule an inspection that includes tests and acceptance criteria specified in the authority to construct plan approval and this subsection. The inspection shall be witnessed by the ~~Department~~ Division at a time approved by the ~~Department~~ Division and include the following tests:

1. A pressure decay test for each vapor control system including underground storage tanks and tank vents using CARB TP-201.3 test procedures. All test procedures pertaining to stage I vapor recovery systems shall be followed except the post-test procedures in section 8 and the calculations in section 9 of the CARB TP-201.3 test procedures. The compliance status of the site shall be determined by comparing the final five-minute pressure with the minimum allowable final pressure in Table 1. A calculated ullage exceeding that listed in Table 1 shall be rounded up to the next higher ullage volume in the table;
2. A test of each pressure vacuum vent valve using CARB TP-201.1E test procedures;
3. A Tie-Tank test using CARB TP-201.3C test procedure; and
4. Procedures specified by a manufacturer or CARB for testing the vapor recovery system.

B. If there is a difference between a testing contractor's test results and the ~~Department~~ Division's test results, the ~~Department~~ Division's test results prevail.

C. If a site fails to pass any of the tests required by subsection (A), the affected vapor recovery system or component shall remain out-of-service until the vapor recovery system and component pass all the appropriate tests in subsection (A).

D. A person who cancels an initial inspection shall notify the ~~Department~~ Division by calling the ~~Department~~ Division's designated telephone number at least one hour before the scheduled inspection and shall reschedule the inspection within 10 business days after this notification. The ~~Department~~ Division shall take enforcement action if a person fails to comply with this Section.

E. A person shall notify the ~~Department~~ Division when a vapor recovery system or component is repaired after failing an initial inspection. A registered service representative shall not proceed with a reinspection until the ~~Department~~ Division approves the reinspection date and time.

F. If a registered service representative does not start an initial inspection pressure decay test within 30 minutes of the scheduled start time, the ~~Department~~ Division shall fail the initial inspection of that site.

G. If a person cancels an initial inspection, the person shall reschedule the inspection within 90 days from the date gasoline was first dispensed.

1. The ~~Department~~ Division shall take enforcement action if the person fails to timely reschedule the inspection.
2. The registered service agency shall notify the ~~Department~~ Division in writing at least 10 business days before the inspection of the time, date, and location of the inspection.
3. The ~~Department~~ Division shall notify the registered service agency within five business days, by fax or e-mail, whether it approves the inspection date and time.

R3-7-1007. Operation

A. The owner or operator of a gasoline dispensing site with stage I vapor recovery shall not transfer or permit the transfer of gasoline into any gasoline storage tank subject to this Article unless stage I vapor recovery equipment is installed, maintained, operating, and being used according to the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Article 7, and this Article.

B. The owner or operator of a gasoline dispensing site with stage I vapor recovery shall operate the stage I vapor recovery system and associated components in compliance with the CARB certification or ~~Department~~ Division approval under A.R.S. § ~~41-2132~~ 3-3512 for that system and these rules.

C. The owner or operator of a gasoline dispensing site with stage I vapor recovery located in area A shall inspect the system and its components at least once every seven days. The inspections shall include all stage I fittings and spill containment.

D. The owner or operator of a gasoline dispensing site shall immediately stop using a stage I vapor recovery system or component if one or more of the following system or component defects occur:
1. Tank vent pipes are not the proper height or are not properly capped with approved pressure and vacuum vent valves;
2. Vent pipes do not meet the CARB-specified paint color code specified in R3-7-1004(D)(13);
3. The stage I vapor recovery system is not properly installed or maintained as evidenced by the following:
   a. Spill containment buckets are cracked, rusted, or not clean and empty of liquid; sidewalls are not attached or are otherwise improperly installed; and drain valves are non-functioning or do not seal;
   b. A fill adaptor collar or vapor poppet (drybreak) is loose, damaged, or has a fill or vapor cap that is not installed or is missing, broken, not securely attached, or missing gaskets;
   c. Coaxial stage I is not equipped with a functioning CARB-approved poppeted fill tube or the coaxial cap is not installed or is missing, broken, not securely attached, or missing gaskets; or
   d. A fill tube is missing, broken, or not sealed; has holes or damaged overfill prevention; or the high point of the bottom opening is more than six inches above the tank bottom;
4. The tank rise cap with instrument lead wire for an electronic monitoring system is not installed tightly or any other tank riser is not sealed and capped securely;
5. An above-ground storage tank does not display a permanently attached UL approval plaque; or
6. Any other component identified in the diagrams, exhibits, attachments, or other documents and certified by CARB or required by the authority to construct permit for that system is missing, disconnected, or malfunctioning.

E. For proper operation of a stage I system under A.R.S. § ~~41-2132(C)(4)~~ 3-3512(C)(4), the owner or operator of a gasoline dispensing site shall recover vapors during pump-out from a gasoline storage tank to a mobile transporter.

F. The owner or operator of a gasoline dispensing site shall ensure that any underground tightness test is conducted in a manner that prevents gasoline vapors being emitted to the atmosphere.

R3-7-1008. Training and Public Education

Each owner or operator of a gasoline dispensing site using stage I vapor recovery shall obtain adequate training and written instructions to enable the system to be installed, operated, and maintained properly in accordance with the manufacturer's specifications and CARB certification. The owner or operator shall maintain documentation of this training onsite and make the documentation available to the ~~Department~~ Division on request.

R3-7-1009. Recordkeeping and Reporting

A. The owner or operator of a gasoline dispensing site employing stage I vapor recovery in area A shall maintain records of the inspections done under R3-7-1007.

B. The owner or operator of a gasoline dispensing site employing stage I vapor recovery in area A shall maintain a log and related records of all regularly scheduled maintenance and any repairs that have been made to stage I equipment.

C. The owner or operator of a gasoline dispensing site that is exempt under A.R.S. § ~~41-2132(B)~~ 3-3512(B) from requirements to install and operate stage I vapor recovery equipment shall maintain a log at the site showing monthly throughputs. The owner or operator shall make the log available to the ~~Department~~ Division within 24 hours after request. The owner or operator shall submit to the ~~Department~~ Division the throughput information required under R3-7-1002(B). If any throughput requirement provided in A.R.S. § ~~41-2132(B)~~ 3-3512(B) and this Article is exceeded for any month, the owner or operator shall notify the ~~Department~~ Division in writing within 30 days. The owner or operator shall, within six months after the end of the month the throughput is exceeded, install and operate a stage I vapor recovery system conforming to this Article. If a stage I vapor recovery system is already installed, the owner or operator shall have the system tested under R3-7-1010 within 30 days after the end of the month in which the throughput was exceeded.

D. The owner or operator of a gasoline dispensing site that has decommissioned a stage II vapor recovery system under R3-7-913 shall maintain a copy of the decommissioning checklist required under R3-7-913(I) for three years.

E. Except as specified in subsection (D), the owner or operator of a gasoline dispensing site shall keep all records required by this Article at the gasoline dispensing site for at least one year and shall make these records available to the ~~Department~~ Division upon request.

R3-7-1010. Annual Testing and Inspection

A. A person shall ensure that an annual inspection is conducted by a registered service representative on or before the annual inspection date. The annual inspection date is the last day of the month in which the last scheduled annual inspection was performed. A registered service agency shall notify the ~~Department~~ Division in writing at least 10 business days before an annual inspection of the time, date, and location of the inspection. The ~~Department~~ Division shall notify the registered service agency within five business days, by fax or e-mail, whether it approves the annual inspection date and time. The registered service agency shall not perform the annual inspection unless the ~~Department~~ Division approves the inspection date and time.

B. The annual inspection shall include the tests defined in R3-7-1005(A)(1) through (3) that pertain to the specific vapor recovery system installed.

