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DEPARTMENT OF ADMINISTRATION (Expedited Rulemaking)

Title 2, Chapter 7

Amend: R2-7-101, R2-7-B306, R2-7-B307, R2-7-C302, R2-7-C306, R2-7-C307, R2-7-C315,
R2-7-505, R2-7-511, R2-7-B901, R2-7-B902, R2-7-B903

Repeal: R2-7-501



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: August 2, 2022

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: July 13, 2022

SUBJECT: DEPARTMENT OF ADMINISTRATION (Expedited Rulemaking)
Title 2, Chapter 7

Amend: R2-7-101, R2-7-B306, R2-7-B307, R2-7-C302, R2-7-C306, R2-7-C307,
R2-7-C315, R2-7-505, R2-7-511, R2-7-B901, R2-7-B902, R2-7-B903

Repeal: R2-7-501

Summary:

This expedited rulemaking from the Department of Administration (Department) relates to rules in Title 2, Chapter 7 regarding the State Procurement Office. The Department seeks to amend the rules in response to the 5YRR proposed course of action for these rules, which was approved by the Council on November 2, 2021. The proposed changes will reduce burdens to statewide procurement procedures due to outdated requirements without compromising quality. Additionally, this expedited rulemaking will amend outdated rules that reference a procurement process that relies on bids and offers sent in the mail. The proposed changes will further clarify the procurement processes should be performed, whenever possible, through the State's electronic procurement system (eProcurement system), which has been the State's process for over a decade. This expedited rulemaking will also remove extra steps from the procurement process and modernize construction procurement, which will result in less burdensome rules.

The Department received approval from the rulemaking moratorium to initiate this rulemaking on December 21, 2021, and final approval to submit to the Council on May 18, 2022.

1. **Do the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)?**

Yes. The Department states that the rules satisfy the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A) under (7) (“ Implements, without material change, a course of action that is proposed in a five-year review report approved by the council pursuant to section 41-1056 within one hundred eighty days of the date that the agency files the proposed expedited rulemaking with the secretary of state.”)

2. **Are the rules legal, consistent with legislative intent, and within the agency’s statutory authority?**

Yes, the Department cites to both general and specific statutory authority.

3. **Do the rules establish a new fee or contain a fee increase?**

No, the rules do not establish a new fee or contain a fee increase.

4. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

The Department indicates they received three written comments prior to the oral proceeding. The comments only included agreement with the proposed changes.

5. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

The Department identified a clerical error in the NPER with regard to R2-7-101(10). The Department indicates the reference in this rule to another section of the rule would become inaccurate after the sections are renumbered due to this rulemaking. The Department corrected the error in the NFER. Additionally, the Departments indicates another non-substantial change between the NPER and NFER was made when the NFER was reviewed internally to rephrase R2-7-B902 (A)-(B) to be more concise regarding the claim resolution.

Council staff does not believe the final rules are a substantial change from the proposed rules.

6. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

Not applicable, there are no corresponding federal laws to the rules.

7. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules do not require the issuance of a general permit or license.

8. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

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

9. **Conclusion**

In this expedited rulemaking the Department seeks to amend the rules in response to their 5YRR proposed course of action. If approved, this rulemaking would be effective immediately upon the Department filing the Notice of Final Expedited Rulemaking and Certificate of Approval with the Secretary of State. The Department meets the criteria for Expedited Rulemaking pursuant to A.R.S. § 41-1027(A)(7).

Council staff recommends approval of this expedited rulemaking.

Douglas A. Ducey
Governor



Andy Tobin
Director

ARIZONA DEPARTMENT OF ADMINISTRATION

STATE PROCUREMENT OFFICE
100 NORTH FIFTEENTH AVENUE • SUITE 305
PHOENIX, ARIZONA 85007
(602) 542-5511

June 21, 2022

Ms. Nicole Sornsin, Chair
The Governor's Regulatory Review Council
100 North 15th Avenue
Phoenix, AZ 85007

Re: A.A.C. Title 2. Administration Chapter 7. Department of Administration - State Procurement Office

Dear Ms. Sornsin:

The Arizona Department of Administration State Procurement Office (ADOA SPO) is submitting the attached final expedited rule package for its consideration and approval at the Council meeting scheduled for August 2, 2022.

The following information is provided for the Council's use in reviewing the enclosed rules for approval pursuant to A.R.S. § 41-1052 and A.A.C. R1-6-202:

- Information Required by A.A.C. R1-6-202(A)(1):
 - a. Close of record date: The rulemaking record was closed on May 2, 2022, following a period for public comment.
 - b. Explanation of meeting A.R.S. § 41-1027(A): A.R.S. § 41-1027(A)(7) allows an agency to complete an expedited rulemaking if it "implements, without material change, a course of action that is proposed in a five-year review report approved by the council." ADOA proposed to make these changes in its 2021 Five-Year Review Report, which was approved by the Council on November 2, 2021.
 - c. Relation of the rulemaking to a five-year review report: This rulemaking relates to the Five-Year Review Report approved by the Council in November 2021.
 - d. Certification regarding studies: I certify that ADOA did not rely on any studies for this rulemaking.
 - e. List of documents enclosed under A.A.C. R1-6-202(A)(1)(e) and (A)(2)-(8):
 - This signed cover letter;
 - The Notice of Final Expedited Rulemaking, including the preamble, table of contents for the rulemaking, and text of each rule;

- ADOA SPO received three (3) written comments prior to the oral proceeding regarding the proposed expedited rulemaking revisions for Chapter 2, Title 7. The comments included agreement to the proposed changes. An oral proceeding was held on April 14, 2022. There were no oral comments made during the proceeding or additional written comments received. The record closed at 5:00 p.m. on May 2, 2022. There are no further record or transcript of such testimony included in this submittal;
- ADOA SPO did not receive any analysis regarding the rules' impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states, and therefore, no such analysis is included in this submittal;
- The rules amended or repealed by this rulemaking do not incorporate materials by reference, and therefore, no such materials are included;
- No statute was declared unconstitutional;
- The general and specific statutes authorizing the rule, including relevant statutory definitions: A.R.S. §§ 41-703(6), 41-2511, 41-2514, and 41-2501 through 41-2673; and
- No term is defined in the rule by referring to another.

Please contact Jessica Klein, Compliance Deputy Assistant Director, State Procurement Office, at 602-350-0339 or Jessica.Klein@azdoa.gov, if you have any questions.

Sincerely,



Andy Tobin, Director ADOA

Enclosures

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 7. DEPARTMENT OF ADMINISTRATION - STATE PROCUREMENT OFFICE

PREAMBLE

<u>1. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
R2-7-101	Amend
R2-7-B306	Amend
R2-7-B307	Amend
R2-7-C302	Amend
R2-7-C306	Amend
R2-7-C307	Amend
R2-7-C315	Amend
R2-7-501	Repeal
R2-7-505	Amend
R2-7-511	Amend
R2-7-B901	Amend
R2-7-B902	Amend
R2-7-B903	Amend

2. Citations to the agency’s statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):

Authorizing Statutes: A.R.S. §§ 41-703(6), 41-2511, and 41-2514

Implementing Statutes: A.R.S. §§ 41-2501 through 41-2673

3. The effective date of the rule:

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. 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: 28 A.A.R. (page 693)

Notice of Proposed Rulemaking: 28 A.A.R. (page 701)

5. The agency's contact person who can answer questions about the rulemaking:

Name: Jessica Klein, Compliance Deputy Assistant Director

Address: Department of Administration

State Procurement Office

100 N. 15th Ave., Suite 305

Phoenix, AZ 85007

Telephone: (602) 350-0339

E-mail: Jessica.Klein@azdoa.gov or SPOCompliance@azdoa.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 State Procurement Office (SPO) of the Arizona Department of Administration (ADOA) seeks expedited rulemaking under A.R.S. § 41-1027(7). The rules that govern procurement are in Arizona Administrative Code (A.A.C.) Title 2, Chapter 7. The Department conducted its five-year review of rules for the year 2020, completed in 2021. After receiving an exception from the rulemaking moratorium pursuant to Executive Order 2020-02 in November 2021, the Department would like approval to modify or remove the aforementioned rules to address the concerns discovered during the five-year rule review process. The changes to the Arizona Procurement Code (APC) requested in this process would not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. Instead, the requested changes would reduce burdens to statewide procurement procedures due to outdated requirements without compromising quality. Furthermore, rule changes are proposed to improve processes and increase efficiency and transparency in public procurement.

A number of the current rules are outdated, because they reference a procurement process that relies on bids and offers sent in the mail. Modification of these rules would clarify that the procurement

processes should be performed, whenever possible, through the State's electronic procurement system (eProcurement system), which has been the State's process for over a decade. These revisions are to the definitions section of the APC to include the term "eProcurement" (A.A.C. R2-7-101), the bid and offer opening process to clarify that bids and offers may be opened electronically (A.A.C. R2-7-B306 and R2-7-C306), and in the sections regarding late bids and offers to add language to make clear that potential suppliers should allow themselves sufficient time to properly file their bids and offers, so they are not excluded as late. (A.A.C. R2-7-B307 and R2-7-C307).

ADOA has also identified areas of the APC which should be revised to remove extra steps from the procurement process and to modernize construction procurement. The proposed revision to A.A.C. R2-7-C315 would remove a barrier to the use of second best-and-final offer in solicitation negotiations. Within the construction procurement rules, General Services Division (GSD) of ADOA has identified one rule which may be removed as it adds no value or guidance to the APC (A.A.C. R2-7-501). Another rule has an extraneous clause which may be removed, as it references non-existent spending limits (A.A.C. R2-7-505). GSD would also like to modify a rule to allow for increased use of job-order contracting (JOC) consistent with current best practices in construction contracting (A.A.C. R2-7-511).

The last set of changes are updates to the contract claims process to reduce litigation. One amendment would clarify that the 180-day limit is a statute of limitations for claims (A.A.C. R2-7-B901). The other changes would confirm that agencies should attempt to negotiate with suppliers prior to litigating a claim, with flexible timetables for completing negotiations that formally incorporate the available informal settlement process into the timeline prior to litigation (A.A.C. R2-7-B902).

The last proposed modifications would be a simple change to make the rules consistent (A.A.C. R2-7-B903) and one to correct an existing typographical error in a citation in the rule (A.A.C. R2-7-C302).

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 or rely on any study for this 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:

Under A.R.S. § 41-1055(D)(2), the Department is not required to provide an economic, small business, and consumer impact statement.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

A clerical error was discovered in the Notice of Final Expedited Rulemaking with regard to A.A.C. R2-7-101(10). A reference in this rule to another section of the rule will become inaccurate after the sections are renumbered due to this rulemaking. This has since been corrected.

An additional non-substantial change between the Notice of Proposed Expedited Rulemaking and Notice of Final Expedited Rulemaking was made when the latter was reviewed internally to rephrase A.A.C. R2-7-B902(A)-(B) to be more concise regarding claim resolution.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

There were three (3) written comments received prior to the oral proceeding regarding the proposed expedited rulemaking revisions for Chapter 2, Title 7. The comments only included agreement with the proposed changes. An oral proceeding was held on April 14, 2022, which was also recorded and posted on the ADOA SPO website. There were no oral comments during the proceeding or additional written comments received. The record closed at 5:00 p.m. on May 2, 2022.

12. All agencies shall list 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:

No other matters prescribed by statute are applicable to the Department or to any specific rule or class of rules.

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 rule does not require the issuance of a regulatory permit. Therefore, a general permit is 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:

Federal laws do not apply to the rules.

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 such 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 reference material is 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:

Not applicable.

15. The full text of the rule follows:

ARTICLE 1. GENERAL PROVISIONS

Section

R2-7-101. Definitions

ARTICLE 3. SOURCE SELECTION AND CONTRACT FORMATION

PART B. COMPETITIVE SEALED BIDDING

Section

R2-7-B306. Receipt, Opening, and Recording of Offers

R2-7-B307. Late Offers, Modifications, Withdrawals

PART C. COMPETITIVE SEALED PROPOSALS

Section

R2-7-C302. Pre-offer Conferences

R2-7-C306. Receipt, Opening, and Recording of Offers

- R2-7-C307. Late Offers, Modifications, and Withdrawals Before Offer Due Date and Time
- R2-7-C315. Offer Revisions and Best and Final Offers

ARTICLE 5. PROCUREMENT OF CONSTRUCTION AND SPECIFIC PROFESSIONAL SERVICES

Section

- R2-7-501. ~~Procurement of Specified Professional and Construction Services~~ Repealed
- R2-7-505. Selection Committee
- R2-7-511. Individual Job Order Contracting

ARTICLE 9. LEGAL AND CONTRACTUAL REMEDIES

PART B. CONTRACT CLAIMS

Section

- R2-7-B901. Controversies Involving Contract Claims Against the State
- R2-7-B902. Agency Chief Procurement Officer's Decision
- R2-7-B903. Issuance of a Timely Decision

ARTICLE 1. GENERAL PROVISIONS

R2-7-101. Definitions

In this Chapter, unless the context otherwise requires:

1. "Affiliate" means any person whose governing instruments require it to be bound by the decision of another person or whose governing board includes enough voting representatives of the other person to cause or prevent action, whether or not the power is exercised. The term applies to persons doing business under a variety of names, persons in a parent-subsidary relationship, or persons that are similarly affiliated.
2. "Agency chief procurement officer" means the procurement officer within a state governmental unit, who is acting under specific, written authority from the state procurement administrator in accordance with R2-7-202 or any person delegated that authority, in writing, under R2-7-203. The term does not include any other person within a state governmental unit who does not have this written delegation of authority.
3. "Aggregate dollar amount" means purchase price, including taxes and delivery charges, for the term of the contract and accounting for all allowable extensions and options.
4. "Alternate project delivery methods" means design-build, construction-management-at-risk, and job-order-contracting construction services.
5. "Arizona Procurement Code" means A.R.S. Title 41, Chapter 23 and this Chapter.
6. "Arizona state contract" means a contract established or authorized by the state procurement administrator for use by state governmental units and eligible procurement units.
7. "Award" means a determination by the state that it is entering into a contract with one or more offerors.

8. "Best and Final Offer" means a revision to an offer submitted after negotiations are completed that contain the offeror's most favorable terms for price, service, and products to be delivered.
9. "Bid" means an offer in response to solicitation.
10. "Bidder" means "offeror" as defined in R2-7-101(~~3435~~).
11. "Brand name or equivalent specification" means a written description that uses one or more manufacturers' product name or catalog item, to describe the standard of quality, performance, and other characteristics that meet state requirements and provides for submission of equivalent products or services.
12. "Brand name specification" means a written description limited to a list of one or more items by manufacturers' product name or catalog item to describe the standard of quality, performance, and other characteristics that meet state requirements.
13. "Clergy" includes the same persons described in A.R.S. § 32-3271(A)(3).
14. "Component" means a part of a manufactured product.
15. "Contract amendment" means a written modification of a contract under A.R.S. § 41-2503(8) or a unilateral exercise of a right contained in the contract.
16. "Cost data" means information concerning the actual or estimated cost of labor, material, overhead, and other cost elements that have been incurred or will be incurred by the offeror or contractor in performing the contract.
17. "Cost-plus-a-percentage-of-cost contract" means the parties to a contract agree that the fee will be a predetermined percentage of the cost of work performed and the contract does not limit the cost and fee before authorization of performance.
18. "Day" means a calendar day and time is computed under A.R.S. § 1-243, unless otherwise specified in the solicitation or contract.
19. "Debarment" means an action taken by the director under R2-7-C901 that prohibits a person from participating in the state procurement process.
20. "Defective data" means data that is inaccurate, incomplete, or outdated.
21. "Dentist" means a person licensed under A.R.S. Title 32, Chapter 11.
22. "Descriptive literature" means information available in the ordinary course of business that shows the characteristics, construction, or operation of an item or service offered.
23. "Eligible procurement unit" means a local public procurement unit, any other state or agency of the United States, or a nonprofit educational or public health institution, including any certified non-profit agency that serves individuals with disabilities as defined in A.R.S. § 41- 2636, that is eligible under a cooperative agreement to use Arizona state contracts.
24. "eProcurement System" means the State's official electronic procurement system as authorized by the state procurement administrator under R2-7-201.

