

Notices of Final Rulemaking

- a. No medical examination form required under subsection (A)(1) or a form indicating noncompliance with CDL physical qualifications, the Division shall follow the suspension and revocation notification procedure prescribed under subsection (B).
 - b. An incomplete medical examination form required under subsection (A)(1), the Division shall immediately return the incomplete form with a letter requesting that the licensee provide missing information to the Division within 45 days after the date of the Division's letter. The Division shall follow the suspension and revocation notification procedure prescribed under subsection (B) if the licensee fails to return requested information in the time-frame prescribed in this subsection.
 - c. A medical examination form required under subsection (A)(1) that indicates the licensee's blood pressure is greater than 140 systolic or 90 diastolic, the Division shall mail notice to the licensee requiring three additional blood pressure evaluations:
 - i. Made on three different days.
 - ii. Performed by a qualified professional as prescribed under subsection (A)(1)(a), and
 - iii. Returned to the Division within 90 days after the Division's written notification.

The Division shall follow the suspension and revocation notification procedure prescribed under subsection (B) if the licensee fails to return requested information prescribed under subsection (C)(2)(c)(iii).
 - d. A medical examination form required under subsection (A)(1) that indicates the licensee's blood pressure is greater than 180 systolic or 104 diastolic, the Division shall follow the suspension and revocation notification procedure prescribed under subsection (B).
- D. Hearings and appeals:**
- 1. Where licensing actions have been taken adverse to the licensee or applicant pursuant to this rule, the licensee or applicant may request a hearing with the Executive Hearing Office within 15 days from the date of the notice of the licensing action.
 - 2. All hearings and appeal procedures shall be in accordance with Article 9 of this Chapter.
- D. A CDL that remains revoked for longer than 12 months expires. The holder of an expired CDL may obtain a new CDL by successful completing all CDL original-application written, vision, and demonstration-skill testing and submitting the medical examination form prescribed under subsection (A)(1).**
- E. Administrative hearing. A person who is denied a CDL or whose CDL is suspended or revoked under this Section may request a hearing according to the procedure prescribed under 17 A.A.C., Chapter 1, Article 5.**

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

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

PREAMBLE

- 1. Sections Affected**
R18-2-309
- Rulemaking Action**
Amend
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statutes: A.R.S. §§ 49-104(A)(1) and (A)(11); 49-425
Implementing statute: A.R.S. § 49-426
- 3. The effective date of the rules:**
June 17, 2004

Immediately upon filing with the Secretary of State. The Administrator specified a 12-month deadline for submittal of program revisions, or June 28, 2004. ADEQ is therefore requesting that this rule be effective immediately upon filing of the Notice of Final Rulemaking with the Secretary of State, under A.R.S. § 41-1032(A).
- 4. A list of all previous notices appearing in the Register addressing the final rules:**
Notice of Rulemaking Docket Opening: 10 A.A.R. 508, February 13, 2004
Notice of Proposed Rulemaking: 10 A.A.R. 770, March 5, 2004
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Kevin Force
Address: Department of Environmental Quality
1110 W. Washington Ave.

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Phoenix, AZ 85007

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

Summary. ADEQ has revised compliance certification requirements under the state's operating permits program, as required by recent revisions to 40 CFR Part 70. EPA has specified a deadline of June 28, 2004 for submittal of program revisions.

Background. State Operating Permits Programs, under Part 70 regulations published in 1992, require responsible officials (ROs) of major sources of air pollutants to certify compliance with the Clean Air Act. Specifically, ROs needed to identify in their certification whether the status of compliance with the Act was continuous or intermittent during the period covered by the ongoing certification.

In its 1997 Compliance Assurance Monitoring (CAM) rule, EPA amended the compliance certification provisions for the State Operating Permits Program, 40 CFR Part 70 (62 FR 54900, October 22, 1997). The 1997 amendments replaced the existing certification requirement with a requirement to indicate whether the certification was based on *methods* that provide continuous or intermittent *data* and whether deviations, excursions, or exceedances occurred (emphasis added). In 2000, ADEQ amended R18-2-309, making the language of the rule mirror the 1997 changes made to Part 70 by EPA (6 A.A.R. 343, January 14, 2000).

In 1999, Natural Resources Defense Council, Inc. (NRDC) filed a petition with the U.S. Court of Appeals for the D.C. Circuit challenging this and other aspects of the 1997 amendments. NRDC claimed that the 1997 amendments were directly inconsistent with the explicit requirement of the Act that compliance certifications identify whether *compliance* is continuous or intermittent (emphasis added). The Court agreed with NRDC that the 1997 amendments were contrary to the statute, which requires that certification include whether compliance, not just data, is continuous or intermittent, and remanded the regulations to EPA for revision in accordance with the Court's opinion (194 F.3d 130, October 29, 1999).

On June 27, 2003, EPA published final amendments to the compliance certification provisions for the State Operating Permits Programs (Part 70) (68 FR 38518). Specifically, the regulations now require, as ordered by the Court, that the compliance certification include whether the facility or source has been in continuous or intermittent compliance. EPA removed the language of the 1997 amendments that referred to continuous or intermittent data. State, local, and tribal governments that implement Part 70 operating permits programs were directed to revise their existing compliance certification requirements to make them consistent with the 2003 amendments.