C. To verify proper operation of a vapor recovery system, the ~~Department~~ Division may perform or may require registered service representatives to perform additional tests under R3-7-1005(A)(4) during the annual inspection and testing. The ~~Department~~ Division shall provide registered service agencies with six months' notice before requiring additional annual testing under R3-7-1005(A)(4).

D. If there is a difference between a testing contractor's test results and the ~~Department~~ Division's test results, the ~~Department~~ Division's test results prevail.

E. If a site fails to pass any of the tests required under subsection (B), the affected vapor recovery system or component shall remain out-of-service until the vapor recovery system and component pass all tests required under subsection (B).

F. After an annual inspection begins, a person shall not make a repair to the vapor recovery system or component until the results of the inspection are recorded.

G. A person shall notify the ~~Department~~ Division when a vapor recovery system or component is repaired after failing an annual inspection. A registered service representative shall not conduct a reinspection until the ~~Department~~ Division approves the reinspection date and time.

H. A registered service representative shall perform all tests according to this Article and any other vapor recovery procedure the ~~Department~~ Division issues to registered service agencies.

I. A person that cancels an annual inspection shall notify the ~~Department~~ Division by calling the ~~Department~~ Division's designated telephone number at least one hour before the scheduled inspection and shall reschedule the test to be completed by the annual inspection date. A registered service agency shall notify the ~~Department~~ Division in writing at least 10 business days before an annual inspection of the time, date, and location of the inspection. The ~~Department~~ Division shall notify the registered service agency within five business days, by fax or e-mail, of its approval of the inspection date and time. The ~~Department~~ Division shall take enforcement action if a person does not comply with this subsection.

J. Gasoline dispensing sites located in area B are exempt from the annual inspection and testing requirements of this Section.

R3-7-1011. Compliance Inspections and Additional Test Methods

The ~~Department~~ Division shall not announce when it plans to conduct a compliance inspection of a stage I vapor recovery system or component. If results of a compliance inspection reveal a violation of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Article, the ~~Department~~ Division shall require the vapor recovery system or component to undergo an appropriate test as specified in R3-7-1010.

R3-7-1012. Enforcement

If the ~~Department~~ Division finds that a stage I vapor recovery system or component is defective or non-compliant with one or more of the provisions of this Chapter or A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, the ~~Department~~ Division shall issue to the owner or operator an administrative order and place a stop-sale, stop-use tag on the non-compliant vapor recovery system or component. The owner or operator may be required to schedule an inspection for a stage II vapor recovery system or component to ensure that it meets all requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19 and this Chapter before the vapor recovery system or component is placed in service.

R3-7-1013. Stage II Vapor Recovery

If the ~~Department~~ Division identifies a gasoline dispensing site operating a stage II vapor recovery system within an ozone nonattainment area designated as moderate, serious, severe, or extreme by the EPA under section 107(d) of the Clean Air Act or in area A after September 30, 2018, the ~~Department~~ Division shall issue an administrative order and civil penalty under A.R.S. § ~~41-2115~~ 3-3475 and require that the stage II vapor recovery system be decommissioned within three months after identification. Each day the stage II vapor recovery system is not decommissioned after the time specified in the administrative order constitutes a separate violation for the purpose of calculating the civil penalty under A.R.S. § ~~41-2115~~ 3-3475.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS) ADMINISTRATION

[R17-148]

PREAMBLE

1. Article, Part, or Section Affected (as applicable) — **Rulemaking Action**

R9-22-712.35	Amend
R9-22-712.61	Amend
R9-22-712.71	Amend

2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 36-2903.01(A)

Implementing statute: A.R.S. § 36-2903.01(G)(12)

3. The effective date of the rule:

October 1, 2017

4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 23 A.A.R. 1046, May 5, 2017

Notice of Proposed Rulemaking: 23 A.A.R. 1015, May 5, 2017

Notice of Rulemaking Docket Opening: 22 A.A.R. 784, April 8, 2016

Notice of Proposed Rulemaking: 22 A.A.R. 761, April 8, 2016

Notice of Final Rulemaking: 22 A.A.R. 2187, August 19, 2016

5. The agency's contact person who can answer questions about the rulemaking:

Name: Gina Relkin
Address: AHCCCS
Office of Administrative Legal Services
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4232

2018 AZ Regulation Text 5599

R3-7-101, -701, -702, -708, -749, -751, -752, -755, -757, -759; Table 1 and 2

Adopted Rule, September 28, 2018

Notice

Added: Text highlighted in green
Deleted: ~~Red text with a strikethrough~~

Agency

Department of Agriculture / Weights and Measures Services Division

Digest

PREAMBLE

1. Article, Part, or Section Affected Rulemaking Action (as applicable) R3-7-101 Amend R3-7-701 Amend R3-7-702 Amend R3-7-708 Amend R3-7-749 Amend R3-7-751 Amend R3-7-752 Amend R3-7-755 Amend R3-7-757 Amend R3-7-759 Amend Table 1 Amend Table 2 Amend

2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A. R.S. Sections 3-3414(A)(4), (D)

Implementing statute: A. R.S. Sections 3-3433, 3-3434, 3-3491, 3-3492, 3-3493, 3-3494, and 3-3495

3. The effective date for the rules:

November 10, 2018

a. If the agency selected a date earlier than the 60-day effective date as specified in A. R.S. Section 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A. R.S. Section 41-1032(A)(1) through (5):

Not applicable

b . If the agency selected a date later than the 60-day effective date as specified in A. R.S. Section 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A. R.S. Section 41-1032(B):

Not applicable

4 . Citation to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 24 A. A.R. 637, March 23, 2018 Notice of Proposed Rulemaking: 24 A. A.R. 595, March 23, 2018

5. The agency's contact person who can answer questions about the rulemaking:

Name: Michelle Wilson

Address: Department of Agriculture

Weights and Measures Services Division

1688 W. Adams St.

Phoenix, AZ 85007

Telephone:(602) 771-4933

Fax: (623) 939-8586

E-mail: mwilson@azda. gov

Web site: https://agriculture. az. gov

6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking: The Department is updating the rules following the approval of HB2368 which amended A. R.S. Section 3-3491 by removing isobutanol from the list of oxygenates that shall not collectively contribute to more than 0.10 percent oxygen by weight in gasoline sold for fueling motor vehicles. Additionally, the Department is updating references to adopt the latest versions of National Institute of Standards and Technology (NIST) Handbooks 44, 130, and 133, as well as making clarifying edits. Specific updates to the rules include:

* The definition of isobutanol;

* The addition of ASTM Standard D7862, 2017 (ASTM D7862-17), "Standard Specification for Butanol for Blending with Gasoline for Use as Automotive Spark-Ignition Engine Fuel," as a material incorporated by reference;

* The adoption of isobutanol as an allowable oxygenate for blending with gasoline;

* The explanation of allowable minimum and maximum isobutanol content in gasoline depending on geographic area and/or time of year;

* Revised requirements for product transfer documents to include statements regarding isobutanol content;

* Clarify requirements for oxygenates to reflect updated federal requirements;

* Incorporation of the latest versions of Handbooks 44, 130, and 133 that outline method of sale, package and labeling, packaged goods, and commercial device requirements; and

* A definition of stage II vapor recovery has been added to clarify current statutory requirements.

The Department, in partnership with the Arizona Department of Environmental Quality, will be submitting the applicable portions of this rulemaking to the Environmental Protection Agency to be incorporated into the federally approved State Implementation Plan under Clean Air Act Section 110.

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

The Department did not review and does not intend to rely on a study in its evaluation of or justification for the rulemaking.