- ~~24~~25. “Filed” means delivery to an agency chief procurement officer or to the director, whichever is applicable, in a manner specified by the Arizona Procurement Code or a solicitation.
- ~~25~~26. “Finished goods” means units of a manufactured product awaiting sale.
- ~~26~~27. “Force account” as used in A.R.S. § 41-2572, means work performed by the state’s regularly employed personnel.
- ~~27~~28. “Governing instruments” means legal documents that establish the existence of an organization and define its powers, including articles of incorporation or association, constitution, charter, by-laws, or similar documents.
- ~~28~~29. “In writing” has the same meaning as “written” or “writing” in A.R.S. § 47-1201, which includes printing, typewriting, electronic transmission, facsimile, or any other intentional reduction to tangible form.
- ~~29~~30. “Interested party” means an offeror or prospective offeror whose economic interest is affected substantially and directly by issuance of a solicitation, an award or loss of an award. Whether an offeror or prospective offeror has an economic interest depends upon the circumstances of each case.
- ~~30~~31. “Legal counsel” means a person licensed as an attorney by the Arizona Supreme Court.
- ~~31~~32. “May” means something is permissive.
- ~~32~~33. “Negotiation” means an exchange or series of exchanges between the state and an offeror or contractor that allows the state or the offeror or contractor to revise an offer or contract, unless revision is specifically prohibited by this Chapter.
- ~~33~~34. “Offer” means a response to a solicitation.
- ~~34~~35. “Offeror” means a person who responds to a solicitation.
- ~~35~~36. “Physician” means a person licensed under A.R.S. Title 32, Chapters 7, 8, 13, 14, 15.1, 16, or 17.
- ~~36~~37. “Price data” means information concerning prices, including profit, for materials, services, or construction substantially similar to the materials, services, or construction to be procured under a contract or subcontract. In this definition, “prices” refers to offered selling prices, historical selling prices, or current selling prices of the items to be purchased.
- ~~37~~38. “Procurement file” means the official records file of the director whether located in the office of the director, ~~or~~ at a public procurement unit, or in the eProcurement System. The procurement file shall include (electronic or paper) the following:
- a. List of notified vendors,
 - b. Final solicitation,
 - c. Solicitation amendments,
 - d. Bids and offers,
 - e. Offer revisions and best and final offers,

- f. Discussions,
- g. Clarifications,
- h. Final evaluation reports, and
- i. Additional information, if requested by the agency chief procurement officer and approved by the state procurement administrator.

~~38:~~39. “Procurement request” means the document that initiates a procurement.

~~39:~~40. “Proposal” means an offer submitted in response to a solicitation.

~~40:~~41. “Prospective offeror” means a person that expresses an interest in a specific solicitation.

~~41:~~42. “Raw materials” means goods, excluding equipment and machinery, purchased for use in manufacturing a product.

~~42:~~43. “Reverse auction” means a procurement method in which offerors are invited to bid on specified goods or services through online bidding and real-time electronic bidding. During an electronic bidding process, offerors’ prices or relative ranking are available to competing offerors and offerors may modify their offer prices until the closing date and time.

~~43:~~44. “Shall” means something is mandatory.

~~44:~~45. “Small business” means a for-profit or not-for-profit organization, including its affiliates, with fewer than 100 full-time employees or gross annual receipts of less than \$4 million for the last complete fiscal year.

~~45:~~46. “Solicitation” means an invitation for bids, a request for technical offers, a request for proposals, a request for quotations, or any other invitation or request issued by the purchasing agency to invite a person to submit an offer.

~~46:~~47. “Source selection method” means a process that is approved by an agency chief procurement officer and used to select a person to enter into a contract for procurement.

~~47:~~48. “State procurement administrator” means the individual appointed by the director as a chief procurement officer for the state, or a state procurement administrator’s authorized designee. A different title may be used for this position.

~~48:~~49. “State procurement office” means an office that acts under the authority delegated to the state procurement administrator.

~~49:~~50. “Suspension” means an action taken by the director under R2-7-C901 that temporarily disqualifies a person from participating in a state procurement process.

~~50:~~51. “Trade secret” means information, including a formula, pattern, device, compilation, program, method, technique, or process, that is the subject of reasonable efforts to maintain its secrecy and that derives independent economic value, actual or potential, as a result of not being generally known to and not being readily ascertainable by legal means.

ARTICLE 3. SOURCE SELECTION AND CONTRACT FORMATION

PART B. COMPETITIVE SEALED BIDDING

R2-7-B306. Receipt, Opening, and Recording of Offers

- A. An agency chief procurement officer shall maintain a record of offers received for each solicitation and shall record the time and date when an offer is received. The agency chief procurement officer shall store each unopened offer in a secure place until the offer due date and time. When practical, an agency chief procurement officer should use the eProcurement system for this process.
- B. A purchasing agency may open an offer to identify the offeror. If this occurs, the agency chief procurement officer shall record the reason for opening the offer, the date and time the offer was opened, and the solicitation number. The agency chief procurement officer shall secure the offer and retain it for public opening.
- C. The agency chief procurement officer shall open offers after the offer due date and time. The agency chief procurement officer shall record the name of each offeror, the amount of each offer, and any other relevant information as determined by the agency chief procurement officer. The agency chief procurement officer shall make the record of offers available for public viewing.
- D. Except for the information identified in subsection (C), the agency chief procurement officer shall ensure that information contained in the offer remains confidential until contract award and is shown only to those persons assisting in the evaluation process.

R2-7-B307. Late Offers, Modifications, Withdrawals

- A. If an offer, modification, or withdrawal is received after the due date and time, at the location designated in the solicitation (which may be the eProcurement system), an agency chief procurement officer shall determine the offer, modification, or withdrawal as late. If the eProcurement system is the designated location for the offer, modification, or withdrawal, prospective offerors are responsible for allowing sufficient time to ensure that their submission is properly filed in the eProcurement system by the appropriate due date and time.
- B. The agency chief procurement officer shall reject a late offer, modification, or withdrawal unless:
 - 1. The document is received before the contract award at the location designated in the solicitation; and
 - 2. The document would have been received by the offer due date and time, but for the action or inaction of personnel directly serving the purchasing agency.
- C. Upon receiving a late offer, modification, or withdrawal, the agency chief procurement officer shall:
 - 1. If the document is hand delivered, refuse to accept delivery; or

2. If the document is not hand delivered, record the time and date of receipt and promptly send written notice of late receipt to the offeror. The agency chief procurement officer may discard the document within 30 days after the date on the notice unless the offeror requests the document be returned.
- D. The agency chief procurement officer shall document a refusal under subsection (C)(1) and place the document or a copy of the notice required in subsection (C)(2) in the procurement file.

PART C. COMPETITIVE SEALED PROPOSALS

R2-7-C302. Pre-offer Conferences

An agency chief procurement officer may conduct one or more pre-offer conferences within a reasonable time before offer due date and time to discuss the procurement requirements and solicit comments from prospective offerors. Amendments to the solicitation may be issued, if necessary, in accordance with ~~R2-7-B303~~ R2-7-C303.

R2-7-C306. Receipt, Opening, and Recording of Offers

- A. An agency chief procurement officer shall maintain a record of offers received for each solicitation and shall record the time and date when an offer is received. The agency chief procurement officer shall store each unopened offer in a secure place until the offer due date and time. When practical, an agency chief procurement officer should use the eProcurement system for this process.
- B. A purchasing agency may open an offer to identify the offeror. If this occurs, the agency chief procurement officer shall record the reason for opening the offer, the date and time the offer was opened, and the solicitation number. The agency chief procurement officer shall secure the offer and retain it for public opening.
- C. The agency chief procurement officer shall open offers after the offer due date and time. The agency chief procurement officer shall record the name of each offeror and any other relevant information as determined by the agency chief procurement officer. The agency chief procurement officer shall make the record of offers available for public viewing.
- D. Except for the information identified in subsection (C), the agency chief procurement officer shall ensure that information contained in the offer remains confidential until contract award and is shown only to those persons assisting in the evaluation process.

R2-7-C307. Late Offers, Modifications, and Withdrawals Before Offer Due Date and Time

- A. If an offer, modification, or withdrawal is not received by the offer due date and time, at the location designated in the solicitation (which may be the eProcurement system), an agency chief procurement

officer shall determine the offer, modification, or withdrawal as late. If the eProcurement system is the designated location for the offer, modification, or withdrawal, prospective offerors are responsible for allowing sufficient time to ensure that their submission is properly filed in the eProcurement system by the appropriate due date and time. This rule does not apply to revision or withdrawal of offers as described in R2-7-C314.

- B.** The agency chief procurement officer shall reject a late offer, modification, or withdrawal unless:
 - 1. The document is received before contract award at the location designated in the solicitation; and
 - 2. The document would have been received by the offer due date and time, but for the action or inaction of personnel directly serving the purchasing agency.
- C.** Upon receiving a late offer, modification, or withdrawal, the agency chief procurement officer shall:
 - 1. If the document is hand delivered, refuse to accept the delivery; or
 - 2. If the document is not hand delivered, record the time and date of receipt and promptly send written notice of late receipt to the offeror. The agency chief procurement officer may discard the document within 30 days after the date on the notice unless the offeror requests the document be returned.
- D.** The agency chief procurement officer shall document a refusal under (C)(1) and place the document or a copy of the notice required in (C)(2) in the procurement file.

R2-7-C315. Offer Revisions and Best and Final Offers

- A.** An agency chief procurement officer may request one or more written revisions to an offer. The agency chief procurement officer shall include in the written request:
 - 1. The date, time, and place for submission of offer revisions; and
 - 2. A statement that if offerors do not submit a written notice of withdrawal or a written offer revision, their immediate previous written offer will be accepted as their final offer.
- B.** An agency chief procurement officer shall request best and final offers from any offeror with whom negotiations have been conducted. The agency chief procurement officer shall include in the written request:
 - 1. The date, time, and place for submission of best and final offer; and
 - 2. A statement that if offerors do not submit a written best and final offer, their immediate previous written offer will be accepted as their best and final offer.
- C.** ~~The agency chief procurement officer shall request written best and final offers only once, unless the state procurement administrator makes a written determination that it is advantageous to the state to conduct further negotiations or change the state's requirements.~~
- D.** If an apparent mistake, relevant to the award determination, is discovered after opening of best and final offers, the agency chief procurement officer

shall contact the offeror for written confirmation. The agency chief procurement officer shall designate a time-frame within which the offeror shall either:

1. Confirm that no mistake was made and assert that the offer stands as submitted; or
2. Acknowledge that a mistake was made, and include the following in a written response:
 - a. Explanation of the mistake and any other relevant information,
 - b. A request for correction including the corrected offer or a request for withdrawal, and
 - c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.

E.D. An offeror who discovers a mistake in their best and final offer may request withdrawal or correction in writing, and shall include the following in the written request:

1. Explanation of the mistake and any other relevant information,
2. A request for correction including the corrected offer or a request for withdrawal, and
3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.

F.E. In response to a request made under subsections (C) or (D), the agency chief procurement officer shall make a written determination of whether correction or withdrawal will be allowed based on whether the action is consistent with fair competition and in the best interest of the state. If an offeror does not provide written confirmation of the best and final offer, the agency chief procurement officer shall make a written determination that the most recent written best and final offer submitted is the final best and final offer.

ARTICLE 5. PROCUREMENT OF CONSTRUCTION AND SPECIFIC PROFESSIONAL SERVICES

R2-7-501. Procurement of Specified Professional and Construction Services Repealed

~~**A.** The agency chief procurement officer shall procure specified professional services as defined in A.R.S. § 41-2578, 41-2579 and 41-2581 in the following manner:~~

- ~~1. Through existing state contracts if available;~~
- ~~2. In accordance with A.R.S. § 41-2535 and Part D of Article 3 of this Chapter or A.R.S. § 41-2533 procurements not to exceed the amount prescribed in A.R.S. § 41-2535;~~
- ~~3. May procure services in accordance with A.R.S. §§ 41-2536, 41-2537, or 41-2581.~~

~~**B.** Unless an alternate project delivery method is used as permitted under R2-7-503, the agency chief procurement officer shall procure construction in the following manner:~~

- ~~1. Through existing state contracts if available;~~

- ~~2. In accordance with A.R.S. § 41-2535 and Part D of Article 3 of this Chapter or A.R.S. § 41-2533 for single award procurements not to exceed the amount prescribed in A.R.S. § 41-2535 or 41-2579 for multiple award procurements;~~
 - ~~3. In accordance with A.R.S. § 41-2533 for procurements estimated to exceed the amount prescribed in A.R.S. § 41-2535; or~~
 - ~~4. May procure construction in accordance with A.R.S. § 41-2536 or 41-2581.~~
- ~~C. The agency chief procurement officer shall procure construction through an alternate project delivery method in the following manner:~~
- ~~1. Through existing state contracts if available;~~
 - ~~2. In accordance with A.R.S. § 41-2535 and Part D of Article 3 of this Chapter or A.R.S. § 41-2578 for procurements not estimated to exceed the amount prescribed in A.R.S. § 41-2535;~~
 - ~~3. May procure construction in accordance with A.R.S. § 41-2536, 41-2537, or 41-2581.~~

R2-7-505. Selection Committee

- A. The agency chief procurement officer shall appoint a selection committee when required under A.R.S. §§ 41-2578, 41-2579, or 41-2581.
- B. For the procurement of specified professional services not estimated to exceed the amount prescribed in A.R.S. § 41-2581, the selection committee shall meet the requirements of A.R.S. § 41-2578(C)(1) and shall consist of three to five members who are appropriately qualified including the agency chief procurement officer as chair.
- ~~C. For the procurement of specified professional services estimated to exceed the amount prescribed in A.R.S. § 41-2578, 41-2579, or 41-2581.~~

R2-7-511. Individual Job Order Contracting

- A. The state procurement administrator may award or authorize an agency chief procurement officer to award job order contracts for ~~job orders estimated to cost \$1,000,000 or less~~ construction, construction services or professional services to a single contractor or multiple contractors.
- B.** ~~An agency chief procurement officer may use job order contracting for individual job orders estimated to cost \$250,000 or less, provided that:~~
 - ~~1. The agency chief procurement officer obtains a cost estimate for the job order, before obtaining a cost proposal from the job order contractor; and~~
 - ~~2. The agency chief procurement officer makes a written determination that award of the job order is in the best interest of the state before awarding a job order.~~Contracts shall be awarded based on scoring of technical proposals, followed by scoring of price proposals.
- ~~C. When authorized by the state procurement administrator, an agency chief procurement officer may use~~

~~job order contracting for individual job orders estimated to cost more than \$250,000 or less than or equal to \$1,000,000, provided that:~~

- ~~1. The agency chief procurement officer obtains a cost estimate for the job order from a person as defined in A.R.S. Title 32, Chapter 1, Article 1 before requesting a cost proposal from the job order contractor; and~~
- ~~2. The agency chief procurement officer makes a written determination that award of the job order is in the best interest of the state before awarding a job order.~~ Price proposals shall be based on an adjustment factor(s) applied to a catalog of construction tasks.