In light of the narrow scope of revisions necessary to bring State programs into compliance with the amendments, the Administrator specified a 12-month deadline for submittal of program revisions, or June 28, 2004. ADEQ is therefore requesting that this rule be effective immediately upon filing of the Notice of Final Rulemaking with the Secretary of State, under A.R.S. § 41-1032(A).

The revisions to R18-2-309 would put the rule back in compliance with 40 CFR Part 70, by again making the language of R18-2-309 mirror that of the revisions EPA made to the regulation in accordance with the Court's remand; Class I sources would be required to certify that compliance with their permit provisions was continuous. Additionally, R18-2-309 applies to both Class I and Class II sources; Class II sources will also be required to certify continuous compliance with the terms and conditions of their permits.

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

None

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

Not applicable

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

Rule Identification

Arizona Administrative Code Title 18, Chapter 2, Article 3; Section R18-2-309.

Costs

Under the former rule, sources were required to specify whether their compliance certifications were based on continuous or intermittent *data*. In the new rule, sources are required to certify continuous or intermittent *compliance*. In this way, the rule change affects the compliance certification *statement* of the source. The rule change does not affect compliance time periods, which are usually based on emission standards. This rule change does not affect any emis-

sion standards, nor does it require increased monitoring or testing requirements. As there were no changes in emission standards, or monitoring or testing requirements, it is expected that the rule change will not result in increased expenditure for permitted sources, whether Class I or Class II.

Costs to ADEQ are those that may accrue for implementation and enforcement of the new requirements. Even though some minor incremental costs may accrue from this rulemaking, ADEQ does not intend to hire any additional employees to implement or enforce these rules.

Benefits

This rulemaking allows ADEQ to retain Title V permitting authority. If the rulemaking is not approved and submitted to EPA by June 28, 2004, ADEQ could lose that permitting authority. ADEQ issues Title V permits to approximately 65 sources.

Benefits accrue to the regulated community when a state agency incorporates a federal regulation in order to become the primary implementer of the regulation, because the state agency is closer to those being regulated and, therefore, is generally easier to contact and to work with to resolve differences, compared with the U.S. EPA, whose regional office for Arizona is in San Francisco. Local implementation also reduces travel and communication costs.

Health benefits accrue to the general public whenever enforcement of environmental laws takes place. Adverse health effects from air pollution result in a number of economic and social consequences, including:

1. Medical costs. These include personal out-of-pocket expenses of the affected individual (or family), plus costs paid by insurance or Medicare, for example.
2. Work loss. This includes lost personal income, plus lost productivity whether the individual is compensated for the time or not. For example, some individuals may perceive no income loss because they receive sick pay, but sick pay is a cost of business and reflects lost productivity.
3. Increased costs for chores and care giving. These include special care giving and services that are not reflected in medical costs. These costs may occur because some health effects reduce the affected individual's ability to undertake some or all normal chores, and he or she may require care giving.
4. Other social and economic costs. These include restrictions on or reduced enjoyment of leisure activities, discomfort or inconvenience, pain and suffering, anxiety about the future, and concern and inconvenience to family members and others.

Conclusion

In conclusion, the incremental costs associated with this rule are generally low, and apply solely to ADEQ, while the air quality benefits are generally high. In addition, there are benefits to industry from being regulated by a geographically nearer government entity. As a result, ADEQ expects probable benefits to outweigh probable costs.

ADEQ anticipates no adverse economic impacts on political subdivisions. Additionally, there are no expected adverse economic impacts on private businesses, their revenues or expenditures. The fact that no new employment is expected to occur has been discussed above, in the context of the impact on state agencies. There are no adverse economic impacts on small businesses, although some regulatory benefits will accrue to them. There are no economic impacts for consumers; benefits to private persons as members of the general public are discussed above in terms of enforcement. There will be no direct impact on state revenues. There are no other, less costly alternatives for achieving the goals of this rulemaking.

Rule impact reduction on small businesses.

A.R.S. § 41-1035 requires ADEQ to reduce the impact of a rule on small businesses by using certain methods when they are legal and feasible in meeting the statutory objectives (see below) for the rulemaking. The five listed methods are:

1. Establish less stringent compliance or reporting requirements in the rule for small businesses.
2. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.
3. Consolidate or simplify the rule's compliance or reporting requirements for small businesses.
4. Establish performance standards for small businesses to replace design or operational standards in the rule.
5. Exempt small businesses from any or all requirements of the rule.

The statutory objectives which are the basis of the rulemaking.

The general statutory objectives that are the basis of this rulemaking are contained in the statutory authority cited in item number 2 of this preamble. The specific objective is to implement compliance certification requirements for Class I and Class II sources.

ADEQ has determined that there is a beneficial impact on small businesses in transferring implementation of these rules to ADEQ. In addition, ADEQ is required by EPA to mirror the federal rules without reducing stringency.