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

Not applicable

Text

FISCAL IMPACT: 9. A summary of the economic, small business, and consumer impact:

These rules provide the requirements for the sale of gasoline containing isobutanol throughout the state upon the effective date of the rulemaking and in the cleaner-burning gasoline area following approval of a revision to the State Implementation Plan by the Environmental Protection Agency. The sale of gasoline containing isobutanol is optional; therefore, costs associated with certification of the fuel to meet air quality standards, labeling, and transition of this fuel are optional. If this type of gasoline is produced and sold, it provides additional options to consumers regarding gasoline purchases. These rules also update to the latest version of the National Institute of Standards and Technology (NIST) Handbooks referenced by the Department for equipment standards and testing methodology. Update to the latest versions of the handbooks provides a consistent regulatory schema for businesses that manufacture, sell and operate regulated equipment in multiple states. Although the Department has not been informed of increased costs due to update of the handbooks, minimal costs may be associated with the new NIST requirements.

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

Changes made between the proposed rulemaking and final rulemaking are organized by section and provided below:

R3-7-702(A)(9): This section was updated in response to Comment 1, as adopting ASTM D7862-17 allows for greater flexibility in the ability to use a newer test method for testing water in butanol and hydrocarbon fuel blends. The changes are outlined as follows:

ASTM Standard D7862, ~~2015a~~ 2017 (ASTM ~~D7862-15a~~ D7862-17), "Standard Specification for Butanol for Blending with Gasoline for Use as Automotive Spark-Ignition Engine Fuel," published ~~2015~~ 2017, ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www. astm. org.

R3-7-708(C): The word "percentage" was added into this section to provide clarification and maintain consistency as requested in Comment 2. The changes are outlined as follows:

In addition to complying with the requirements in R3-7-707, the transferor of an oxygenated gasoline blend shall ensure that the product transfer document contains a legible and conspicuous statement that the gasoline being transferred contains an oxygenate and lists the type and percentage concentration of the oxygenate.

R3-7-755(C)(3): This section was added in response to Comment 3, in order to clarify the re-certification requirements if a registered oxygenate blender wishes to blend an AZRBOB with an oxygenate other than specified by the registered supplier. The changes are outlined as follows:

A registered oxygenate blender may utilize an oxygenate type other than the one specified by the registered supplier provided all the requirements of R3-7-751, R3-7-755, and R3-7-759 are demonstrated with the addition of the different oxygenate type .

R3-7-759 , Table 2: A footnote reference was added into the portion of Table 2 shown below in order to provide clarification in regards to the maximum allowable oxygenate content for isobutanol utilized as a component in Type 2 Arizona CBG. The changes are outlined as follows:

NOTE: THIS SECTION CONTAINS A GRAPHIC. THE GRAPHIC IS NOT REPRODUCIBLE IN THIS FORMAT. PLEASE REFER TO OUR ONLINE VERSION OF THIS TEXT TO VIEW THE CONTENT.

** Maximum oxygen content shall comply with the EPA oxygenate waiver requirements.

11 . An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to comments:

The Department received written comments from two stakeholders regarding the proposed rule.

Comment 1: The latest published version of D7862 should be incorporated by reference in R3-7-702(A)(9) to ensure the most current technical information is utilized. The newer version includes additional flexibility to utilize a newer test method for testing water in butanol and hydrocarbon fuel blends.

Response: The department agrees that this will provide flexibility and has included the newest version of ASTM D7862 in the final rule.

Comment 2: The last sentence in R3-7-708(C) removes the term "percentage" when specifying the oxygenate concentration. This term should be added to clarify and maintain consistency.

Response: The department agrees and has added the term "percentage" when referring to the concentration of the oxygenate listed on the product transfer document.

Comment 3: R3-7-755 should include an additional statement to allow an oxygenate blender the use of a different oxygenate than what is designated by the registered supplier if additional requirements are met to recertify the fuel. As proposed, the rule would only allow the use of isobutanol if a registered supplier certified AZRBOB¬ 1 for use with isobutanol and delivered through a segregated supply chain, thus restricting AZRBOB certified to meet CBG requirements with ethanol from being blended with isobutanol.

Response: A .R. S. 3-3493 and 3-3494 require all gasoline produced and shipped to or within the state and sold or offered for sale for use in motor vehicles in a county with a population of one million, two hundred thousand or more, area A, and area C (as defined in A. R.S. 3-3401), meet specific fuel quality requirements to protect air quality. This is commonly referred to as the cleaner-burning gasoline (CBG) program. To ensure all CBG meets the specifications, the rules require a registered supplier to certify (by performing laboratory analysis) each batch of AZRBOB or CBG to be shipped to or sold within the CBG-covered area. This certification provides the evidence that the gasoline sold within the CBG-covered area will meet the required standards to protect air quality. The statutes and rules that comprise the CBG program are approved by EPA within the federally-enforceable State Implementation Plan.

Historically, all CBG and AZRBOB has been produced outside of Arizona and all AZRBOB shipped to the CBG-covered area through the pipeline has required the same type and quantity of oxygenate to be added. Per rule, a registered supplier must notify the department before transporting Arizona CBG or AZRBOB into the CBG-covered area by means other than a pipeline. For these reasons, "specialty" blends of certified CBG have been produced and shipped to the CBG-covered area as a segregated product by means other than a pipeline.

In current practice, all AZRBOB is produced and shipped as a fungible product through the pipeline to the CBG-covered area, and requires the addition of 10% ethanol for the final CBG product to be

distributed to retail stations. Due to the fact that the various batches of certified AZRBOB are all mixed together during the distribution process, there is no way to test and certify that a particular batch of AZRBOB blended with a specified concentration of isobutanol (or other oxygenate) would continue to meet the standards once it is mixed with other batches of AZRBOB during the distribution process. For this reason, the product either: 1) needs to be produced by a registered supplier, certified, and kept segregated through the distribution chain; or 2) AZRBOB needs to be re-certified with the appropriate concentration and type of oxygenate (other than 10% ethanol) to demonstrate the CBG will meet the standards.

It is unknown at this point whether it is feasible to produce compliant CBG by blending AZRBOB with isobutanol. This uncertainty is due to logistics, AZRBOB properties, and practicality. However, the department agrees that clarification of the rule to allow added flexibility to segregate AZRBOB at various points in the supply chain and "recertify" the gasoline as CBG with a differing oxygenate provides additional flexibility and clarification.

Comment 4: An isobutanol blend will not be fungible with CBG that is blended with ethanol as comingling is not allowed at retail by EPA (although comingling is not detrimental to combustion engines or their performance). It is recommended to remove the word "fungible" in R3-7-749 or add clarification.

Response: T he word "fungible" indicates that the final CBG blend must be "interchangeable" with other finished CBG, not that it must have the ability to be commingled. Blending with differing oxygenate type and amounts may result in a final CBG that is not compliant due to finished fuel properties that when combined offer reduced octane, increased RVP, or other non-complaint fuel properties. No changes were made.

Comment 5: Given that AZRBOB is comingled in large storage tanks at terminals, every refiner that supplies AZRBOB to the terminal will need to test isobutanol blends and note their acceptance of isobutanol for blending with AZRBOB on product transfer documents as they do with ethanol blends to comply with R3-7-755. The low volume of isobutanol available provides no incentive for refiners to do the testing. If a refiner is willing to test, the result is that any AZRBOB that is tested will need to be segregated in its own tank which isn't practical given the size of typical tanks as well as the availability of smaller tanks.

Response: Yes, as explained in the response to Comment 3, the statutes and rules as approved in the State Implementation Plan require that all gasoline shipped to or within Arizona and sold or offered for sale for use in motor vehicles in a county with a population of one million, two hundred thousand or more, area A, and area C, meet specific requirements for CBG.