D. Individual job orders issued under a job order contract shall not exceed \$2,000,000.00, unless authorized by the state procurement administrator.

E. All individual job orders exceeding \$1,000,000 shall obtain authorization from the chief procurement officer of the General Services Division.

F. ~~Upon completion of the job order, the agency chief procurement officer shall document in the contract file a summary of the estimated or final costs and the reasons the award is in the best interests of the state.~~ Individual job orders shall include an itemized list of each construction task required to complete the work with the task's associated unit price and applied adjustment factor.

~~**G.** Conduct the procurement, as necessary in accordance with R2-7-B302, R2-7-B311, R2-7-B313, and R2-7-B315, unless a modified process is approved by the state procurement administrator. The agency chief procurement officer may request cost proposals from multiple job order contractors or negotiate with a single job order contractor.~~

~~**H.** The agency chief procurement officer may authorize contract change orders or amendments that result in the individual job order cost exceeding \$1,000,000~~ \$2,000,000 ~~only with authorization from the state procurement administrator.~~

ARTICLE 9. LEGAL AND CONTRACTUAL REMEDIES

PART B. CONTRACT CLAIMS

R2-7-B901. Controversies Involving Contract Claims Against the State

A. A claimant shall file a contract claim with the agency chief procurement officer, with a copy to the state procurement administrator, within 180 days after the claim arises. A claim filed after 180 days of the date on which the claim arose shall be considered untimely and rejected. The claim shall include the following:

1. The name, address, and telephone number of the claimant;
2. The signature of the claimant or claimant's representative;
3. Identification of the purchasing agency and the solicitation or contract number;
4. A detailed statement of the legal and factual grounds of the claim including copies of the relevant documents; and

5. The form and dollar amount of the relief requested
- B.** The agency chief procurement officer shall have the authority to settle and resolve contract claims, except that the agency chief procurement officer shall receive prior written approval of the state procurement administrator for the settlement or resolution of a claim in excess of the amount prescribed in A.R.S. § 41-2535.

R2-7-B902. Agency Chief Procurement Officer's Decision

- A.** ~~If a claim cannot be resolved under R2-7-B901, the agency chief procurement officer shall, upon a written request by the claimant for a final decision, issue a written decision no more than 60 days after the request is filed. The agency chief procurement officer shall take reasonable steps to work with the parties to a claim to resolve all or some of the issues in the claim through either discussions or an informal settlement conference under R2-7-A910.~~
- B.** The parties to a claim shall have 60 days to resolve the claim, unless this period is modified by the agency chief procurement officer as described herein. The agency chief procurement officer may end the 60-day period early, if the agency chief procurement officer determines that the claim cannot be resolved by the parties. The agency chief procurement officer may also allow additional time for the parties to resolve the claim, upon request by all parties to the claim.
- C.** If any issues in the claim are not resolved by a mutual agreement between the parties to the claim as described in subsections A and B of this section, then the agency chief procurement officer shall issue a decision within 60 days of the end of the time period for discussions or settlement described in subsection B of this section. (~~continued from A~~) Before issuing a ~~final~~ decision, the agency chief procurement officer shall review the facts pertinent to the claim and secure any necessary assistance from legal, fiscal, and other advisors. Upon a showing of good cause, the director may grant the agency chief procurement officer up to 30 additional days to issue this decision.
- ~~B.~~D.** The agency chief procurement officer shall furnish the decision to the claimant, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, with a copy to the state procurement administrator. The decision shall include:
1. A description of the claim;
 2. A reference to the pertinent contract provision;
 3. A statement of the factual areas of agreement or disagreement;
 4. A statement of the agency chief procurement officer's decision, with supporting rationale; and
 5. A paragraph which substantially states: "This is the final decision of the agency chief procurement officer. This decision may be appealed to the director of the Department of Administration. If you

appeal, you must file a written notice of appeal containing the information required in R2-7-B904(B) with the director within 30 days from the date you receive this decision."

R2-7-B903. Issuance of a Timely Decision

If the agency chief procurement officer fails to issue a decision within ~~60 days after the request is filed~~ the appropriate time period as described in R2-7-B902, the claimant may proceed as if the agency chief procurement officer had issued an adverse decision.

ARTICLE 1. GENERAL PROVISIONS**R2-7-101. Definitions**

In this Chapter, unless the context otherwise requires:

1. "Affiliate" means any person whose governing instruments require it to be bound by the decision of another person or whose governing board includes enough voting representatives of the other person to cause or prevent action, whether or not the power is exercised. The term applies to persons doing business under a variety of names, persons in a parent-subsidiary relationship, or persons that are similarly affiliated.
2. "Agency chief procurement officer" means the procurement officer within a state governmental unit, who is acting under specific, written authority from the state procurement administrator in accordance with R2-7-202 or any person delegated that authority, in writing, under R2-7-203. The term does not include any other person within a state governmental unit who does not have this written delegation of authority.
3. "Aggregate dollar amount" means purchase price, including taxes and delivery charges, for the term of the contract and accounting for all allowable extensions and options.
4. "Alternate project delivery methods" means design-build, construction-management-at-risk, and job-order-contracting construction services.
5. "Arizona Procurement Code" means A.R.S. Title 41, Chapter 23 and this Chapter.
6. "Arizona state contract" means a contract established or authorized by the state procurement administrator for use by state governmental units and eligible procurement units.
7. "Award" means a determination by the state that it is entering into a contract with one or more offerors.
8. "Best and Final Offer" means a revision to an offer submitted after negotiations are completed that contain the offeror's most favorable terms for price, service, and products to be delivered.
9. "Bid" means an offer in response to solicitation.
10. "Bidder" means "offeror" as defined in R2-7-101(34).
11. "Brand name or equivalent specification" means a written description that uses one or more manufacturers' product name or catalog item, to describe the standard of quality, performance, and other characteristics that meet state requirements and provides for submission of equivalent products or services.
12. "Brand name specification" means a written description limited to a list of one or more items by manufacturers' product name or catalog item to describe the standard of quality, performance, and other characteristics that meet state requirements.
13. "Clergy" includes the same persons described in A.R.S. § 32-3271(A)(3).
14. "Component" means a part of a manufactured product.
15. "Contract amendment" means a written modification of a contract under A.R.S. § 41-2503(8) or a unilateral exercise of a right contained in the contract.
16. "Cost data" means information concerning the actual or estimated cost of labor, material, overhead, and other cost elements that have been incurred or will be incurred by the offeror or contractor in performing the contract.
17. "Cost-plus-a-percentage-of-cost contract" means the parties to a contract agree that the fee will be a predetermined percentage of the cost of work performed and the contract does not limit the cost and fee before authorization of performance.
18. "Day" means a calendar day and time is computed under A.R.S. § 1-243, unless otherwise specified in the solicitation or contract.
19. "Debarment" means an action taken by the director under R2-7-C901 that prohibits a person from participating in the state procurement process.
20. "Defective data" means data that is inaccurate, incomplete, or outdated.
21. "Dentist" means a person licensed under A.R.S. Title 32, Chapter 11.
22. "Descriptive literature" means information available in the ordinary course of business that shows the characteristics, construction, or operation of an item or service offered.
23. "Eligible procurement unit" means a local public procurement unit, any other state or agency of the United States, or a nonprofit educational or public health institution, including any certified non-profit agency that serves individuals with disabilities as defined in A.R.S. § 41-2636, that is eligible under a cooperative agreement to use Arizona state contracts.
24. "Filed" means delivery to an agency chief procurement officer or to the director, whichever is applicable, in a manner specified by the Arizona Procurement Code or a solicitation.
25. "Finished goods" means units of a manufactured product awaiting sale.
26. "Force account" as used in A.R.S. § 41-2572, means work performed by the state's regularly employed personnel.
27. "Governing instruments" means legal documents that establish the existence of an organization and define its powers, including articles of incorporation or association, constitution, charter, by-laws, or similar documents.
28. "In writing" has the same meaning as "written" or "writing" in A.R.S. § 47-1201, which includes printing, typewriting, electronic transmission, facsimile, or any other intentional reduction to tangible form.
29. "Interested party" means an offeror or prospective offeror whose economic interest is affected substantially and directly by issuance of a solicitation, an award or loss of an award. Whether an offeror or prospective offeror has an economic interest depends upon the circumstances of each case.
30. "Legal counsel" means a person licensed as an attorney by the Arizona Supreme Court.
31. "May" means something is permissive.
32. "Negotiation" means an exchange or series of exchanges between the state and an offeror or contractor that allows the state or the offeror or contractor to revise an offer or contract, unless revision is specifically prohibited by this Chapter.
33. "Offer" means a response to a solicitation.
34. "Offeror" means a person who responds to a solicitation.
35. "Physician" means a person licensed under A.R.S. Title 32, Chapters 7, 8, 13, 14, 15.1, 16, or 17.
36. "Price data" means information concerning prices, including profit, for materials, services, or construction substantially similar to the materials, services, or construction to be procured under a contract or subcontract. In this definition, "prices" refers to offered selling prices, historical selling prices, or current selling prices of the items to be purchased.
37. "Procurement file" means the official records file of the director whether located in the office of the director or at

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a public procurement unit. The procurement file shall include (electronic or paper) the following:

- a. List of notified vendors,
 - b. Final solicitation,
 - c. Solicitation amendments,
 - d. Bids and offers,
 - e. Offer revisions and best and final offers,
 - f. Discussions,
 - g. Clarifications,
 - h. Final evaluation reports, and
 - i. Additional information, if requested by the agency chief procurement officer and approved by the state procurement administrator.
38. "Procurement request" means the document that initiates a procurement.
 39. "Proposal" means an offer submitted in response to a solicitation.
 40. "Prospective offeror" means a person that expresses an interest in a specific solicitation.
 41. "Raw materials" means goods, excluding equipment and machinery, purchased for use in manufacturing a product.
 42. "Reverse auction" means a procurement method in which offerors are invited to bid on specified goods or services through online bidding and real-time electronic bidding. During an electronic bidding process, offerors' prices or relative ranking are available to competing offerors and offerors may modify their offer prices until the closing date and time.
 43. "Shall" means something is mandatory.
 44. "Small business" means a for-profit or not-for-profit organization, including its affiliates, with fewer than 100 full-time employees or gross annual receipts of less than \$4 million for the last complete fiscal year.
 45. "Solicitation" means an invitation for bids, a request for technical offers, a request for proposals, a request for quotations, or any other invitation or request issued by the purchasing agency to invite a person to submit an offer.
 46. "Source selection method" means a process that is approved by an agency chief procurement officer and used to select a person to enter into a contract for procurement.
 47. "State procurement administrator" means the individual appointed by the director as a chief procurement officer for the state, or a state procurement administrator's authorized designee. A different title may be used for this position.
 48. "State procurement office" means an office that acts under the authority delegated to the state procurement administrator.
 49. "Suspension" means an action taken by the director under R2-7-C901 that temporarily disqualifies a person from participating in a state procurement process.
 50. "Trade secret" means information, including a formula, pattern, device, compilation, program, method, technique, or process, that is the subject of reasonable efforts to maintain its secrecy and that derives independent economic value, actual or potential, as a result of not being generally known to and not being readily ascertainable by legal means.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed; new Section

made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 3118, effective January 7, 2013 (Supp. 12-4). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-102. Written Determinations

- A. If a written determination is required under applicable law, an agency chief procurement officer shall include the basis for the action taken in the written determination.
- B. The agency chief procurement officer shall place the written determination into the purchasing agency's procurement file.
- C. A procurement file located at a state agency is considered the official records file of the director as required by A.R.S. § 41-2502, if the file is maintained by an agency chief procurement officer.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed; new Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-103. Confidential Information

- A. If a person wants to assert that a person's offer, specification, or protest contains a trade secret or other proprietary information, a person shall include with the submission a statement supporting this assertion. A person shall clearly designate any trade secret and other proprietary information, using the term "confidential". Contract terms and conditions, pricing, and information generally available to the public are not considered confidential information under this Section.
- B. Until a final determination is made under subsection (C), an agency chief procurement officer shall not disclose information designated as confidential under subsection (A) except to those individuals deemed by an agency chief procurement officer to have a legitimate state interest.
- C. Upon receipt of a submission, an agency chief procurement officer shall make one of the following written determinations:
 1. The designated information is confidential and the agency chief procurement officer shall not disclose the information except to those individuals deemed by the agency chief procurement officer to have a legitimate state interest;
 2. The designated information is not confidential; or
 3. Additional information is required before a final confidentiality determination can be made.
- D. If an agency chief procurement officer determines that information submitted is not confidential, a person who made the submission shall be notified in writing. The notice shall include a time period for requesting a review of the determination by the state procurement administrator.
- E. An agency chief procurement officer may release information designated as confidential under subsection (A) if:
 1. A request for review is not received by the state procurement administrator within the time period specified in the notice; or
 2. The state procurement administrator, after review, makes a written determination that the designated information is not confidential.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective

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- f. Any specific responsibility criteria;
 - g. Whether the offeror is required to submit samples, descriptive literature, or technical data with the offer;
 - h. Any evaluation criteria;
 - i. A statement of where documents incorporated by reference are available for inspection and copying;
 - j. A statement that the agency may cancel the solicitation or reject an offer in whole or in part;
 - k. Certification by the offeror that submission of the offer did not involve collusion or other anticompetitive practices;
 - l. Certification by the offeror of compliance with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance;
 - m. That the offeror is required to declare whether the offeror has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including, but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body;
 - n. Any bid security required;
 - o. The means required for submission of an offer. The solicitation shall specifically indicate whether hand delivery, U.S. mail, electronic mail, facsimile, or other means are acceptable methods of submission;
 - p. Any designation of the specific bid items and amounts to be recorded at offer opening; and
 - q. Any other offer submission requirements;
 - 2. Specifications, including:
 - a. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
 - b. If a brand name or equivalent specification is used, instructions that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to the brands designated qualify for consideration; and
 - c. Any other specification requirements;
 - 3. Terms and Conditions, including:
 - a. Whether the contract will include an option for extension; and
 - b. Any other contract terms and conditions.
- A. An agency chief procurement officer shall issue a solicitation amendment to do any or all of the following:
 1. Make changes in the solicitation;
 2. Correct defects or ambiguities;
 3. Provide additional information or instructions; or
 4. Extend the offer due date and time if the agency chief procurement officer determines that an extension is in the best interest of the state.
 - B. If a solicitation is changed by a solicitation amendment, the agency chief procurement officer shall notify suppliers to whom the agency chief procurement officer distributed the solicitation.
 - C. It is the responsibility of the offeror to obtain any solicitation amendments. An offeror shall acknowledge receipt of an amendment in the manner specified in the solicitation or solicitation amendment on or before the offer due date and time.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-B304. Modification or Withdrawal of Offer Before Offer Due Date and Time

- A. An offeror may modify or withdraw its offer, in writing, before the offer due date and time.
- B. The agency chief procurement officer shall place the document submitted by the offeror in the procurement file as a record of the modification or withdrawal.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-B305. Cancellation of a Solicitation Before Offer Due Date and Time