ADEQ, therefore, has found that it is not legal or feasible to adopt any of the five listed methods in ways that reduce the impact of these rules on small businesses. ADEQ is not aware of any Class I source in Arizona that is a small business. Even if such a source did exist, ADEQ has concluded that each of the listed methods would be illegal in such a case, as federal law requires that this rule change apply to major sources. Further, as was discussed above, ADEQ has determined that the new rule imposes no changes in emission standards, monitoring or testing requirements. Therefore, ADEQ expects that the rule change will not result in increased costs for permitted sources, whether or not they are small businesses. Exempting small businesses from the rule, or creating a different regulatory scheme for small businesses, however, would result in increased administrative costs to the agency. Finally, where federal rules impact small businesses, EPA is required by both the Regulatory Flexibility Act and the Small Business Regulatory Enforcement and Fairness Act to make certain adjustments in its own rulemakings.

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

Minor technical and grammatical changes were made.

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

None

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

Not applicable

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

None

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

No

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

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

ARTICLE 3. PERMITS AND PERMIT REVISIONS

Section

R18-2-309. Compliance Plan; Certification

ARTICLE 3. PERMITS AND PERMIT REVISIONS

R18-2-309. Compliance Plan; Certification

All permits shall contain the following elements with respect to compliance:

1. The elements required by R18-2-306(A)(3), (4), and (5).
2. Requirements for ~~eompliance certification~~ certifications of compliance with terms and conditions contained in the permit, including ~~emission emissions~~ limitations, standards, ~~or and~~ work practices. Permits shall include each of the following:
 - a. The frequency ~~for of~~ submissions of compliance certifications, which shall not be less than annually;
 - b. The means to monitor the compliance of the source with its emissions limitations, standards, and work practices;
 - c. A requirement that the compliance certification include all of the following (the identification of applicable information may cross-reference the permit or previous reports, as applicable):
 - i. The identification of each term or condition of the permit that is the basis of the certification;
 - ii. The identification of the methods or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period, ~~and whether the methods or other means provide continuous or intermittent data~~. The methods and other means shall include, at a minimum, the methods and means required under R18-2-306(A)(3). If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information;
 - iii. The status of compliance with the terms and conditions of the permit for the period covered by the certification, ~~including whether compliance during the period was continuous or intermittent. The certification shall be~~ based on the methods or means designated in subsection (2)(c)(ii). The certification shall identify each deviation and take it into account ~~for consideration~~ in the compliance certification. For emission units subject to 40 CFR 64, the certification shall also identify as possible exceptions to compliance any period during which compliance is required and in which an excursion or exceedance defined under 40 CFR 64

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- occurred; and
- iv. Other facts the Director may require to determine the compliance status of the source.
- d. A requirement that permittees submit all compliance certifications ~~be submitted~~ to the Director. Class I permit permittees shall also submit compliance certifications ~~shall also be submitted~~ to the Administrator.
- e. Additional requirements specified in sections 114(a)(3) and 504(b) of the Act or pursuant to R18-2-306.01.
3. A requirement for any document required to be submitted by a permit permittee, including reports, to contain a certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this ~~part~~ Section shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.
4. Inspection and entry provisions ~~which~~ that require that upon presentation of proper credentials, the permittee shall allow the Director to:
- a. Enter upon the permittee's premises where a source is located, ~~or~~ emissions-related activity is conducted, or ~~where~~ records are required to be kept under the conditions of the permit;
- b. Have access to and copy, at reasonable times, any records that are required to be kept under the conditions of the permit;
- c. Inspect, at reasonable times, any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit;
- d. Sample or monitor, at reasonable times, substances or parameters for the purpose of assuring compliance with the permit or other applicable requirements; and
- e. Record any inspection by use of written, electronic, magnetic, and or photographic media.
5. A compliance plan that contains all the following:
- a. A description of the compliance status of the source with respect to all applicable requirements;
b. A description as follows:
- i. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with ~~such~~ the requirements;
ii. For applicable requirements that will become effective during the permit term, a statement that the source will meet ~~such~~ the requirements on a timely basis;
iii. For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements;
- c. A compliance schedule as follows:
- i. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with ~~such~~ the requirements;
ii. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement;
iii. A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. ~~Such~~ The schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirement for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such The schedule of compliance shall be supplemental to supplement, and shall not sanction noncompliance with, the applicable requirements on which it is based.
- d. A schedule for submission of certified progress reports no less frequently than every six months for sources required to have a schedule of compliance to remedy a violation. ~~Such~~ The schedule progress reports shall contain:
- i. Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones, or compliance were achieved; and
ii. An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.
- e.6. The compliance plan content requirements specified in ~~this~~ subsection (5) shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the Act, and incorporated ~~pursuant to~~ under R18-2-333 with regard to the schedule and ~~method(s)~~ each method the source will use to achieve compliance with the acid rain emissions limitations.
- e.7. If there is a Federal Implementation Plan (FIP) applicable to the source, a provision that compliance with the FIP is required.