Comment 6: Paragraph R3-7-755(I) implies that if splash-blending of AZRBOB and isobutanol is done in a truck, each splashblended batch needs to be tested for oxygenate level. This can be done, but it is expensive, impractical, and would not incent blenders or jobbers to make isobutanol blends available.

Response: A. A.C. R3-7-755(I) provides requirements for oxygenate blending in trucks. This section requires that a quality assurance and sampling plan meeting the requirements in 40 CFR 80.69(E)(2) as it existed on July 1, 1996, with exceptions noted. In summary, if an oxygenate blender is not using computer-controlled in-line blending, sampling must be performed at a rate of not less than one sample per each one hundred occasions AZRBOB and oxygenate are blended in a truck by that oxygenate blender, or one sample per month, whichever is more frequent (see 40 CFR 80.69(e)(2)(ii)(B)).

Comment 7: EPA is in the process of streamlining regulations and is working to allow the addition of isobutanol at an equal or greater percentage than 10% ethanol when 10% ethanol is required per the product transfer documentation. This encompasses the spirit of CBG and is clearly not detrimental to air emissions either through combustion or evaporative emissions. We prefer an approach such as this being pursued with EPA. Additional benefits of the use of isobutanol are outlined in the comment.

Response: W e are aware of the work EPA is doing with respect to streamlining federal gasoline regulations. EPA has released a draft proposed rule with an anticipated timeframe for implementation around January 1, 2020. However, at this time we are not aware of evidence regarding the impacts

related to the use of 12.5% isobutanol in lieu of 10% ethanol nor is there anything that has been finalized by EPA. We will continue to monitor the efforts of EPA and the availability of such data.

12 . All agencies shall list any other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A. R.S. Sections 41-1052 and 41-1055 shall respond to the following questions:

A. R.S. Section 3-3414(D) requires the Associate Director of the Weights and Measures Services Division to consult with the Director of the Department of Environmental Quality when making rules relating to quality standards for motor fuel, including oxygenated fuels. A. R.S. Section 3-3433(C) also requires consultation regarding standards and test methods for motor fuels. This rulemaking establishes the standards relating to motor fuels. The required consultation occurred.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Not applicable

b . Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

This rulemaking is consistent with the federal law. The cleaner-burning gasoline and vapor recovery air quality programs are regulated at the federal level under the Clean Air Act and required under State Implementation Plans in effect for the region.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

13 . A list of any incorporated by reference material as specified in A. R.S. Section 41-1028 and its location in the rule:

The following materials are incorporated at R3-7-101:

United States Division of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices , 2018 edition.

United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 130, Uniform Laws and Regulations , 2018 edition.

United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 133, Checking The Net Contents of Packaged Goods , 2018 edition.

The following materials are incorporated at R3-7-702:

Government Publishing Office, 16 CFR 306 - Automotive Fuel Ratings, Certification and Posting, January 14, 2016 Edition. American Petroleum Institute, API Recommended Practice 1637 (API RP 1637), "Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Gasoline Dispensing Facilities and Distribution Terminals," published July 2006, Reaffirmed May 2012.

ASTM International, ASTM Standard D975, 2016a (ASTM D975- 16a), "Standard Specification for Diesel Fuel Oils," published 2016.

ASTM International, ASTM Standard D4806, 2016a (ASTM D4806- 16a), "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel," published 2016. ASTM International, ASTM Standard D4814, 2016ee1 (ASTM D4814- 16ee1), "Standard Specification for Automotive Spark- Ignition Engine Fuel," published 2016.

United States Environmental Protection Agency, Waiver Requests under Section 211(f) of the Clean Air Act, August 22, 1995.

ASTM International, ASTM Standard D5798, 2015 (ASTM D5798- 15), "Standard Specification for Ethanol Fuel Blends for Flexible-Fuel Automotive Spark-Ignition Engines," published 2015.

ASTM International, ASTM Standard D6751, 2015ce1 (ASTM D6751- 15ce1), "Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels," published 2015.

California Air Resources Board, "California Procedures for Evaluating Alternative Specifications for Phase 2 Reformulated Gasoline Using the California Predictive Model," adopted April 20, 1995.

Government Publishing Office, the Federal Complex Model contained in 40 CFR 80.45, January 1, 1999.

California Air Resources Board, The California Reformulated Gasoline Regulations, Title 13, California Code of Regulations, Section 2266.5 (Requirements Pertaining to California Reformulated Gasoline Blendstock for Oxygen Blending (CARBOB) and Downstream Blending), as of April 9, 2005.

California Air Resources Board, Procedures for Using the California Model for California Reformulated Gasoline Blendstocks for Oxygenate Blending (CARBOB), adopted April 25, 2001.

ASTM International, ASTM Standard D7467, 2015ce1 (ASTM D7467- 15ce1), "Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20)," published 2015.

ASTM Standard D7862, 2017 (ASTM D7862-17), "Standard Specification for Butanol for Blending with Gasoline for Use as Automotive Spark-Ignition Engine Fuel," published 2017.

SAE International, SAE J285, "Dispenser Nozzle Spouts for Liquid Fuels Intended for Use with Spark Ignition and Compression Ignition Engines," published May 5, 2012.

The following materials are incorporated at R3-7-755:

Government Publishing Office, 40 CFR 80.69(a)(7), July 1, 1996.

Government Publishing Office 40 CFR 80.69(e)(2), July 1, 1996.

14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

None of the rules were previously made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 3. AGRICULTURE CHAPTER 7. DEPARTMENT OF AGRICULTURE

WEIGHTS AND MEASURES SERVICES DIVISION

ARTICLE 1. ADMINISTRATION AND PROCEDURES

Section

R3-7-101. Definitions

R3-7-104. Administrative Enforcement Action

ARTICLE 7. MOTOR FUELS AND PETROLEUM PRODUCTS

Section

R3-7-701. Definitions

R3-7-702. Material Incorporated by Reference

R3-7-708. Gasoline Oxygenate Blends

R3-7-749. Definitions Applicable to Arizona CBG and AZRBOB

R3-7-751. Arizona CBG Requirements

R3-7-752. General Requirements for Registered Suppliers

R3-7-755. Additional Requirements for AZRBOB and Downstream Oxygenate Blending

R3-7-757. Product Transfer Documentation; Records Retention

R3-7-759. Testing Methodologies

Table 1. Type 1 Arizona CBG Standards

Table 2. Type 2 Arizona CBG Standards

ARTICLE 1. ADMINISTRATION AND PROCEDURES

R3-7-101. Definitions

The definitions in A. R.S. Section 3-3401, 3-3414, 3-3436, and 3-3511 and the following definitions apply to this Chapter:

1. No change

2. No change

   a. No change

   b. No change

   c. No change

   d. No change

   e. No change

   f. No change

   g. No change

   h. No change

3. No change

4. No change

5. No change

6. No change

7. No change

8. No change

9. No change

10. No change

11. No change

    a. No change

    b. No change

    c. No change

12. No change

13. No change

14. "Handbook 44" means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measur ing Devices , Government Publishing Office, P. O. Box 979050, St. Louis, MO 63197-9000 or bookstore. gpo. gov ~~(2017~~ 2018 edi

tion), incorporated by reference and on file with the Division. This incorporation by reference contains no future editions or amendments.

15. "Handbook 130" means the United States Department of Commerce, Technology Administration, National Institute of Stan

dards and Technology (NIST) Handbook 130, Uniform Laws and Regulations , Government Publishing Office, P. O. Box 979050, St. Louis, MO 63197-9000 or bookstore. gpo. gov ~~(2017~~ 2018 edition), incorporated by reference and on file with the Division. This incorporation by reference contains no future editions or amendments.