- A. Based on the best interest of the state, an agency chief procurement officer may cancel a solicitation before the offer due date and time.
- B. The agency chief procurement officer shall notify suppliers to whom the agency chief procurement officer distributed the solicitation.
- C. The agency chief procurement officer shall not open offers after cancellation. The agency chief procurement officer may discard the offer after 30 days from notice of solicitation cancellation, unless the offeror requests the offer be returned.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-B306. Receipt, Opening, and Recording of Offers

- A. An agency chief procurement officer shall maintain a record of offers received for each solicitation and shall record the time and date when an offer is received. The agency chief procurement officer shall store each unopened offer in a secure place until the offer due date and time.
- B. A purchasing agency may open an offer to identify the offeror. If this occurs, the agency chief procurement officer shall record the reason for opening the offer, the date and time the offer was opened, and the solicitation number. The agency chief procurement officer shall secure the offer and retain it for public opening.
- C. The agency chief procurement officer shall open offers after the offer due date and time. The agency chief procurement officer shall record the name of each offeror, the amount of each offer, and any other relevant information as determined by the agency chief procurement officer. The agency chief procurement officer shall make the record of offers available for public viewing.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-B302. Pre-offer Conferences

An agency chief procurement officer may conduct one or more pre-offer conferences. If a pre-offer conference is conducted, it shall be a reasonably sufficient time prior to the offer due date and time. Statements made during a pre-offer conference are not amendments to the solicitation.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-B303. Solicitation Amendment

- D. Except for the information identified in subsection (C), the agency chief procurement officer shall ensure that information contained in the offer remains confidential until contract award and is shown only to those persons assisting in the evaluation process.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-B307. Late Offers, Modifications, Withdrawals

- A. If an offer, modification, or withdrawal is received after the due date and time, at the location designated in the solicitation, an agency chief procurement officer shall determine the offer, modification, or withdrawal as late.
- B. The agency chief procurement officer shall reject a late offer, modification, or withdrawal unless:
1. The document is received before the contract award at the location designated in the solicitation; and
 2. The document would have been received by the offer due date and time, but for the action or inaction of personnel directly serving the purchasing agency.
- C. Upon receiving a late offer, modification, or withdrawal, the agency chief procurement officer shall:
1. If the document is hand delivered, refuse to accept delivery; or
 2. If the document is not hand delivered, record the time and date of receipt and promptly send written notice of late receipt to the offeror. The agency chief procurement officer may discard the document within 30 days after the date on the notice unless the offeror requests the document be returned.
- D. The agency chief procurement officer shall document a refusal under subsection (C)(1) and place the document or a copy of the notice required in subsection (C)(2) in the procurement file.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-B308. Cancellation of Solicitation After Receipt of Offers and Before Award

- A. Based on the best interest of the state, an agency chief procurement officer may cancel a solicitation after offer due date and time. The agency chief procurement officer shall prepare a written justification for cancellation and place it in the procurement file.
- B. The agency chief procurement officer shall notify offerors of the cancellation in writing.
- C. The agency chief procurement officer shall retain offers received under the canceled solicitation in the procurement file. If the purchasing agency intends to issue another solicitation within six months after cancellation of the procurement, the agency chief procurement officer shall withhold the offers from public inspection. After award of a contract under the subsequent solicitation, the agency chief procurement officer shall make offers submitted in response to the canceled solicitation available for public inspection except for information determined to be confidential pursuant to R2-7-103.
- D. In the event of cancellation, the agency chief procurement officer shall promptly return any bid security provided by an offeror.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508,

effective April 8, 2006 (Supp. 06-1).

R2-7-B309. One Offer Received

If only one offer is received in response to a solicitation, the agency chief procurement officer shall review the offer and either:

1. Award the contract to the offeror and prepare a written determination that:
 - a. The price submitted is fair and reasonable under R2-7-702,
 - b. The offer is responsive, and
 - c. The offeror is responsible, or
2. Reject the offer and:
 - a. Resolicit for new offers,
 - b. Cancel the procurement, or
 - c. Use a different source selection method authorized under the Arizona Procurement Code.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 3118, effective January 7, 2013 (Supp. 12-4).

R2-7-B310. Offer Mistakes Discovered After Offer Opening and Before Award

- A. If an apparent mistake in an offer, relevant to the award determination, is discovered after opening and before award, an agency chief procurement officer shall contact the offeror for written confirmation of the offer. The agency chief procurement officer shall designate a time-frame within which the offeror shall either:
1. Confirm that no mistake was made and assert that the offer stands as submitted; or
 2. Acknowledge that a mistake was made, and include all of the following in a written response:
 - a. Explanation of the mistake and any other relevant information;
 - b. A request for correction including the corrected offer or a request for withdrawal; and
 - c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- B. An offeror who discovers a mistake in its offer may request correction or withdrawal in writing and shall include all of the following in the written request:
1. Explanation of the mistake and any other relevant information;
 2. A request for correction including the corrected offer or a request for withdrawal; and
 3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- C. An agency chief procurement officer may permit an offeror to correct a mistake if the mistake and the intended offer are evident in the uncorrected offer; for example, an error in the extension of unit prices. The agency chief procurement officer shall not permit a correction that is prejudicial to the state or fair competition.
- D. An agency chief procurement officer shall permit an offeror to furnish information called for in the solicitation but not supplied if the intended offer is evident and submittal of the information is not prejudicial to other offerors.
- E. An agency chief procurement officer shall make a written determination of whether correction or withdrawal is permitted, based on whether the action is consistent with fair competition and in the best interest of the state.
- F. If the offeror fails to act under subsection (A) the offeror is considered nonresponsive and the agency chief procurement

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lawfully prohibited from participating in any public procurement activity, including, but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body;

- n. Any offer security required;
 - o. The means required for submission of offer. The solicitation shall specifically indicate whether hand delivery, U.S. mail, electronic mail, facsimile, or other means are acceptable methods of submission;
 - p. Any cost or pricing data required;
 - q. The type of contract to be used;
 - r. A statement that negotiations may be conducted with offerors reasonably susceptible of being selected for award; and
 - s. Any other offer requirements specific to the solicitation.
2. Specifications, including:
- a. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
 - b. If a brand name or equivalent specification is used, instructions that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to those brands designated shall qualify for consideration; and
 - c. Any other specification requirements specific to the solicitation.
3. Terms and Conditions, including:
- a. Whether the contract is to include an extension option; and
 - b. Any other contract terms and conditions.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-C302. Pre-offer Conferences

An agency chief procurement officer may conduct one or more pre-offer conferences within a reasonable time before offer due date and time to discuss the procurement requirements and solicit comments from prospective offerors. Amendments to the solicitation may be issued, if necessary, in accordance with R2-7-B303.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-C303. Solicitation Amendment

- A. An agency chief procurement officer shall issue a solicitation amendment to do any or all of the following:
 - 1. Make changes in the solicitation;
 - 2. Correct defects or ambiguities;
 - 3. Provide additional information or instructions; or
 - 4. Extend the offer due date and time if the agency chief procurement officer determines that an extension is in the best interest of the state.
- B. If a solicitation is changed by a written solicitation amendment, the agency chief procurement officer shall notify suppliers to whom the agency chief procurement officer distributed the solicitation.

- C. It is the responsibility of the offeror to obtain any solicitation amendments. An offeror shall acknowledge receipt of an amendment in a manner specified in the solicitation amendment on or before the offer due date and time.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-C304. Modification or Withdrawal of Offer Before Offer Due Date and Time

- A. An offeror may modify or withdraw their offer at any time, in writing, before the offer due date and time.
- B. The agency chief procurement officer shall place the document submitted in the procurement file as a record of the modification or withdrawal.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-C305. Cancellation of Solicitation Before Offer Due Date and Time

- A. Based on the best interest of the state, an agency chief procurement officer may cancel a solicitation before the offer due date and time.
- B. The agency chief procurement officer shall notify suppliers to whom the agency chief procurement officer distributed the solicitation.
- C. The agency chief procurement officer shall not open offers after cancellation. The agency chief procurement officer may discard the offer after 30 days from notice of solicitation cancellation unless the offeror requests the offer be returned.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-C306. Receipt, Opening, and Recording of Offers

- A. An agency chief procurement officer shall maintain a record of offers received for each solicitation and shall record the time and date when an offer is received. The agency chief procurement officer shall store each unopened offer in a secure place until the offer due date and time.
- B. A purchasing agency may open an offer to identify the offeror. If this occurs, the agency chief procurement officer shall record the reason for opening the offer, the date and time the offer was opened, and the solicitation number. The agency chief procurement officer shall secure the offer and retain it for public opening.
- C. The agency chief procurement officer shall open offers after the offer due date and time. The agency chief procurement officer shall record the name of each offeror and any other relevant information as determined by the agency chief procurement officer. The agency chief procurement officer shall make the record of offers available for public viewing.
- D. Except for the information identified in subsection (C), the agency chief procurement officer shall ensure that information contained in the offer remains confidential until contract award and is shown only to those persons assisting in the evaluation process.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-C307. Late Offers, Modifications, and Withdrawals Before Offer Due Date and Time

- A. If an offer, modification, or withdrawal is not received by the offer due date and time, at the location designated in the solicitation, an agency chief procurement officer shall determine the offer, modification, or withdrawal as late. This rule does not apply to revision or withdrawal of offers as described in R2-7-C314.
- B. The agency chief procurement officer shall reject a late offer, modification, or withdrawal unless:
1. The document is received before contract award at the location designated in the solicitation; and
 2. The document would have been received by the offer due date and time, but for the action or inaction of personnel directly serving the purchasing agency.
- C. Upon receiving a late offer, modification, or withdrawal, the agency chief procurement officer shall:
1. If the document is hand delivered, refuse to accept the delivery; or
 2. If the document is not hand delivered, record the time and date of receipt and promptly send written notice of late receipt to the offeror. The agency chief procurement officer may discard the document within 30 days after the date on the notice unless the offeror requests the document be returned.
- D. The agency chief procurement officer shall document a refusal under (C)(1) and place the document or a copy of the notice required in (C)(2) in the procurement file.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-C308. Cancellation of Solicitation After Offer Opening and Before Award

- A. Based on the best interest of the state, an agency chief procurement officer may cancel a solicitation after offer due date and time. The agency chief procurement officer shall prepare a written justification for cancellation and place it in the procurement file.
- B. The agency chief procurement officer shall notify offerors of the cancellation in writing.
- C. The agency chief procurement officer shall retain offers received under the canceled solicitation in the procurement file. If the purchasing agency intends to issue another solicitation within six months after cancellation of the procurement, the agency chief procurement officer may withhold the offers from public inspection. After award of a contract under the subsequent solicitation, the agency chief procurement officer shall make offers submitted in response to the cancelled solicitation open for public inspection except for information determined to be confidential pursuant to R2-7-103.
- D. In the event of cancellation, the agency chief procurement officer shall promptly return any offer security provided by an offeror.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-C309. Only One Offer Received

- If only one offer is received in response to a solicitation, the agency chief procurement officer shall review the offer and either:
1. Award the contract to the offeror and prepare a written determination that:
 - a. The price submitted is fair and reasonable pursuant to R2-7-702; and
 - b. The offeror is responsive; and
 - c. The offeror is responsible; or
 2. Reject the offer and:
 - a. Resolicit for new offers;
 - b. Cancel the procurement; or
 - c. Use a different source selection method authorized under the Arizona Procurement Code.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 3118, effective January 7, 2013 (Supp. 12-4).

R2-7-C310. Extension of Offer Acceptance Period

- A. To extend the offer acceptance period, an agency chief procurement officer shall notify offerors in writing of an extension and request written concurrence from all offerors.
- B. To be eligible for a contract award, an offeror shall submit written concurrence to the extension. The agency chief procurement officer shall not consider the offer from an offeror who fails to respond to the notice of extension.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-C311. Determination of Not Susceptible for Award

- A. An agency chief procurement officer may determine at any time during the evaluation period and before award that an offer is not susceptible for award. The agency chief procurement officer shall place a written determination, based on one or more of the following, in the procurement file:
1. The offer fails to substantially meet one or more of the mandatory requirements of the solicitation;
 2. The offer fails to comply with any susceptibility criteria identified in the solicitation; or
 3. The offer is not susceptible for award in comparison to other offers based on the criteria set forth in the solicitation. When there is doubt as to whether an offer is susceptible for award, the offer should be included for further consideration.
- B. The agency chief procurement officer shall promptly notify the offeror in writing of the final determination that the offer is not susceptible for award, unless the agency chief procurement officer determines notification to the offeror would compromise the state's ability to negotiate with other offerors.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 3118, effective January 7, 2013 (Supp. 12-4). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-C312. Responsibility Determinations

- A. An agency chief procurement officer shall determine, at any time during the evaluation period and before award, that an offeror is responsible or nonresponsible.
- B. The agency chief procurement officer may consider the following factors before determining that an offeror is responsible or nonresponsible:
1. The offeror's financial, business, personnel, or other resources, including subcontractors;
 2. The offeror's record of performance and integrity;
 3. Whether the offeror has been debarred or suspended;
 4. Whether the offeror is legally qualified to contract with the state;
 5. Whether the offeror promptly supplied all requested information concerning its responsibility; and
 6. Whether the offeror meets any responsibility criteria specified in the solicitation.

- C. The agency chief procurement officer shall promptly notify the offeror in writing of the final determination that the offer is nonresponsible unless the agency chief procurement officer determines notification to the offeror would compromise the state's ability to negotiate with other offerors. The agency chief procurement office shall file a copy of the determination in the procurement file.
- D. The agency chief procurement officer shall only disclose responsibility information furnished by an offeror in accordance with A.R.S. § 41-2540(B).
- E. For the offeror awarded a contract, the agency chief procurement officer's signature on the contract constitutes a determination that the offeror is responsible.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-C313. Clarification of Offers

- A. The purpose for clarifications is to provide for a greater mutual understanding of the offer. Clarifications are not negotiations and material changes to the request for proposal or offer shall not be made by clarification.
- B. The agency chief procurement officer may request clarifications from offerors at any time after receipt of offers. Clarifications may be requested orally or in writing. If clarifications are requested orally, the offeror shall confirm the request in writing. A request for clarifications shall not be considered a determination that the offeror is susceptible for award.
- C. The agency chief procurement officer shall retain any clarifications in the procurement file.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-C314. Negotiations with Responsible Offerors and Revisions of Offers

- A. An agency chief procurement officer shall establish procedures and schedules for conducting negotiations. The agency chief procurement officer shall ensure there is no disclosure of one offeror's price or any information derived from competing offers to another offeror.
- B. Negotiations may be conducted orally or in writing. If oral negotiations are conducted, the agency chief procurement officer shall confirm the negotiations in writing and provide to the offeror.
- C. If negotiations are conducted, negotiations shall be conducted with all offerors determined to be reasonably susceptible for award. Offerors may revise offers based on negotiations provided that any revision is confirmed in writing.
- D. An agency chief procurement officer may conduct negotiations with responsible offerors to improve offers in such areas as cost, price, specifications, performance, or terms, to achieve best value for the state based on the requirements and the evaluation factors set forth in the solicitation.
- E. Responsible offerors determined to be susceptible for award, with which negotiations have been held, may revise their offer in writing during negotiations.
- F. An offeror may withdraw an offer at any time before the best and final offer due date and time by submitting a written request to the agency chief procurement officer.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 3118, effective January 7, 2013 (Supp. 12-4). Amended by final rulemaking at 20 A.A.R.

3510, effective February 2, 2015 (Supp. 14-4).

R2-7-C315. Offer Revisions and Best and Final Offers

- A. An agency chief procurement officer may request written revisions to an offer. The agency chief procurement officer shall include in the written request:
 1. The date, time, and place for submission of offer revisions; and
 2. A statement that if offerors do not submit a written notice of withdrawal or a written offer revision, their immediate previous written offer will be accepted as their final offer.
- B. An agency chief procurement officer shall request best and final offers from any offeror with whom negotiations have been conducted. The agency chief procurement officer shall include in the written request:
 1. The date, time, and place for submission of best and final offer; and
 2. A statement that if offerors do not submit a written best and final offer, their immediate previous written offer will be accepted as their best and final offer.
- C. The agency chief procurement officer shall request written best and final offers only once, unless the state procurement administrator makes a written determination that it is advantageous to the state to conduct further negotiations or change the state's requirements.
- D. If an apparent mistake, relevant to the award determination, is discovered after opening of best and final offers, the agency chief procurement officer shall contact the offeror for written confirmation. The agency chief procurement officer shall designate a time-frame within which the offeror shall either:
 1. Confirm that no mistake was made and assert that the offer stands as submitted; or
 2. Acknowledge that a mistake was made, and include the following in a written response:
 - a. Explanation of the mistake and any other relevant information,
 - b. A request for correction including the corrected offer or a request for withdrawal, and
 - c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- E. An offeror who discovers a mistake in their best and final offer may request withdrawal or correction in writing, and shall include the following in the written request:
 1. Explanation of the mistake and any other relevant information,
 2. A request for correction including the corrected offer or a request for withdrawal, and
 3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- F. In response to a request made under subsections (C) or (D), the agency chief procurement officer shall make a written determination of whether correction or withdrawal will be allowed based on whether the action is consistent with fair competition and in the best interest of the state. If an offeror does not provide written confirmation of the best and final offer, the agency chief procurement officer shall make a written determination that the most recent written best and final offer submitted is the final best and final offer.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 3118, effective January 7, 2013 (Supp. 12-4). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-C316. Evaluation of Offers

84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). New Section made by final rulemaking at 18 A.A.R. 3118, effective January 7, 2013 (Supp. 12-4).

R2-7-405. Repealed**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-406. Reserved**R2-7-407. Repealed****Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-408. Repealed**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-409. Repealed**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-410. Repealed**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-411. Repealed**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective

April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

ARTICLE 5. PROCUREMENT OF CONSTRUCTION AND SPECIFIC PROFESSIONAL SERVICES**R2-7-501. Procurement of Specified Professional and Construction Services**

- A.** The agency chief procurement officer shall procure specified professional services as defined in A.R.S. §§ 41-2578, 41-2579, and 41-2581 in the following manner:
1. Through existing state contracts if available;
 2. In accordance with A.R.S. § 41-2535 and Part D of Article 3 of this Chapter or A.R.S. § 41-2533 procurements not to exceed the amount prescribed in A.R.S. § 41-2535;
 3. May procure services in accordance with A.R.S. §§ 41-2536, 41-2537, or 41-2581.
- B.** Unless an alternate project delivery method is used as permitted under R2-7-503, the agency chief procurement officer shall procure construction in the following manner:
1. Through existing state contracts if available;
 2. In accordance with A.R.S. § 41-2535 and Part D of Article 3 of this Chapter or A.R.S. § 41-2533 for single award procurements not to exceed the amount prescribed in A.R.S. §§ 41-2535 or 41-2579 for multiple award procurements;
 3. In accordance with A.R.S. § 41-2533 for procurements estimated to exceed the amount prescribed in A.R.S. § 41-2535; or
 4. May procure construction in accordance with A.R.S. §§ 41-2536 or 41-2581.
- C.** The agency chief procurement officer shall procure construction through an alternate project delivery method in the following manner:
1. Through existing state contracts if available;
 2. In accordance with A.R.S. § 41-2535 and Part D of Article 3 of this Chapter or A.R.S. § 41-2578 for procurements not estimated to exceed the amount prescribed in A.R.S. § 41-2535;
 3. May procure construction in accordance with A.R.S. §§ 41-2536, 41-2537, or 41-2581.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Section repealed; new Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). New Section made by final rulemaking at 18 A.A.R. 3118, effective January 7, 2013 (Supp. 12-4). Amended by final rulemaking at 18 A.A.R. 3118, effective January 7, 2013 (Supp. 12-4).

R2-7-502. Compliance with the Department

A purchasing agency shall comply with the procurement and contract administration requirements of the Department as required by A.R.S. § 41-790 et seq.

Historical Note

Adopted effective April 2, 1993 (Supp. 93-2). Amended by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-503. Procurement of Construction Using Alternate Project Delivery Method

The agency chief procurement officer may use an alternate project delivery method if it is in the best interest of the state pursuant to A.R.S. §§ 41-2578 and 41-2579, based on the following factors:

1. Cost and cost control method,
2. Value engineering,
3. Market conditions,
4. Schedule,
5. Required specialized expertise,
6. Technical complexity of the project, or
7. Project management.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed; new Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 3118, effective January 7, 2013 (Supp. 12-4). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-504. Notice

- A. The agency chief procurement officer shall provide a copy of a solicitation for specified professional services or construction services to any person who requests a copy of the solicitation.
- B. For procurements not estimated to exceed the amount prescribed in A.R.S. § 41-2535, the agency chief procurement officer shall provide notice of the procurement in accordance with Part D of Article 3 of this Chapter, unless otherwise authorized pursuant to A.R.S. §§ 41-2536 or 41-2537.
- C. For procurements estimated to exceed the amount prescribed in A.R.S. § 41-2535:
 1. The agency chief procurement officer shall make the solicitation available to prospective offerors registered at the State Procurement Office for the specific material, service, or construction being solicited; and
 2. The agency chief procurement officer shall advertise at least once in a general circulation or industry trade publication. If practicable, the date of the advertisement shall be at least 14 days before the offer due date.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed; new Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 3118, effective January 7, 2013 (Supp. 12-4).

R2-7-505. Selection Committee

- A. The agency chief procurement officer shall appoint a selection committee when required under A.R.S. §§ 41-2578, 41-2579, or 41-2581.
- B. For the procurement of specified professional services not estimated to exceed the amount prescribed in A.R.S. § 41-2581, the selection committee shall meet the requirements of A.R.S. § 41-2578(C)(1) and shall consist of three to five members who are appropriately qualified including the agency chief procurement officer as chair.
- C. For the procurement of specified professional services estimated to exceed the amount prescribed in A.R.S. §§ 41-2578, 41-2579, or 41-2581.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Section repealed; new Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 3118, effective January 7, 2013 (Supp. 12-4).

R2-7-506. Bid Security

- A. The agency chief procurement officer shall include the bid security requirements of A.R.S. § 41-2573 in the solicitation.
- B. If an offeror fails to submit the bid security required by A.R.S. § 41-2573 with the offer, the agency chief procurement officer shall reject the offer.
- C. The offeror shall submit bid security in one of the following forms:
 1. An annual or one-time surety bond executed solely by a surety company authorized to transact surety business in this state, issued by the Director of the Department of Insurance under A.R.S. Title 20, Chapter 2, Article 1, and in a format prescribed by A.R.S. § 41-2573 and this Section; or
 2. A certified or cashier check.
- D. The state procurement administrator or, in the case of construction on state property, the Assistant Director of General Services, may issue a written determination to accept the bid security if the bid security fails to comply in a nonsubstantial manner when:
 1. Only one offer is received and there is not sufficient time to re-solicit;
 2. The amount of the bid security submitted, although less than the amount required by the solicitation, is equal to or greater than the difference between the apparent low offer and the next higher acceptable offer; or
 3. The bid security is inadequate as a result of correcting or modifying an offer in accordance with R2-7-B310, if the offeror increases the amount of the security to required limits within two days after notification.
- E. The state procurement administrator or, in the case of construction on state property, the Assistant Director of General Services, shall determine if the bid security may be released without penalty under § 41-2573(E).

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Amended by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-507. Offer Mistakes Discovered After Offer Opening and Before Award

- A. If an apparent mistake, relevant to the award determination is discovered after offer opening and before award, the agency chief procurement officer shall contact the offeror for written confirmation of the offer. The agency chief procurement officer shall designate a time-frame within which the offeror shall either:
 1. Confirm that no mistake was made and assert that the offer stands as submitted; or
 2. Acknowledge that a mistake was made, and include all of the following in a written response:
 - a. Explanation of the mistake and any other relevant information;

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- b. A request for correction including the corrected offer or a request for withdrawal; and
 - c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- B.** An offeror who discovers a mistake in its offer may request correction or withdrawal in writing, and shall include all of the following in the written request:
- 1. Explanation of the mistake and any other relevant information;
 - 2. A request for correction including the corrected offer or a request for withdrawal; and
 - 3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- C.** An agency chief procurement officer may permit an offeror to correct a mistake if the mistake and the intended offer are evident in the uncorrected offer; for example, an error in the extension of unit prices. The agency chief procurement officer shall not permit a correction that is prejudicial to the state or fair competition.
- D.** An agency chief procurement officer shall permit an offeror to furnish information called for in the solicitation but not supplied if the intended offer is evident and submittal of the information is not prejudicial to other offerors.
- E.** An agency chief procurement officer shall make a written determination of whether correction or withdrawal is permitted, based on whether the action is consistent with fair competition and in the best interest of the state.
- F.** If the offeror fails to act under subsection (A), the offeror is considered nonresponsive and the agency chief procurement officer shall place a written determination that the offeror is nonresponsive in the procurement file.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective January 13, 1987 (Supp. 87-1). Amended effective April 2, 1993 (Supp. 93-2). Section repealed; new Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-508. Performance and Payment Bonds

- A.** The agency chief procurement officer shall ensure that performance and payment bonds are executed solely by a surety company or companies holding a certificate of authority to transact surety business in this state issued by the Department of Insurance under A.R.S. Title 20, Chapter 2, Article 1 and in a format prescribed by A.R.S. § 41-2574.
- B.** The contractor shall submit to the state the performance bond and the payment bond upon request of the agency chief procurement officer. If a contractor fails to deliver the required performance bond or payment bond by the designated date, the contractor's offer shall be rejected, its bid security shall be enforced, and award of the contract shall be made as prescribed in this Chapter.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Repealed effective April 2, 1993 (Supp. 93-2). New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-509. Conditions for Use of Substitute Security in Lieu**of Retention**

A contractor may submit substitute security to replace contract payment retention if:

1. The contractor requests the use of substitute security before the first progress payment;
2. The contractor submits an invoice with each progress payment in an amount of no less than 10% of the progress payment, or the contractor submits an invoice once at the beginning of the project in an amount no less than 5% of the total contract amount;
3. The interest earned on the security shall accrue to the benefit of the contractor but shall be retained by the contractor until the agency chief procurement officer has approved completion and acceptance of all work to be performed under the contract; and
4. The contractor ensures that the date of maturity of the security is after the estimated contract completion date, but no later than one year after the estimated contract completion date.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed; new Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-510. The Form of Substitute Security in Lieu of Retention

If the conditions identified under R2-7-506 are met, the agency chief procurement officer shall accept a substitute security from a contractor in the form of one of the following:

1. An assignment of a time certificate of deposit by a financial institution licensed by this state;
2. Share certificates of a financial institution or credit union authorized to transact business in this state; or
3. Security issued or guaranteed as to principal and interest by:
 - a. The United States;
 - b. The state; or
 - c. Counties, municipalities, and school districts within this state.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Section repealed; new Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-511. Individual Job Order Contracting

- A.** The state procurement administrator may award or authorize an agency chief procurement officer to award job order contracts for job orders estimated to cost \$1,000,000 or less.
- B.** An agency chief procurement officer may use job order contracting for individual job orders estimated to cost \$250,000 or less, provided that:
1. The agency chief procurement officer obtains a cost estimate for the job order, before obtaining a cost proposal from the job order contractor; and
 2. The agency chief procurement officer makes a written determination that award of the job order is in the best interest of the state before awarding a job order.
- C.** When authorized by the state procurement administrator, an agency chief procurement officer may use job order contract-

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ing for individual job orders estimated to cost more than \$250,000 or less than or equal to \$1,000,000, provided that:

1. The agency chief procurement officer obtains a cost estimate for the job order from a person as defined in A.R.S. Title 32, Chapter 1, Article 1 before requesting a cost proposal from the job order contractor; and
 2. The agency chief procurement officer makes a written determination that award of the job order is in the best interest of the state before awarding a job order.
- D.** The agency chief procurement officer may request cost proposals from multiple job order contractors or negotiate with a single job order contractor.
- E.** The agency chief procurement officer may authorize contract change orders or amendments that result in the individual job order cost exceeding \$1,000,000 only with authorization from the state procurement administrator.
- F.** Upon completion of the job order, the agency chief procurement officer shall document in the contract file a summary of the estimated or final costs and the reasons the award is in the best interests of the state.
- G.** Conduct the procurement, as necessary in accordance with R2-7-B302, R2-7-B311, R2-7-B313, and R2-7-B315, unless a modified process is approved by the state procurement administrator.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed; new Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 3118, effective January 7, 2013 (Supp. 12-4).

R2-7-512. Repealed**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-513. Repealed**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-514. Repealed**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-515. Repealed**Historical Note**

Adopted as an emergency effective January 1, 1985, pur-

suant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

ARTICLE 6. CONTRACT CLAUSES**R2-7-601. Contract Clauses**

The agency chief procurement officer shall include in solicitations and contracts all contract clauses necessary to ensure the state's interests are addressed.

Historical Note

Adopted effective April 2, 1993 (Supp. 93-2). Section repealed; new Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-602. Assignment of Rights and Duties

A contractor shall not assign or transfer the rights or duties of a state contract without the written consent of the agency chief procurement officer.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-603. Change of Name

If a contractor requests to change the name in which it holds a state contract, the agency chief procurement officer may, upon receipt of a document indicating name change, enter into a written amendment with the contractor to effect the name change. The amendment shall provide that no other terms and conditions of the contract are changed.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-604. Contract Change Orders and Amendments

- A.** The agency chief procurement officer may extend or authorize options in a contract provided the price of the extension or option was evaluated under the contractor's original offer.
- B.** Any contract change order or amendment or aggregate change orders or amendments of a contract not covered under subsection (A) that exceeds 25% of the original contract amount may be executed only if the state procurement administrator or, in the case of construction on state property, the Assistant Director of General Services, determines in writing that the change order or amendment is advantageous to the state and the price is determined fair and reasonable pursuant to R2-7-702.
- C.** The agency chief procurement officer may, in situations in which time or economic consideration preclude re-solicitation, negotiate a reduction to the contract, including scope, price, and contract requirements under A.R.S. § 41-2537.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-605. Multi-term Contracts

- A.** The agency chief procurement officer may enter into a contract for materials or services for a period exceeding the time identified in A.R.S. § 41-2546(A), if a written approval from the state procurement administrator is issued prior to offer due date and time.
- B.** The agency chief procurement officer shall submit a request to the state procurement administrator in writing indicating:

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filed, at the same time furnishing a copy of the report to the interested party. The agency chief procurement officer shall also provide a copy of the report to any interested parties who request a copy, at their cost. The report shall contain copies of:

1. The appeal;
2. The offer submitted by the interested party;
3. The offer of the firm that is being considered for award;
4. The solicitation, including the specifications or portions relevant to the appeal;
5. The abstract of offers or relevant portions;
6. Any other documents that are relevant to the protest; and
7. A statement by the agency chief procurement officer setting forth findings, actions, recommendations and any additional evidence or information necessary to determine the validity of the appeal.