16. "Handbook 133" means the United States Department of Commerce, Technology Administration, National Institute of Stan

dards and Technology (NIST) Handbook 133, Checking The Net Contents of Packaged Goods , Government Publishing Office, P. O. Box 979050, St. Louis, MO 63197-9000 or bookstore. gpo. gov (January ~~2017~~ 2018 edition), incorporated by reference and on file with the Division. This incorporation by reference contains no future editions or amendments.

17. No change

18. No change

19. No change

20. No change

21. No change

22. No change

23. No change

24. No change

25. No change

26. No change

27. No change

28. No change

29. No change

30. No change

31. No change

32. No change

33 . "Stage II vapor recovery" means a system where at least ninety percent by weight of the gasoline vapors that are displaced or drawn from a vehicle fuel tank during refueling are transferred to a vapor-tight holding system or vapor control system .

~~33~~ 34 . No change

~~34~~ 35 . No change

~~35~~ 36 . No change

~~36~~ 37 . No change

~~37~~ 38 . No change

~~38~~ 39 . No change

~~39~~ 40 . No change

ARTICLE 7. MOTOR FUELS AND PETROLEUM PRODUCTS

R3-7-701. Definitions

In addition to the definitions in A. R.S. Section 3-3401 and R3-7-101, the following definitions apply to this Article unless the context otherwise requires:

"Address" means a street number, street name, city, state, and zip code.

"Approved oxygenate" means an oxygenate not prohibited by A. R.S. 3-3491(E) .

"Area A" has the same meaning as in A. R.S. Section 3-3401.

"Area B" has the same meaning as in A. R.S. Section 3-3401. "Area C" has the same meaning as in A. R.S. Section 3-3401.

"Arizona Cleaner Burning Gasoline" or "Arizona CBG" means a gasoline blend that meets the requirements of this Article for gasoline produced and shipped to or within Arizona and sold or offered for sale for use in motor vehicles within the CBG-covered area, except as provided under A. R.S. Section 3-3493(I).

"AST" means aboveground storage tank.

"AZRBOB" or "Arizona Reformulated Blendstock for Oxygenate Blending" means a combination of gasoline blendstocks that is intended to be or represented to constitute Arizona CBG upon the addition of a specified amount (or range of amounts) of ~~fuel ethanol~~ an approved oxygenate after the blendstock is supplied from the facility at which it was produced or imported. "Batch" means a quantity of motor fuel or AZRBOB that is homogeneous for motor fuel properties specific for the motor fuel standards applicable to that motor fuel or AZRBOB.

"Beginning of transport" means the point at which:

A registered supplier relinquishes custody of Arizona CBG or AZRBOB to a transporter or third-party terminal; or A registered supplier that retains custody of Arizona CBG or AZRBOB begins transfer of the Arizona CBG or AZRBOB into a vessel, tanker, or other container for transport to the CBG-covered area.

"Biodiesel" has the same meaning as prescribed under A. R.S. Section 3-3401.

"Biodiesel blend" has the same meaning as prescribed under A. R.S. Section 3-3401. Per ASTM D975, diesel fuel may contain 5 percent or less biodiesel and is not considered to be a biodiesel blend.

"Biofuel" has the same meaning as prescribed under A. R.S. Section 3-3401.

"Biofuel blend" has the same meaning as prescribed under A. R.S. Section 3-3401.

"Biofuel blender" means a person that modifies a motor fuel by adding a biofuel.

"Biofuel producer" means a person that owns, leases, operates, controls, or supervises a facility at which biofuel is produced.

"Biofuel Supplier" means a marketer or jobber of a biofuel or biofuel blend. "Biomass" has the same meaning as prescribed under A. R.S. Section 3-3401.

"Biomass-based diesel" has the same meaning as prescribed under A. R.S. Section 3-3401.

"Biomass-based diesel blend" has the same meaning as prescribed under A. R.S. Section 3-3401.

"Blendstock" means any liquid compound that is blended with another liquid compound to produce a motor fuel, including Arizona CBG. A deposit-control or similar additive registered under 40 CFR 79 is not a blendstock.

"CARB" means the California Air Resources Board.

"CARBOB Model" means the procedures incorporated by reference in R3-7-702(11).

"CARB Phase 2 gasoline" means gasoline that meets the specifications incorporated by reference in R3-7-702(8).

"CBG-covered area" means a county with a population of 1,200,000 or more persons according to the most recent United States decennial census and any portion of a county within area A.

"Conventional gasoline" means gasoline that conforms to the requirements of this Chapter for sale or use in Arizona, but does not meet the requirements of Arizona CBG or AZRBOB.

"Diesel fuel" or "Diesel" has the same meaning as prescribed under A. R.S. Section 3-3401. Per ASTM D975, diesel fuel may contain 5 percent or less biodiesel.

"Duplicate" means a portion of a sample that is treated the same as the original sample to determine the accuracy and precision of an analytical method.

"EPA" means the United States Environmental Protection Agency.

"EPA waiver" means a waiver granted by the Environmental Protection Agency as described in

"Waiver Requests under Section 211(f) of the Clean Air Act," which is incorporated by reference in R3-7-702.

"Ethanol flex fuel" has the same meaning as prescribed under A. R.S. Section 3-3401. "Final destination" means the name and address of the location to which a transferee will deliver motor fuel for further distribution or final consumption.

"Final distribution facility" means a stationary motor-fuel transfer point at which motor fuel or AZRBOB is transferred into a cargo tank truck, pipeline, or other delivery vessel from which the motor fuel or AZRBOB will be delivered to a motor-fuel dispensing site. A cargo tank truck is a final distribution facility if the cargo tank truck transports motor fuel or AZRBOB and carries documentation that the type and amount or range of amounts of oxygenates designated by the registered supplier will be or have been blended directly into the cargo tank truck before delivery of the resulting motor fuel to a motor-fuel dispensing site.

"Fleet" means at least 25 motor vehicles owned or leased by the same person. "Fleet vehicle fueling facility" means a facility or location where a motor fuel is dispensed for final use by a fleet.

"Fuel ethanol" means denatured ethanol that meets the requirements in ASTM D4806, which is incorporated by reference in R3- 7-702.

"Gasoline" has the same meaning as prescribed under A. R.S. Section 3-3401.

"Isobutanol" means butanol isomer 2-methyl-1-propanol that meets the requirements in ASTM D7862, which is incorporated by reference in R3-7-702 .

"Jobber" means a person that distributes a motor fuel from a bulk storage plant to the owner or operator of a UST or AST or purchases a motor fuel from a terminal for distribution to the owner or operator of a UST or AST.

"Manufacturer's proving ground" has the same meaning as prescribed under A. R.S. Section 3-3401.

"Marketer" means a person engaged in selling or offering for sale motor fuels.

"Motor Fuel" has the same meaning as prescribed under A. R.S. Section 3-3401.

"Motor fuel dispensing site" means a facility or location where a motor fuel is dispensed into commerce for final use.

"Motor fuel property" means any characteristic listed in R3-7-751(A)(1) through (7), R3-7-751(B)(1) through (7), Table 1, Table 2, or any other motor fuel standard referenced in this Article.

"Motor vehicle" means a vehicle equipped with a spark-ignited or compression-ignition internal combustion engine except: A vehicle that runs on or is guided by rails, or A vehicle designed primarily for travel through air or water.

"Motor vehicle racing event" has the same meaning as prescribed under A. R.S. Section 3-3401.

"MTBE" means methyl tertiary butyl ether.

"Neat" means pure or 100 percent

• "NOx" means oxides of nitrogen.

"Octane," "octane number," or "octane rating" mean the anti-knock characteristic of gasoline as determined by the resultant arithmetic test average of ASTM D2699 and ASTM D2700.