- B.** The agency chief procurement officer may submit a written request to the director for an extension of the time period for filing the report as prescribed in subsection (A), identifying the reason for extension. The director shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for the submission of the report. The director shall notify the agency chief procurement officer, the state procurement administrator, and the interested party in writing that the time for the submission of the report is extended, providing the date on which the report must be submitted.
- C.** The interested party shall file comments on the agency report with the director within 10 days after receipt of the report. The interested party shall provide copies of the comments to the agency chief procurement officer, the state procurement administrator, and other interested parties.
- D.** The interested party may submit a written request to the director for an extension of the period for submission of comments, identifying the reasons for the extension. The director shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for the submission of filing comments. The director shall notify the agency chief procurement officer and the state procurement administrator of any extension.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 3118, effective January 7, 2013 (Supp. 12-4).

R2-7-A909. Remedies by the Director

If the Director sustains the appeal in whole or part and determines that a solicitation, a not susceptible for award determination, or an award does not comply with procurement statutes and regulations, the director shall implement remedies as provided in R2-7-A904 or R2-7-A910.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-A910. Informal Settlement Conference

In any protest, claim or debarment proceeding, the Director may request to hold an informal settlement conference with all interested parties. The conference may be held at any time prior to a final administrative decision. If an informal settlement conference is held, a person with the authority to act on behalf of the interested party must be present. The agency chief procurement officer shall notify the interested parties in writing that statements, either written or oral, made at the conference, including a written document, cre-

ated or expressed solely for the purpose of settlement negotiations are inadmissible in any subsequent administrative or judicial hearing. Should any interested party choose not to participate in an informal settlement conference, the Director, or the Director's designee, in his or her discretion, may conduct the conference with those interested parties that appear, or reschedule the conference, or terminate the conference. If the informal settlement conference results in a full settlement agreement between all interested parties, that agreement shall be reduced to writing, signed by the interested parties, and entered as the final administrative decision in the proceeding. If the interested parties do not reach agreement on all matters at issue in the proceedings, but do agree to resolve one or some of the issues, that partial agreement shall be reduced to writing, be signed by the interested parties, and bind the interested parties through the remainder of the proceedings. If the Director, or the Director's designee, participates in an informal settlement conference, the Director, or the Director's designee, may not participate in or attempt to influence the outcome of the final administrative decision. Further, in making a final administrative decision, the Director shall not give any weight to whether or not an informal settlement conference has been held, or to any consideration of the perceived success or failure of the informal settlement conference.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). R2-7-A910 renumbered to R2-7-A911; new Section R2-7-A910 made by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-A911. Dismissal Before Hearing

- A.** The Director may dismiss, upon written determination, an appeal in whole or in part before scheduling a hearing if:
1. The appeal does not state a valid basis for protest;
 2. The appeal is untimely as prescribed under R2-7-A905; or
 3. The appeal attempts to raise issues not raised in the protest.
- B.** The Director shall notify the interested party, the agency chief procurement officer, and the state procurement administrator in writing of a determination to dismiss an appeal before hearing.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). R2-7-A911 renumbered to R2-7-A912; new Section R2-7-A911 renumbered from R2-7-A910 and amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-A912. Hearing

The Director shall resolve appeals of solicitation or contract award decisions as contested cases under A.R.S. § 41-1092.07.

Historical Note

New Section R2-7-A912 renumbered from R2-7-A911 and amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

PART B. CONTRACT CLAIMS**R2-7-B901. Controversies Involving Contract Claims Against the State**

- A.** A claimant shall file a contract claim with the agency chief procurement officer, with a copy to the state procurement administrator, within 180 days after the claim arises. The claim shall include the following:
1. The name, address, and telephone number of the claimant;

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2. The signature of the claimant or claimant's representative;
 3. Identification of the purchasing agency and the solicitation or contract number;
 4. A detailed statement of the legal and factual grounds of the claim including copies of the relevant documents; and
 5. The form and dollar amount of the relief requested.
- B.** The agency chief procurement officer shall have the authority to settle and resolve contract claims, except that the agency chief procurement officer shall receive prior written approval of the state procurement administrator for the settlement or resolution of a claim in excess of the amount prescribed in A.R.S. § 41-2535.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-B902. Agency Chief Procurement Officer's Decision

- A.** If a claim cannot be resolved under R2-7-B901, the agency chief procurement officer shall, upon a written request by the claimant for a final decision, issue a written decision no more than 60 days after the request is filed. Before issuing a final decision, the agency chief procurement officer shall review the facts pertinent to the claim and secure any necessary assistance from legal, fiscal, and other advisors.
- B.** The agency chief procurement officer shall furnish the decision to the claimant, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, with a copy to the state procurement administrator. The decision shall include:
1. A description of the claim;
 2. A reference to the pertinent contract provision;
 3. A statement of the factual areas of agreement or disagreement;
 4. A statement of the agency chief procurement officer's decision, with supporting rationale;
 5. A paragraph which substantially states: "This is the final decision of the agency chief procurement officer. This decision may be appealed to the director of the Department of Administration. If you appeal, you must file a written notice of appeal containing the information required in R2-7-B904(B) with the director within 30 days from the date you receive this decision."

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-B903. Issuance of a Timely Decision

If the agency chief procurement officer fails to issue a decision within 60 days after the request is filed, the claimant may proceed as if the agency chief procurement officer had issued an adverse decision.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-B904. Appeals and Reports to the Director

- A.** The claimant may appeal the final decision of the agency chief procurement officer to the director within 30 days from the date the decision is received. The claimant shall file a copy of the appeal with the director, the agency chief procurement officer, and the state procurement administrator.
- B.** The claimant shall file the appeal in writing and shall include the following:
1. A copy of the decision of the agency chief procurement officer;

2. A statement of the factual areas of agreement or disagreement; and
 3. The precise factual or legal error in the decision of the agency chief procurement officer from which an appeal is taken.
- C.** The agency chief procurement officer shall file a complete report on the appeal with the director and the state procurement administrator within 14 days from the date the appeal is filed, providing a copy to the claimant at that time by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The report shall include a copy of the claim, a copy of the agency chief procurement officer's decision, if applicable, and any other documents that are relevant to the claim.
- D.** The director shall resolve appeals on claim decisions as contested cases under A.R.S. § 41-1092.07.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-B905. Controversies Involving State Claims Against the Contractor

If the agency chief procurement officer is unable to resolve, by mutual agreement, a claim asserted by the state against a contractor, the agency chief procurement officer shall promptly refer the matter in writing to the director for resolution under A.R.S. § 41-1092.07. The agency chief procurement officer shall furnish a copy of the claim to the state procurement administrator.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

PART C. DEBARMENTS AND SUSPENSIONS**R2-7-C901. Authority to Debar or Suspend**

The director has the sole authority to debar or suspend a person from participating in state procurements under A.R.S. § 41-2613.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-C902. Initiation of Debarment

Upon receipt of information concerning a possible cause for debarment, the director shall investigate the possible cause. If the director has a reasonable basis to believe that a cause for debarment exists, the director may propose debarment under R2-7-C904.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-C903. Period of Debarment

- A.** The director shall not establish the period of time for a debarment that exceeds three years from the date of the debarment determination.
- B.** If debarment is based solely upon debarment by another governmental agency, the director may establish that the period of debarment is to run concurrently with the period established by the other debarring agency.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-C904. Notice of Debarment and Hearing

- A.** If debarment is proposed, the director shall notify the person and affected affiliates in writing within seven days by certified mail, return receipt requested, or any other method that pro-

41-703. Duties of director

The director shall:

1. Be directly responsible to the governor for the direction, control and operation of the department.
2. Provide assistance to the governor and legislature as requested.
3. Adopt rules the director deems necessary or desirable to further the objectives and programs of the department.
4. Formulate policies, plans and programs to effectuate the missions and purposes of the department.
5. Employ, determine the conditions of employment and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons as may be necessary in the performance of the department's duties and contract for the services of outside advisors, consultants and aides as may be reasonably necessary.
6. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of monies.
7. Contract with or assist other departments, agencies and institutions of the state, local and federal governments in the furtherance of the department's purposes, objectives and programs.
8. Accept and disburse grants, gifts, donations, matching monies and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.
9. Establish and maintain separate financial accounts as required by federal law or regulations.
10. Advise and make recommendations to the governor and the legislature on all matters concerning the department's objectives.
11. Delegate the administrative functions, duties and powers as the director deems necessary to carry out the efficient operation of the department.

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 as defined in this chapter, or contracts between this state and its political subdivisions or other governments, except as provided in chapter 24 of this title and in article 10 of this chapter. This chapter also applies to the disposal of state materials. This chapter and rules adopted under this chapter do not prevent any state governmental unit or political subdivision from complying with the terms 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. Notwithstanding any other law, sections 41-2517 and 41-2546 apply to any agency as defined in section 41-1001, including the office of the governor.
- E. The Arizona board of regents and the legislative and judicial branches of state government are not subject to this chapter except as prescribed in subsection F of this section.
- F. 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.
- G. The Arizona state lottery commission is exempt from 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.
- H. The Arizona health care cost containment system administration is exempt from 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 and contracts with regional behavioral health authorities pursuant to title 36, chapter 34. All other procurement, including contracts for the statewide administrator of the program pursuant to section 36-2903, subsection B, shall be as prescribed by this chapter.
- I. Arizona correctional industries is exempt from 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 this chapter other than sections 41-2517 and 41-2586 and are subject to title 28, chapter 20 and 2 Code of Federal Regulations section 200.317 for the procurement of the following:
1. All items of construction, reconstruction, rehabilitation, preservation or improvement undertaken on highway infrastructure.
 2. Engineering services and any other work or activity to carry out engineering services related to highway infrastructure.
 3. Right-of-way services related to land titles, appraisals, real property acquisitions, relocation services, property management and facility design.

4. Any other construction, reconstruction, rehabilitation, preservation or improvement work or activity that is required pursuant to title 28, chapter 20.

K. The Arizona highways magazine is exempt from 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 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. This chapter is 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 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 this chapter.

P. This chapter is not applicable to contracts entered into by the department of economic security:

1. With a provider licensed or certified by an agency of this state to provide child day care services.
2. 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 sections 3001 through 3058ff).
3. For services pursuant to title 36, chapter 29, article 2.
4. With an eligible entity as defined by Public Law 105-285, section 673(1)(A)(i), as amended, for designated community services block grant program monies and any other monies given to the eligible entity that accomplishes the purpose of Public Law 105-285, section 672.

Q. The Arizona health care cost containment system may not require that persons with whom it contracts follow 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.

R. The department of health services may not require that persons with whom it contracts follow this chapter for the purpose of subcontracts entered into for the provision of domestic violence services pursuant to title 36, chapter 30, article 1.

S. The department of health services is exempt from this chapter for contracts for services of physicians at the Arizona state hospital.

T. Contracts for goods and services approved by the board of trustees of the public safety personnel retirement system are exempt from this chapter.

U. 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.

V. The Arizona state parks board is exempt from 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.

W. The Arizona state parks board is exempt from this chapter for the purchase, production, promotion, distribution and sale of publications, souvenirs and sundry items obtained and produced for resale.

X. The Arizona state schools for the deaf and the blind are exempt from this chapter for the purchase of textbooks and 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.

Y. Expenditures of monies in the morale, welfare and recreational fund established by section 26-153 are exempt from this chapter.

Z. Notwithstanding section 41-2534, the director of the state department of corrections may contract with local medical providers in counties with a population of less than four hundred thousand persons for the following purposes:

1. To acquire hospital and professional medical services for inmates who are incarcerated in state department of corrections facilities that are located in those counties.
2. To ensure the availability of emergency medical services to inmates in all counties by contracting with the closest medical facility that offers emergency treatment and stabilization.

AA. The department of environmental quality is exempt from this chapter for contracting for procurements relating to the water quality assurance revolving fund program established pursuant to title 49, chapter 2, article 5. The department shall engage in a source selection process that is similar to the procedures prescribed by this chapter. The department may contract for remedial actions with a single selection process. 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.

BB. The motor vehicle division of the department of transportation is exempt from 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.

CC. This section does not exempt third-party authorizations pursuant to title 28, chapter 13 from any other applicable law.

DD. The state forester is exempt from this chapter for purchases and contracts relating to wildland fire suppression and pre-positioning equipment resources and for other activities related to combating wildland fires and other unplanned risk activities, including fire, flood, earthquake, wind and hazardous material responses. All other procurement by the state forester shall be as prescribed by this chapter.

EE. The cotton research and protection council is exempt from this chapter for procurements.

FF. The Arizona commerce authority is exempt from this chapter, except article 10 for the purpose of cooperative purchases. The authority shall adopt policies, procedures and practices, in consultation with the department of administration, that are similar to and based on the policies and procedures prescribed by this chapter for the purpose of increased public confidence, fair and equitable treatment of all persons engaged in the process and fostering broad competition while accomplishing flexibility to achieve the authority's statutory requirements. The authority shall make its policies, procedures and practices available to the public. The authority may exempt specific expenditures from the policies, procedures and practices.

GG. The Arizona exposition and state fair board is exempt from this chapter for contracts for professional entertainment.

HH. This chapter does not apply to the purchase of water, gas or electric utilities.

II. This chapter does not apply to professional certifications, professional memberships and conference registrations.

JJ. The department of gaming is exempt from this chapter for problem gambling treatment services contracts with licensed behavioral health professionals.

KK. This chapter does not apply to contracts for credit reporting services.

LL. This chapter does not apply to contracts entered into by the department of child safety:

1. With a provider of family foster care pursuant to section 8-503.
2. With an eligible entity as defined by Public Law 105-285, section 673(1)(A)(i), as amended, for designated community services block grant program monies and any other monies given to the eligible entity that accomplishes the purpose of Public Law 105-285, section 672.
3. For services pursuant to title 36, chapter 29, article 1 and as set forth in the approved medicaid state plan.

MM. This chapter does not apply to contracts entered into by the department of economic security with a financial institution to serve as a program manager and depository under section 46-903.

41-2511. Authority of the director

- A. Except as otherwise provided in this chapter, the director may adopt rules, consistent with this chapter, governing the procurement and management of all materials, services and construction to be procured by this state and the disposal of materials.
- B. The director shall serve as the central procurement officer of this state.
- C. Except as otherwise provided in this chapter, the director shall, in accordance with rules adopted under this chapter:
1. Procure or supervise the procurement of all materials, services and construction needed by this state.
 2. Establish guidelines for the management of all inventories of materials belonging to this state.
 3. Sell, trade or otherwise dispose of surplus materials belonging to this state.
 4. Establish and maintain programs for the inspection, testing and acceptance of materials, services and construction.
 5. Establish and maintain programs to ensure procurement compliance with this chapter and applicable rules.
 6. Establish and maintain a mandatory procurement training and certification program to ensure consistency in procurement practices for those authorized to perform procurement functions under this chapter.
 7. Employ staff as necessary to perform the duties prescribed in this chapter.
 8. Establish procurement offices as the director determines necessary to maintain an effective and efficient program of procurement administration.
 9. Provide consultation to state agency management in all aspects of procurement to increase efficiency and economy in state agencies by improving the methods of procurement with full recognition of the requirements and needs of management.
 10. Enter into agreements with any state government unit or political subdivision of this state or agency of a political subdivision of this state to furnish procurement administration services and facilities of the department. Unless monies have been appropriated by the legislature for this purpose, any agreement shall provide for reimbursement to this state of the actual cost of the services and facilities furnished, as determined by the director.
 11. Enter into agreements with the attorney general for dedicated legal resources to support any state governmental unit in procurement legal matters, including negotiations, protests and appeals.