"Oxygenate" has the same meaning as prescribed under A. R.S. Section 3-3401.

"Oxygenate blender" means a person that owns, leases, operates, controls, or supervises an oxygenate-blending facility, or that owns or controls the blendstock or gasoline used, or the gasoline produced, at an oxygenate-blending facility.

"Oxygen content" means the percentage by weight of oxygen contained in a gasoline oxygenate blend as determined under ASTM D4815.

"Pipeline" means a transporter that owns or operates an interstate common-carrier pipe or is subject to Federal Energy Regulatory Commission tariffs to transport motor fuels into Arizona.

"Premium Diesel" means a diesel fuel meeting the requirements in ASTM D975 and in Handbook 130, Uniform Engine Fuels and Automotive Lubricants Regulations, Section 2.2.1(a) through 2.2.1(d).

"Producer" means a refiner, blender, or other person that produces a motor fuel, including Arizona CBG or AZRBOB.

"Production facility" means a facility at which a motor fuel, including Arizona CBG or AZRBOB, is produced. Upon request of a producer, the associate director may designate, as part of the producer's production facility, a physically separate bulk storage facility that:

Is owned or leased by the producer;

Is operated by or at the direction of the producer; and

Is used to store or distribute motor fuels, including Arizona CBG or AZRBOB, that are supplied only from the production facility.

"Product transfer document" has the same meaning as prescribed under A. R.S. Section 3-3401.

"Refiner" means a person that owns, leases, operates, controls, or supervises a refinery in the United States, including its trust territories.

"Refinery" means a facility that produces a liquid fuel, including Arizona CBG or AZRBOB, by distilling petroleum, or a transmix facility that produces a motor fuel offered for sale or sold into commerce as a finished motor fuel.

"Reproducibility" means the testing method margin of error as provided in the ASTM specification or other testing method required under this Article.

"Supply" means to provide or transfer motor fuel to a physically separate facility, vehicle, or transportation system.

"Terminal" means an owner or operator of a motor fuel storage tank facility that accepts custody, but not necessarily ownership, of a motor fuel from a registered supplier, oxygenate blender, pipeline, or other terminal and relinquishes custody of the motor fuel to a transporter or another terminal.

"Test result" means any document that contains a result of testing including all original test measures, all subsequent test measures that are not identical to the original test measure, and all worksheets on which calculations are performed.

"Transferee" means a person that receives title to or custody of a motor fuel.

"Transferor" means a person that relinquishes title to or custody of a motor fuel to a transporter, marketer, jobber, or motor fuel dispensing site.

"Transmix" means a mixture of petroleum distillate fuel and gasoline that does not meet the Arizona standards for either petroleum distillate fuels or gasoline.

"Transmix facility" means a facility at which transmix is processed into its components and then the components either are combined with a finished product or further processed to produce a finished motor fuel.

"Transporter" means a person that causes motor fuels, including Arizona CBG or AZRBOB, to be transported into or within Arizona.

"UST" means underground storage tank.

"Vapor pressure" means dry vapor pressure equivalent of gasoline or blendstock as measured according to ASTM D5191.

"Vehicle emissions control area" has the same meaning as prescribed under A. R.S. Section 3-3401.

"VOC" means volatile organic compound.

R3-7-702. Material Incorporated by Reference

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

9 . ASTM Standard D7862, 2017 (ASTM D7862-17), "Standard Specification for Butanol for Blending with Gasoline for Use as Automotive Spark-Ignition Engine Fuel," published 2017, ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www. astm. org .

~~9~~ . 10 .No change

~~10~~ . 11 . No change

~~11~~ . 12 . No change

~~12~~ . 13 . No change

~~13~~ . 14 . No change

~~14~~ . 15 .No change

B. No change

R3-7-708. Gasoline Oxygenate Blends

A. No change

B. No change

1. No change

a. No change

i. No change

ii. No change

b. No change

i. No change

ii. No change

2. No change

a. No change

b. No change

3. No change

a. No change

i. No change

ii. No change

b. No change

c. No change

i. No change

ii. No change

4. No change

C. In addition to complying with the requirements in R3-7-707, the transferor of an ~~gasoline ethanol~~ oxygenated gasoline blend shall ensure that the product transfer document contains a legible and conspicuous statement that the gasoline being transferred contains ~~fuel ethanol and the percentage concentration of fuel ethanol~~ an oxygenate and lists the type and percentage concentration of the oxygenate .

D. No change

R3-7-749. Definitions Applicable to Arizona CBG and AZRBOB

The following definitions apply only to R3-7-750 through R3-7-762, including Tables A, 1, and 2:

"Designated alternative limit" means a motor fuel property specification, expressed in the nearest part per million by weight for sulfur content, nearest 10th percent by volume for aromatic hydrocarbon content, nearest 10th percent by volume for olefin content, and nearest degree Fahrenheit for T90 and T50, that is assigned by a registered supplier to a final blend of Type 2 Arizona CBG or AZRBOB for purposes of compliance with the Predictive Model Procedures. "Downstream oxygenate blending" means combining AZRBOB and ~~fuel ethanol~~ an oxygenate to produce fungible Arizona CBG.

"Importer" means any person that assumes title or ownership of Arizona CBG or AZRBOB produced by an unregistered supplier.

"Oxygenate-blending facility" means any location (including a truck) where ~~fuel ethanol~~ an oxygenate is added to Arizona CBG or AZRBOB and the resulting quality or quantity of Arizona CBG is not altered in any other manner except for the addition of a deposit-control or similar additive registered under 40 CFR 79.

"Oxygenated Arizona CBG" means Arizona CBG with a maximum oxygen content of 4.0 wt. percent or another oxygen content approved by the associate director under A. R.S. Section 3-3493, that is produced and shipped to or within Arizona and sold or offered for sale for use in motor vehicles in the CBG-covered area from November 1 through March 31 of each year.

"Performance standard" means the VOC and NOx emission reduction percentages in R3-7-751(A)(8) and Table 1.

"PM" or "Predictive Model Procedures" means the California Predictive Model and CARB's "California Procedures for Evaluating Alternative Specifications for Phase 2 Reformulated Gasoline Using the California Predictive Model," as adopted April 20, 1995, which is incorporated by reference in R3-7-702.

"PM alternative gasoline formulation" means a final blend of Arizona CBG or AZRBOB that is subject to a set of PM alternative specifications.

"PM alternative specifications" means the specifications for the following fuel properties, as determined using a testing methodology in R3-7-759:

Maximum vapor pressure, expressed in the nearest 100th of a pound per square inch;

Maximum sulfur content, expressed in the nearest part per million by weight;

Maximum olefin content, expressed in the nearest 10th of a percent by volume;

Minimum and maximum oxygen content, expressed in the nearest 10th of a percent by weight;

Maximum T50, expressed in the nearest degree Fahrenheit;

Maximum T90, expressed in the nearest degree Fahrenheit; and

Maximum aromatic hydrocarbon content, expressed in the nearest 10th of a percent by volume.

"PM averaging compliance option" means, with reference to a specific fuel property, the compliance option for PM alternative gasoline formulations by which final blends of Arizona CBG and AZRBOB are assigned designated alternative limits under R3- 7-751(G), (H), and (I).

"PM averaging limit" means a PM alternative specification that is subject to the PM averaging compliance option.

"PM flat limit" means a PM alternative specification that is subject to the PM flat limit compliance option.

"PM flat limit compliance option" means, with reference to a specific fuel property, the compliance option that each gallon of gasoline must meet for that specified fuel property as contained in the PM alternative specifications.

"Produce" means:

Except as otherwise provided, to convert a liquid compound that is not Arizona CBG or AZRBOB into Arizona CBG or AZRBOB.