41-2514. [State procurement rules](#)

- A. The director may adopt and issue rules pursuant to chapter 6 of this title to carry out the purposes of this chapter.
- B. Except by mutual consent of the parties to the contract, no rule promulgated under this chapter may change any commitment, right or obligation of this state or of a contractor under a contract in existence on the effective date of the rule.

41-2531. Definitions

In this article, unless the context otherwise requires:

1. "Bidder prequalification" means determining in accordance with rules adopted pursuant to this chapter that a prospective bidder or offeror satisfies the criteria for being included on the bidder's list.
2. "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are reasonable, allowable and allocable in accordance with the contract terms and the provisions of this chapter, and paid a fee, if provided for in the contract.
3. "Demonstration project" means a project in which a vendor supplies a service or material to this state for which the state does not pay but for which this state may be obligated to provide routine support such as utility cost and operating personnel.
4. "Established catalogue price" means the price included in a catalogue, price list, schedule or other form that:
 - (a) Is regularly maintained by a manufacturer, distributor or contractor.
 - (b) Is either published or otherwise available for inspection by customers.
 - (c) States prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the materials or services involved.
5. "Invitation for bids" means all documents, whether attached or incorporated by reference, which are used for soliciting bids in accordance with the procedures prescribed in section 41-2533.
6. "Multistep sealed bidding" means a two phase process consisting of a technical first phase composed of one or more steps in which bidders submit unpriced technical offers to be evaluated by this state and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their price bids considered.
7. "Paper" means newspaper, high grade office paper, fine paper, bond paper, offset paper, xerographic paper, duplicator paper and related types of cellulosic material containing not more than ten per cent by weight or volume of noncellulosic material such as laminates, binders, coatings or saturants.
8. "Paper product" means paper items or commodities, including paper napkins, towels, corrugated paper and related types of cellulosic products containing not more than ten per cent by weight or volume of noncellulosic material such as laminates, binders, coatings or saturates.
9. "Post-consumer material" means a discard generated by a business or residence that has fulfilled its useful life. Post-consumer material does not include discards from industrial or manufacturing processes.
10. "Purchase description" means the words used in a solicitation to describe the materials, services or construction for purchase and includes specifications attached to, or made a part of, the solicitation.
11. "Recycled paper" means paper products which have been manufactured from materials otherwise destined for the waste stream and which contain at least forty per cent recovered wastepaper with ten per cent of that being post-consumer material.
12. "Request for information" means all documents issued to vendors for the sole purpose of seeking information about the availability in the commercial marketplace of materials or services.
13. "Request for proposals" means all documents, whether attached or incorporated by reference, which are used for soliciting proposals in accordance with procedures prescribed in section 41-2534.

14. "Responsible bidder or offeror" means a person who has the capability to perform the contract requirements and the integrity and reliability which will assure good faith performance.

15. "Responsive bidder" means a person who submits a bid which conforms in all material respects to the invitation for bids.

16. "Unsolicited proposal" means a written proposal that is submitted on the initiative of the offeror for the purposes of obtaining a contract with this state and that is not in response to a formal or informal request from this state.

17. "Wastepaper" means recyclable paper and paperboard, including high grade office paper, computer paper, fine paper, bond paper, offset paper, xerographic paper, duplicator paper and corrugated paper.

DEPARTMENT OF ADMINISTRATION

Title 2, Chapter 10, Articles 1-2, 4-6



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 2, 2022

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: July 13, 2022

SUBJECT: **Arizona Department of Administration**
Title 2, Chapter 10, Articles 1-2 & 4-6

This Five-Year-Review Report (5YRR) from the Department of Administration relates to rules in Title 2, Chapter 10, regarding Risk Management. The report covers the following Articles:

Article 1 - Coverage and Claims Procedure

Article 2 - Loss Prevention

Article 4 - Provider Indemnity Program (PIP)

Article 5 - Environmental Losses

Article 6 - Computation of Interest on Appealed Judgments

In the last 5YRR of these rules the Department proposed to amend burdensome rules. The Department completed a rulemaking that addressed the changes proposed in the report in 2018.

Proposed Action

The Department is proposing to amend four of their rules (R2-10-101, R2-10-201, R2-10-206, R2-10-207) to make them more clear, concise, and understandable. Additionally, the Department is not reviewing R2-10-502 with the intention that the rule will expire under A.R.S. 41-1056 (J).

1. **Has the agency analyzed whether the rules are authorized by statute?**

Yes, the Department cites to both the general and specific statutory requirements.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department states that the information provided with the last adoption of the rules in April 2000 estimated that there would not be any impact on small business or consumers in the state. The Department indicates that the rules affect the internal operation of state agencies and not the public. The Department currently estimates that the rules do not have any impact on small business or consumers in the state, nor has the effect on state agencies changed.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department believes that the rules impose the least burden to persons regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Department indicates they did not receive any written criticisms to the rules.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Department indicates the rules are overall clear, concise, and understandable with the exception of the following:

R2-10-101 - Definitions

R2-10-201 - Submission of Building Plans

R2-10-206 - Agency Loss Prevention Program Management

R2-10-207 - Agency Loss Prevention Program Elements

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes, the Department indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Department indicates the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Department indicates the rules are enforced as written.

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

Not applicable, there are no corresponding federal laws.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable, the rules do not require the issuance of a general permit or license.

11. **Conclusion**

As mentioned above, the Department is proposing to amend four of its rules in an effort to make them more clear, concise, and understandable. The Department indicates it plans to submit a Notice of Final Rulemaking to the Council by November 2022.

Council staff recommends approval of this report.

Douglas A. Ducey
Governor



Andy Tobin
Director

ARIZONA DEPARTMENT OF ADMINISTRATION

OFFICE OF THE DIRECTOR
100 NORTH FIFTEENTH AVENUE • SUITE 302
PHOENIX, ARIZONA 85007
(602) 542-1500

May 26, 2022

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 302
Phoenix, Arizona 85007

Dear Mrs. Sornsin:

In compliance with A.R.S. § 41-1056, the Arizona Department of Administration (ADOA) submits a report of its five-year-review of Title 2, Chapter 10 of the Arizona Administrative Code. I certify that the Department is in compliance with A.R.S. § 41-1091. This Chapter contains rules authorized by statute that govern the administration of the ADOA Risk Management Division.

The Arizona Department of Administration did not review the following rule with the intention that this rule expire under A.R.S.41-1056(J): R2.10.502.

If you have any questions regarding this five-year-review report or need additional information prior to the council meeting when the report is considered, please contact Keith Johnson, ADOA State Risk Manager at (602) 625-8318. Individuals from the Department will be present at the Governor's Regulatory Review Council meeting to answer any questions that the members may have about this five-year-review report.

Sincerely,

A handwritten signature in black ink that reads "Andy M. Tobin".

Andy Tobin
Director

cc: Keith Johnson, State Risk Manager

**Arizona Department of Administration
Five Year Report
Title 2, Chapter 10, Articles 1, 2, and 4 through 6
Risk Management Division**

1. **Authorization of rules by existing statutes:**

A.R.S. §§41-621 – Provides general authority for the rule

A.R.S. §§ 41-621(Q), and 41-623(A) – Provides specific authority

2. **Objective of the rules:**

The objective of the rules is to establish the Department's policies and procedures for Risk Management in administering liability insurance for state agencies.

R2-10-101 through R2-10-109

R2-10-101 defines terms and phrases used in the Department's rules whose meanings in this context are not self-evident or are technical in nature. R2-10-102 summarizes the procedures for agencies to follow when reporting a claim made against the state. It also delineates the time frame that is acceptable to report the claim after the incident occurs and how to report the loss to Risk Management. R2-10-103 establishes the responsibility of Risk Management for the investigation of claims and the determination of whether it is self-insured or should be reported to one of the state's excess insurance carriers. In addition, the rule directs that all contracts concerning these claims be made to Risk Management, or the Attorney General's Office or the designated independent counsel. R2-10-104 establishes a time limitation on the reporting of property losses to Risk Management and requires that competitive bids be obtained for replacement or repair of state property subject to Risk Management approval. R2-10-105 establishes the procedure for agencies to follow in the event of an employment discrimination charge. R2-10-106 establishes the valuation basis for personal and real property coverage. The rule also establishes the procedure for determining the method of repair or replacement of covered property and lists the types of property that are excluded from coverage provided by the state's self-insurance. R2-10-107 describes the limitations of liability coverage provided to state employees and describes the conditions that must be met before coverage applies. R2-10-108 establishes the conditions under which a deductible of up to \$10,000 may be assessed to an agency for liability payments greater than \$150,000, and what actions the agency may take to have its deductible waived. The rule also emphasizes prompt reporting, preventative actions, and other cooperative measures to be taken by the agency with Risk Management's assistance to waive any deductibles and significantly reduce overall losses. R2-10-109 establishes the procedure on how time frames are computed for purposes of claim reporting, eligibility for coverage, and response to requirements related to the deductible program.

R2-10-201 through R2-10-207

R2-10-201 assures that Risk Management Loss Prevention Consultants will have the opportunity to examine building plans and make preventive recommendations prior to construction. R2-10-202 requires Risk Management to be consulted when an agency plans on purchasing any specialized equipment that performs hazard control functions. This allows Risk Management to review the intended use of the equipment with the agency and provide recommendations to the agency regarding the purchase and use of the equipment. R2-10-203 requires that all state employees report any suspected or known hazards to their agency loss prevention coordinator. The rule requires an initial assessment to determine if the hazard is correctable at the agency level, or if further action is required by non-agency personnel in responding to the hazard. Any hazard that is not corrected by agency personnel or resources must be reported to Risk Management. R2-10-204 requires that Risk Management review each agency's loss prevention program, evaluate its effectiveness, and make recommendations on improving loss prevention practices. This assists the agencies in operating an effective program and allows Risk Management to monitor the loss prevention activities of each agency. R2-10-205 requires each agency to develop a loss control program that specifically addresses the agency's activities and exposures. The objective is to protect state employees from job related hazards and to protect the state from third party liability claims that may be caused by these exposures. R2-10-206 establishes the agency's commitment to loss prevention and identifies the agency employees responsible for the development, implementation, and coordination of their program. R2-10-207 establishes the basis for the development of effective loss prevention programs at each state agency. The rule requires each agency to include certain specific elements and to develop procedures for investigating and reporting accidents, maintaining records, and preparing emergency plans for reasonably foreseeable perils.

R2-10-401

R2-10-401 establishes property & liability coverage and limitations pursuant to A.R.S. § 41-621(B) to a) individual providers while caring for a state client, and b) a state client.

R2-10-501 through R2-10-503

R2-10-501 establishes the conditions for Risk Management to open a claim and provide funding to state agencies for the investigation and remediation of environmental damage to property under the ownership or control of the state. The rule also establishes the types of analysis that will be completed by Risk Management and under what conditions Risk Management will not provide funding. R2-10-502 establishes the selection procedure for the contracting of environmental investigation and remediation. In addition, the rule establishes the role of Risk Management in the selection and justification of hiring an environmental contractor. R2-10-503 provides state agencies with the option of requesting funding from Risk Management for site maintenance of closed hazardous substance and waste sites. In the event the agency does not have the resources to provide follow up inspections on these sites, Risk Management can ensure that additional migration of the hazard does not occur.

R2-10-601

R2-10-601 establishes the method for computing interest on money held in the Risk Management revolving fund from a judgment that is on appeal against the state. In addition, the rule defines the type of Treasury Bill used as the basis for the computation and the time elements that are used in averaging these amounts. These procedures are pursuant to A.R.S. § 41-622(F).

3. **Are the rules effective in achieving their objectives?: YES**

The following rules effectively achieve their objectives:

R2-10-101 Definitions

R2-10-102 Reporting Procedures

R2-10-103 Liability Claim Procedures

R2-10-104 Self-insured Property Claims Procedures

R2-10-105 Employment Discrimination Claim Procedures

R2-10-106 State-owned Property Coverage and Limitations

R2-10-107 Liability Coverage and Limitations

R2-10-108 Deductibles and Waivers

R2-10-109 Computation of Time

R2-10-201 Submission of Building Plans

R2-10-202 Purchase of Specialized Hazard Control Equipment

R2-10-203 Hazard Reporting

R2-10-204 RM Loss Prevention Consultative Services

R2-10-205 Development and Implementation of Agency Loss Prevention Programs

R2-10-206 Agency Loss Prevention Program Management

R2-10-207 Agency Loss Prevention Program Elements

R2-10-401 Coverages and Limitations

R2-10-501 Investigation, Feasibility Study, and Remediation of Release of Hazardous Substances

R2-10-502 Contracting for Site Investigation, Feasibility Study, Remediation, and Other Related Environmental Work

R2-10-503 Site Maintenance

R2-10-601 Computation Procedures

4. **Are the rules consistent with other rules and statutes?: YES**

The Department believes the following rules are consistent with state and federal statutes and rules: R2-10-101 through R2-10-109; R2-10-201 through R2-10-207; R2-10-401; R2-10-501 through R2-10-503; and R2-10-601.

5. **Are the rules enforced as written?: YES**

The Department is currently enforcing the following rules: R2-10-101 through R2-10-109; R2-10-201 through R2-10-207; R2-10-401; R2-10-501 through R2-10-503; and R2-10-601.

6. **Are the rules clear, concise, and understandable?: NO (See below)**

The Department considers the definition of “provider” in R2-10-101 to be unclear, as it serves to exclude coverage to non-licensed individuals or entities. The Department has determined a need for the definition of “claim” in R2-10-101, as it is used frequently throughout the Administrative Code, though it is not defined. The Department considers the use of “building” in R2-10-201 to be unclear, as it does not incorporate significant property improvements. The Department has determined additional clarification is needed in R2-10-206A in order to ensure the letter is updated annually and when a new Director is appointed. The Department considers R2-10-207(11)(e) to be unclear, as it does not specify the Department responsible for creating a Vehicle Incident Review Committee. The Department is not reviewing R2-10-502 at this time, with the intention that the rule will expire. The Department considers the rest of the rules to be clear, concise, and understandable.

7. **Has the agency received written criticisms of the rules within the last five years?: NO**

The Department has not received written criticisms regarding any of the rules within the last five years.

8. **Comparison of economic, small business, and consumer impact with economic impact statement:**

The information provided with the last adoption of rules in April 2000 estimated that there would not be any impact on small business or consumers in the state. The rules only affect the internal operations of state agencies and not the public.

The Department further estimated that the effect on the state agencies would be that of loss reduction, provided that the rules promulgated were followed by the agencies. The payment of claims restores the agency to their position prior to the loss.

The Department currently estimates that the rules do not have any impact on small business or consumers in the state, nor has the effect on state agencies changed.

9. **Has the agency received any business competitiveness analyses of the rules?: NO**

None

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?: YES**

The Department indicated in the previous five-year review report approved in 2017 that in an effort to comply with the Governor's initiative to remove burdensome rules, the Department was in the process of obtaining approval to make amendments. In addition, R2-10-504. Loss Prevention, had been repealed January 11, 2017, as the rule was not burdensome nor unclear, but was duplicative in wording and it was determined there was no added benefit to state agencies.