If a person blends a blendstock that is not Arizona CBG or AZRBOB with Arizona CBG or AZRBOB acquired from another person, and the resulting blend is Arizona CBG or AZRBOB, the person conducting the blending produces only the portion of the blend not previously Arizona CBG or AZRBOB.

If a person blends Arizona CBG or AZRBOB with other Arizona CBG or AZRBOB in accordance with this Article, without the addition of a blendstock that is not Arizona CBG or AZRBOB, that person is not a producer of Arizona CBG or AZRBOB. If a person supplies Arizona CBG or AZRBOB to a refiner that agrees in writing to further process the Arizona CBG or AZRBOB at the refiner's refinery and be treated as the producer of Arizona CBG or AZRBOB, the refiner is the producer of the Arizona CBG or AZRBOB.

If an oxygenate blender blends oxygenates into AZRBOB supplied from a gasoline production or import facility, and does not alter the quality or quantity of the AZRBOB or the quality or quantity of the resulting Arizona CBG certified by a registered supplier in any other manner except for the addition of a deposit-control or similar additive, the producer or importer of the AZRBOB, rather than the oxygenate blender, is considered the producer or importer of the full volume of the resulting Arizona CBG.

"Registered supplier" means a producer or importer that supplies Arizona CBG or AZRBOB and is registered with the associate director under R3-7-750.

"Third-party terminal" means an owner or operator of a gasoline storage tank facility that accepts custody, but not ownership, of Arizona CBG or AZRBOB from a registered supplier, oxygenate blender, pipeline, or other third-party terminal and relinquishes custody of the Arizona CBG or AZRBOB to a transporter or other terminal.

"Type 1 Arizona CBG" means a gasoline that meets the standards contained in R3-7-751(A) and Table 1.

"Type 2 Arizona CBG" means a gasoline that meets the standards contained in Table 2 or is certified using the PM according to the requirements of R3-7-751(G), (H), and (I), and meets the requirements in:

R3-7-751(A) beginning April 1 through October 31 of each year, and

R3-7-751(B) beginning November 1 through March 31 of each year.

"Winter" means November 1 through March 31.

R3-7-751. Arizona CBG Requirements

A. No change

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
   a. No change
   b. No change
   c. No change
   d. No change
   e. No change
   f. No change
7. No change
   a. No change
      i. November 1 March 31: 10 percent fuel ethanol by volume or 12.5 percent isobutanol by volume . If A. R.S. Section 3- 3493(C) petition in effect: 2.7 percent oxygen by weight as approved by the associate director.
      ii. No change
   b. The maximum oxygen content shall not exceed 4.0 percent by weight for fuel ethanol and ~~as specified in A. R.S. Section 3-3491~~ shall not exceed the amount allowed by EPA waivers under Section 211(f) of the Clean Air Act for other oxygenates . ~~, and~~ Additionally, the oxygen content shall comply with the requirements of A. R.S. Section 3-3491 and Section 3-3492.
   c. No change
8. No change

B. No change

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

6. No change

7. Oxygenate ~~- Ethanol~~ ;

a. Minimum oxygenate content - 10 percent fuel ethanol by volume or 12.5 percent isobutanol by volume ;

b. Maximum oxygen content - 4.0 percent oxygen by weight, and shall comply with the requirements of A. R.S. Section 3-3492; and

c. Alternative minimum fuel ethanol or isobutanol content may be used if approved by the associate director under A. R.S. Section 3 3493(C).

C. Fuel ethanol and other oxygenate specifications. A person that uses fuel ethanol or other oxygenates as a blending component with

AZRBOB or Arizona CBG shall ensure that the fuel ethanol or other oxygenates meet ~~meets~~ the following requirements ~~in ASTM D4806 and the following:~~

~~1 . A sulfur content not exceeding 10 ppm by weight,~~

~~2 . An olefins content not exceeding 0.5 percent by volume, and~~

~~3 . An aromatic hydrocarbon content not exceeding 1.7 percent by volume .~~

1 . A sulfur content not exceeding 10 ppm by weight;

2 . The fuel ethanol or other oxygenate must be composed solely of carbon, hydrogen, nitrogen, oxygen, and sulfur;

3 . For fuel ethanol, only gasoline previously certified under 40 CFR Part 80 (including previously certified blendstocks for oxy genate blending), gasoline blendstocks, or natural gas liquids may be used as denaturants; and

4 . For fuel ethanol, the concentration of all denaturants is limited to a maximum of 3.0 volume percent .

D. No change

1. No change

2. No change

E. No change

1. No change

2. No change

F. No change

G. No change

H. No change

1. No change

2. No change

a. No change

b. No change

i. No change

ii. No change

3. No change

4. No change

a. No change

b. No change

i. No change

ii. No change

iii. No change

c. No change

d. No change

i. No change

ii. No change

I. No change

1. No chang

e 2. No change

3. No change

4. No change

a. No change

b. No change

J. No change

K. No change

1. No change

2. No change

3. No change

L. No change

1. No change

a. No change

b. No change

2. No change

a. No change

i. No change

ii. No change

b. No change

c. No change

d. No change

3. No change

a. No change

b. No change

4. No change

M. No change

N. No change

O. No change

1. No change

2. No change

P. No change

1. No change

2. No change

3. No change

Q. No change

R . The use of oxygenates other than ethanol under subsection (A)(7)(a)(i) and (B)(7)(a) is prohibited until EPA approves a revision to the state implementation plan allowing the use of oxygenates other than ethanol .

R3-7-752. General Requirements for Registered Suppliers

A. No change

B. No change

C. No change

1. No change

a. No change

b. No change

c. No change

d. No change

e. No change

2. No change

3. No change

D. No change

E. No change

F. No change

1. No change

a. No change

b. No change

i. No change

ii. No change

iii. No change

2. No change

3. No change

a. No change

b. No change

c. No change

i. No change

ii. No change

iii. No change

d. No change

e. No change

4. No change

a. No change

i. No change

ii. No change

iii. No change

iv. No change

v. No change

vi. No change

vii. No change

b. No change

c. No change

i. No change

ii. No change

d. No change

G. No change

H. No change

1. No change

a. No change

b. No change

c. No change

d. No change

e . Isobutanol: 0.6% by volume

~~e~~ . f . No change

~~f~~ . g . No change

~~g~~ . h . No change

~~h~~ . i . No change

~~i~~ . j . No change

~~j~~ . k . No change

2. No change

a. No change

b. No change

R3-7-755. Additional Requirements for AZRBOB and Downstream Oxygenate Blending

A. No change

1. No change

a. If a registered supplier designates a final blend as AZRBOB and complies with the provisions of this Section, the fuel prop erties and performance standards of the AZRBOB, for purposes of compliance with Table 2, are determined by adding the specified type and amount of ~~fuel ethanol~~ oxygenate to a representative sample of the AZRBOB and determining the fuel properties and performance standards of ~~testing~~ the resulting gasoline using the test methods in R3-7-759 or, in the case of fuel ethanol blends, certifying the AZRBOB using the CARBOB model. If the registered supplier designates a range of amounts of ~~fuel ethanol~~ oxygenate to be added to the AZRBOB, the minimum designated amount of ~~fuel ethanol~~ oxygenate shall be added to the AZRBOB to determine the fuel properties and performance standards of the resulting Arizona CBG. If a registered supplier does not comply with this subsection, the Division shall determine whether the AZRBOB complies with applicable fuel properties and performance standards, excluding requirements for vapor pressure, without adding ~~fuel ethanol~~ oxygenate to the AZRBOB.

b. In determining whether AZRBOB complies with the Arizona CBG standards, the registered supplier shall ensure that the ~~fuel ethanol~~ oxygenate added to the representative sample under subsection (A)(1)(a) is representative of the ~~fuel ethanol~~ oxygenate the registered supplier reasonably expects will be subsequently added to the AZRBOB.

2. Calculating the volume of AZRBOB. If a registered supplier designates a final blend as AZRBOB and complies with this Sec tion, the volume of AZRBOB is calculated for compliance purposes under R3-7-751 by adding the minimum amount of ~~fuel ethanol~~ oxygenate designated by the registered supplier. If a registered supplier fails to comply with this subsection, the Division shall calculate the volume of AZRBOB for purposes of compliance with applicable fuel properties and performance standards without adding the amount of ~~fuel ethanol~~ oxygenate to the AZRBOB.

B. No change

1. No change

a. The transferee is a registered oxygenate blender and will add ~~fuel ethanol~~ oxygenate in the type and amount (or within the range of amounts) designated in R3-7-757 before the AZRBOB is transferred from a final distribution facility, or

b. The transferee will take all reasonably prudent steps necessary to ensure that the AZRBOB is transferred to a registered oxygenate blender that adds the type and amount (or within the range of amounts) of ~~fuel ethanol~~ oxygenate designated in R3-7-757 to the AZRBOB before the AZRBOB is transferred from a final distribution facility.

2. A person shall not sell or supply Arizona CBG from a final distribution facility if the type and amount or range of amounts of ~~fuel ethanol~~ oxygenate designated in R3-7-757 ~~has~~ have not been added to the AZRBOB.

C. No change

1. ~~Fuel ethanol~~ Oxygenate in the type and amount (or within the range of amounts) specified by the registered supplier at the time the AZRBOB is supplied from the production or import facility, or

2. Other AZRBOB for which the same ~~fuel ethanol~~ oxygenate type and amount (or range of amounts) is specified by the registered supplier at the time the AZRBOB is supplied from the production or import facility.

3 . A registered oxygenate blender may utilize an oxygenate type other than the one specified by the registered supplier provided all the requirements of R3-7-751, R3-7-752, R3-7-755, and R3-7-759 are demonstrated with the addition of the different oxygenate type .

D. No change

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

E. No change

1. No change
    a. No change
    b. No change
    c. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
9. No change
10. No change
    a. No change
    b. No change
    c. No change
    d. No change
    e. No change
    f. No change
    g. No change
    h. No change
    i. No change
    j. No change
    k. No change

F. No change

G. No change

1. No change
2. No change

H. No change

I. Requirements for oxygenate blenders.

1. Requirement to add ~~fuel ethanol~~ oxygenate to AZRBOB. If an oxygenate blender receives AZRBOB from a transferor to whom the oxygenate blender represents that ~~fuel ethanol~~ oxygenate will be added to the AZRBOB, the oxygenate blender shall add ~~fuel ethanol~~ oxygenate to the AZRBOB in the type and amount (or within the range of amounts) identified in the documentation accompanying the AZRBOB.

2. Additional requirements for oxygenate blending at terminals. An oxygenate blender that makes Arizona CBG by blending ~~fuel ethanol~~ oxygenate with AZRBOB in a motor fuel storage tank, other than a truck used to deliver motor fuel to a retail outlet or bulk-purchaser consumer facility, shall determine the oxygen content and volume of the Arizona CBG before shipping, by collecting and analyzing a representative sample of the Arizona CBG, using the methodology in R3-7-759.

3. No change

   a. No change

   b. No change

   c. No change

4. No change

   a. An oxygenate blender that produces Arizona CBG by blending ~~fuel ethanol~~ oxygenate with AZRBOB into a pipeline using computer-controlled in-line blending shall, for each batch of Arizona CBG produced:

      i. Obtain a flow proportional composite sample after the addition of ~~fuel ethanol~~ oxygenate and before combining the resulting Arizona CBG with any other Arizona CBG;

      ii. No change

      iii. No change

   b. If the test results for the Arizona CBG indicate that it does not contain the amount of ~~fuel ethanol~~ oxygenate specified by the ranges of the applicable test methods, the oxygenate blender shall:

      i. No change

      ii. No change

      iii. Collect a representative sample every two hours during each in-line blend of AZRBOB and ~~fuel ethanol~~ oxygenate, and analyze the samples within 12 hours of collection, until the cause of the noncompliance is determined and corrected; and

      iv. No change

   c. No change

5. No change

   a. No change

      i. No change

      ii. No change

      iii. No change

      iv. No change

      v. No change

      vi. No change

b. No change

c. Within 20 days of the associate director's written request, an oxygenate blender shall provide any records maintained by the oxygenate blender under this Section. If the oxygenate blender fails to provide records requested for a blend or shipment of Arizona CBG, the associate director shall deem that the blend or shipment of Arizona CBG violates R3-7-751 or exceeds the comparable PM averaging limits, if applicable, unless the oxygenate blender demonstrates to the associate director that the Arizona CBG meets the standards and limits under R3-7-751.

6. No change

7. No change

8. No change

9. No change

J. No change

R3-7-757. Product Transfer Documentation; Records Retention

A. No change

1. No change

2. No change

3. No change

4. No change

5. No change

6. No change

7. For oxygenated Arizona CBG designated for sale for use in motor vehicles from November 1 through March 31, the type and minimum quantity of ~~fuel ethanol~~ oxygenate contained in the Arizona CBG;

8. If the product transferred is AZRBOB for which ~~fuel ethanol~~ oxygenate blending is intended:

a. Identification of the fuel as AZRBOB and a statement that the "AZRBOB does not comply with the standards for Arizona CBG without the addition of ~~fuel ethanol~~ oxygenate" ;

b. ~~Fuel ethanol~~ Oxygenate type or types and amount or range of amounts that the AZRBOB requires to meet the fuel proper ties or performance standards claimed by the registered supplier of the AZRBOB, and the applicable specifications for volume percent ~~fuel ethanol~~ of oxygenate and weight percent oxygen content; and

c. Instructions to the transferee that the AZRBOB may not be combined with any other AZRBOB unless the other AZRBOB has the same requirements for ~~fuel ethanol~~ oxygenate type or types and amount or range of amounts; and

9. No change

a. No change

b. No change

c. No change

B. No change

C. No change

D. No change

E. No change

F. No change

G. When a person transfers custody or title of ~~fuel ethanol~~ an oxygenate that is intended for use in AZRBOB or Arizona CBG, the person shall provide the transferee a document that prominently states that the ~~fuel ethanol~~ oxygenate complies with the standards for ~~fuel ethanol~~ an oxygenate intended for use in AZRBOB or Arizona CBG.

H. No change

R3-7-759. Testing Methodologies

A. No change

B. An oxygenate blender or third-party terminal certifying Arizona CBG or AZRBOB before transport to the CBG-covered area shall measure ~~fuel ethanol~~ the oxygenate content in accordance with the oxygenate blender's or third-party terminal's approved QA/QC program or in accordance with one of the methods listed in Table A.

C. No change

D. No change

E. No change

Table 1. Type 1 Arizona CBG Standards

NOTE: THIS SECTION CONTAINS A GRAPHIC. THE GRAPHIC IS NOT REPRODUCIBLE IN THIS FORMAT. PLEASE REFER TO OUR ONLINE VERSION OF THIS TEXT TO VIEW THE CONTENT.

Table 2 . Type 2 Arizona CBG Standards

NOTE: THIS SECTION CONTAINS A GRAPHIC. THE GRAPHIC IS NOT REPRODUCIBLE IN THIS FORMAT. PLEASE REFER TO OUR ONLINE VERSION OF THIS TEXT TO VIEW THE CONTENT.

History

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE CHAPTER 7. DEPARTMENT OF AGRICULTURE

WEIGHTS AND MEASURES SERVICES DIVISION

[R18-198]

Classification

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