Effective January 8, 2018, R2-10-101, R2-10-106 through R2-10-108, R2-10-201 through R2-10-202, and R2-10-207 were amended by final rulemaking at 23 A.A.R. 3239. The amendment updated Title 2, Chapter 10, Article 1, "Coverage and Claims Procedure" and Article 2, "Loss Prevention". The subject matter of R2-10-101 defines specific terms relating to Risk Management. The amendment updated the definitions to add "Occurrence" and renumber in the sequence and now meets the requirements of the Executive's budget. The subject matter of R2-10-106 establishes the valuation basis for property coverage and a deductible for reported property claims. The amendment increased the deductible from \$100 disappearing deductible to a \$2,500 per occurrence deductible. The subject matter of R2-10-107 removed an unnecessary action for state agencies and renumbers the sequence. The subject matter of R2-10-108 made a clarification to the deductible language relating to settlements. The subject matter of R2-10-201 updated the language to reflect when agencies must submit building plans for review. The subject matter for R2-10-202 updated language to reflect when an agency must contact Risk Management when purchasing specialized safety or security equipment. The subject matter of R2-10-207 updated, clarified and repealed agency tracking requirements.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:**

The Department believes that the rules impose the least burden to persons regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

12. **Are the rules more stringent than corresponding federal laws? N/A**

There is no similar regulatory framework or federal law applicable to the subject matter of the rules; federal law does not apply to these rules.

13. **For a rule adopted after July 29, 2010, that requires issuance of a regulatory permit, license or agency authorization, whether the rule complies with A.R.S. § 41-1037 indicating whether:**

a. **The rule requires issuance of a regulatory permit, license, or agency authorization:**

Not applicable

b. **The permit, license, or agency authorization falls within the definition of “general permit” in A.R.S. § 41-1001, if a permit, license, or agency authorization is issued:**

Not applicable. Answer provided in 13(a).

c. **An exception applies under A.R.S. § 41-1037, if a general permit is not issued:**

Not applicable. Answer provided in 13(a).

14. **Course of action the agency proposes to take regarding each rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department has determined that a course of action is necessary to amend R2-10-101 in order to address potential clarity deficiencies. The proposed amendment will incorporate changes and additions to definitions in order to ensure clear and concise language.

The Department has determined that a course of action is necessary to amend R2-10-201 in order to incorporate property improvements that exceed \$100,000.00.

The Department has determined that a course of action is necessary to amend R2-10-206A in order to ensure the letter is updated and reissued annually and when a new Director is appointed.

The Department has determined that a course of action is necessary to amend R2-10-207(11)(e) in order to change the rule language to clarify who is responsible for creating a Vehicle Incident Review Committee (VIRC) and to clarify the agency and/or driver's responsibilities should they be involved in a loss..

The Department will not review R2-10-502 at this time, with the intention that the rule will expire.

The Department has determined that no course of action is necessary for R2-10-102 through R2-10-109, R2-10-202 through R2-10-205, R2-10-401, R2-10-501, R2-10-503, and R2-10-601.

The Department intends to submit all proposed rule changes by November 2022.

Title 2, Chapter 10, Articles 1 through 2 and 4 through 6

Risk Management Division

Article 1 – Coverage and Claims Procedure

Article 2 – Loss Prevention

Article 4 – Provider Indemnity Program (PIP)

Article 5 – Environmental Losses

Article 6 – Computation of Interest on Appealed Judgments

RULE TEXT

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TITLE 2. ADMINISTRATION

CHAPTER 10. DEPARTMENT OF ADMINISTRATION - RISK MANAGEMENT DIVISION

(Authority: A.R.S. § 41-621 et seq.)

Chapter heading revised at request of Department, Office File No. M11-239, filed July 8, 2011 (Supp. 11-3).

Laws 1983, Ch. 98, 121, transferred authority for Risk Management Services to the Director of Administration effective July 27, 1983.

Article 1 consisting of Sections R2-10-101 through R2-10-105; Article 2 consisting of Sections R2-10-201 through R2-10-204; Article 3 consisting of Sections R2-10-301 through R2-10-304 adopted effective July 27, 1983.

Former Sections R2-10-01 through R2-10-05, R2-10-50 through R2-10-53, R2-10-100 through R2-10-103 renumbered and readopted with conforming changes.

ARTICLE 1. COVERAGE AND CLAIMS PROCEDURE

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R2-10-104.	Self-insured Property Claim Procedures	3
R2-10-105.	Employment Discrimination Claim Procedures	3
R2-10-106.	State-owned Property Coverage and Limitations	4
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ARTICLE 2. LOSS PREVENTION

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ARTICLE 4. PROVIDER INDEMNITY PROGRAM (PIP)

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ARTICLE 6. COMPUTATION OF INTEREST ON APPEALED JUDGMENTS

Section		
R2-10-601.	Computation Procedures	10

ARTICLE 1. COVERAGE AND CLAIMS PROCEDURE

R2-10-101. Definitions

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

1. "Agency" means a state department, board, or commission.
2. "Agency loss prevention committee" means a panel of individuals established by the head of an agency to develop and oversee the agency's loss prevention program.
3. "Agency loss prevention coordinator" means an individual chosen by the head of an agency to implement the agency's loss prevention program and who is the agency's liaison with Risk Management.
4. "Attorney General's Office" means the Liability Management Section of the Attorney General's Office assigned to defend claims covered by A.R.S. § 41-621.
5. "Client" means an individual in custodial care of a provider through contract or court order with a state agency through programs listed in A.R.S. § 41-621(B).
6. "Confined space" has the meaning of 29 CFR 1910.146(b) Occupational Safety and Health Standards for General Industry, The Industrial Commission of Arizona, Division of Occupational Safety and Health, February 1, 1998, which is incorporated by reference in this rule. This incorporation by reference does not include any later amendments or editions. Copies of the incorporation by reference are available for inspection at the Industrial Commission of Arizona, 800 West Washington, Phoenix, Arizona and in the Office of the Secretary of State, Public Service Department, 1700 West Washington, Phoenix, Arizona.
7. "Contaminant" means a substance that is radioactive, infectious, carcinogenic, toxic, irritant, corrosive, sensitizer or an agent that damages the lungs, skin, eyes, mucous membranes, and other body organs.
8. "Deductible" means the amount of a loss that the agency will pay before Risk Management is obligated to pay anything.
9. "Department" means the Department of Administration, an agency of the State of Arizona.
10. "Emergency" means an immediate health threat.
11. "Environment" means navigable waters, surface waters, groundwater, drinking water supply, land surface or subsurface strata, and ambient air, within or bordering on this state.
12. "Environmental Contractor" means a company hired by the state to conduct environmental site investigations and remediation work.
13. "Environmental property claim" means a demand or payment resulting from chemical or biological damage to the environment.
14. "Ergonomics" means a science of the relationship between human capability and the work environment, which the Department uses to design a job, task, equipment, or tool to conform comfortably within the limits of human capability.
15. "Feasibility study" means a remediation plan based upon a site investigation to clean up a contaminated site by an environmental contractor.
16. "Geophysical survey" means a radar, magnetic, electric, gravity, thermal, or seismic survey.
17. "Groundwater" means water beneath the ground in sediments or permeable bedrock.
18. "Hazardous substance or waste" means hazardous waste as defined in A.R.S. § 49-921(5).
19. "Health threat" means evidence that exposure to a specific type and concentration of contaminant is harmful to human health. This evidence shall be based on at least 1 study conducted by the National Institute of Occupational Safety and Health or the Environmental Protection Agency in accordance with established scientific principles.
20. "Incident" means an event involving an agency employee, facility, or equipment that results in an occupational injury or illness, personal injury, or loss of or damage to state property, or an event involving the public that exposes the state to a liability loss.
21. "Loss prevention" means any action or plan intended to reduce the frequency and severity of property, liability, or workers' compensation losses.
22. "Occurrence" means an accident, incident or a series of accidents or incidents arising out of a single event or originating cause and includes all resultant or concomitant insured losses.
23. "Passenger van" means any motor vehicle designed, modified, or otherwise capable of being configured to carry not less than 8 passengers and no more than 15 passengers.
24. "Personal protective equipment" means any clothing, material, device, or equipment worn to protect a person from exposure to, or contact with, any harmful material or force.
25. "Provider" means an individual or entity licensed to provide services to state clients as outlined in A.R.S. § 41-621(B) that is not contractually required to indemnify and hold the state harmless.
26. "Remedial action" or "remediation" means the process of cleaning up a hazardous substance or waste site by an environmental contractor.
27. "Risk Manager" means the Administrator for the State Risk Management Program.
28. "Risk Management" or "RM" means the State Risk Management Program.
29. "Self-insurance" means state provided loss protection for an agency or employee funded through RM's revolving fund.
30. "Site assessment" means the process of completing and assessing a site investigation and a feasibility study.
31. "Site investigation" means a detailed examination by an environmental contractor of an area of a building or ground suspected of being contaminated with a hazardous substance or waste.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Former Section R2-10-101 repealed, new Section R2-10-101 adopted effective June 12, 1989 (Supp. 89-2). Amended effective December 18, 1992 (Supp. 92-4). Amended effective January 12, 1995 (Supp. 95-1). Amended effective September 15, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 1717, effective April 20, 2000 (Supp. 00-2). Amended by final rulemaking at 23 A.A.R. 3239, effective January 8, 2018 (Supp. 17-4).

R2-10-102. Reporting Procedures

- A.** An agency or provider shall report a property loss, liability claim, or incident that may give rise to a claim under A.R.S. § 41-621 to RM as follows:
 - 1. A physical injury within 1 day of the incident orally, in writing, or by electronic means.
 - 2. Property damage expected to exceed \$10,000 within 1 day of the incident orally, in writing, or by electronic means.
 - 3. Property loss expected to exceed \$10,000 within 1 day of the incident orally, in writing, or by electronic means.
 - 4. All other claims or incidents within 10 days of the incident in writing or by electronic means.
- B.** An agency, officer, agent, or employee of the state receiving a claim, notice, summons, complaint or other process by any claimant or representative shall immediately forward the claim to RM. This applies to all claims for injuries or damages whether the reporting party believes there to be a factual basis for the claim, but excludes contract lawsuits or other matters not covered under A.R.S. § 41-621.
- C.** An agency officer, agent, or employee shall cooperate under A.R.S. § 41-621(M) with RM, the Attorney General's office and their representatives and shall provide all information and materials RM requests to investigate and resolve a claim.
- D.** An agency shall submit a report of a loss on the following RM forms:
 - 1. A loss involving a state-owned vehicle or a state driver on the "Automobile Loss Report". Information required includes: the agency involved, facts of the incident, the vehicles involved, description of injuries to individuals, names of witnesses, and the police agency that investigated the incident.
 - 2. A loss involving private property damage, or injury to a member of the public as a result of alleged negligence of a state officer, agent or employee other than a loss arising out of use of a motor vehicle, on a "General Liability Report". Information including the agency and employees involved, facts of the incident, name of the claimant, and description of the claimant's injuries, witnesses to the incident, and the name of the police agency that investigated the incident.
 - 3. A loss to state property, whether personal property (other than motor vehicles) or real property, on the "Property Loss Report". Information includes the agency and employees involved, facts of the incident, description of the damaged property, the party responsible for the loss, names of witnesses, and the police agency investigating the loss.
 - 4. A loss to employee-owned property covered under A.R.S. § 41-621(A)(4) on the "Property Loss Report". Information necessary to document the loss and calculate the actual dollar value of the claim is required. In addition, the employee shall submit a copy of any written agreement between the employee and the employing state agency authorizing the use of the employee-owned property on the job, and a copy of the Personal Property Inventory form (PROPINV) maintained by the employing state agency.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Amended effective June 12, 1989 (Supp. 89-2). Amended effective December 18, 1992 (Supp. 92-4). Amended effective January 12, 1995 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 1717, effective April 20, 2000 (Supp. 00-2).

R2-10-103. Liability Claim Procedures

- A.** RM shall investigate all reported liability claims to determine coverage. RM shall notify the appropriate insurance carrier, if applicable, and evaluate the merits of self-insured claims and coordinate defense and settlements under A.R.S. § 41-621.
- B.** State employees shall direct all contacts concerning any liability claim against the state, its agencies, officers, agents, or employees by a third party to RM, the Attorney General's office, or an independent contractor representing either of those offices.
- C.** Unless authorized by law, an agency, officer, or employee shall obtain prior approval from the Risk Manager, Attorney General's office before disclosure of oral discussions, written reports of claims, or lawsuits to anyone other than state-authorized personnel. Prior permission for each discussion or report is necessary to comply with this subsection.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Amended effective June 12, 1989 (Supp. 89-2). Amended effective December 18, 1992 (Supp. 92-4). Amended effective January 12, 1995 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 1717, effective April 20, 2000 (Supp. 00-2).

R2-10-104. Self-insured Property Claim Procedures

- A.** RM shall not cover a property loss covered under the terms of the state's self-insurance program for state agencies if the loss is not reported to RM as required by R2-10-102(A), or is reported later than 90 days following discovery of the incident. RM shall cover a property loss only if there is proper documentation as to the cause and dollar amount of the loss. RM shall only cover those claims with documentation submitted to RM within 1 year of the date of discovery. If a loss to a building or structure requires more than one year to repair or replace, the Risk Manager may grant an extension of time to document the

amount of the loss. An agency shall submit a request for an extension in writing to the Risk Manager no later than 11 months from the date of loss. The request shall contain clear justification for the delay, and a projected date of completion.

- B. RM shall investigate all reported property claims to determine coverage (and notify the appropriate excess insurance carrier if applicable) and coordinate settlements under A.R.S. § 41-621.
- C. RM or, upon request, the agency involved, shall obtain competitive bids for the necessary repairs or replacement. RM shall authorize and approve all repair or replacement.
- D. RM shall review and approve consulting services, when required of an architect or engineer who are advising the state on the repair, replacement, or construction of state buildings that have been partially or totally damaged and that are to be paid for by RM funds.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Amended effective June 12 1989 (Supp.89-1). Amended effective December 18, 1992 (Supp. 92-4). Amended effective January 12, 1995 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 1717, effective April 20, 2000 (Supp. 00-2).

R2-10-105. Employment Discrimination Claim Procedures

- A. Upon receipt of a notice of discrimination charge, the agency or employee shall:
 - 1. Within 7 days, send a copy of the charge to RM and the Attorney General's office.
 - 2. Contact the Attorney General's office for any required legal assistance during the administrative process.
 - 3. Provide to RM a completed copy of any response, prior to filing. RM shall review the information contained in the response and assist in resolution during administrative process.
- B. The agency shall provide a copy of a decision or Right to Sue Letter to RM within 7 days.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Amended effective June 12, 1989 (Supp. 89-2). Former Section R2-10-105 renumbered to Sections R2-10-106 and R2-10-107, new Section R2-10-105 renumbered from R2-10-106 and amended effective December 18, 1992 (Supp. 92-4). Amended effective January 12, 1995 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 1717, effective April 20, 2000 (Supp. 00-2).

R2-10-106. State-owned Property Coverage and Limitations

- A. The Department provides property loss coverage for state-owned buildings on a replacement-cost basis for items actually replaced or repaired. Property loss coverage for state-owned personal property is replacement cost less depreciation. For agencies with a total appropriated and non-appropriated budget of less than \$1 million, property claims will be subject to a \$100 per occurrence deductible. A property deductible of \$2,500 per occurrence shall apply to all other agencies.
 - a. Subrogation collections shall reimburse the fund from which a deductible was paid up to the amount of the deductible and on a primary basis.
 - b. No deductible shall apply to property loss coverage afforded in accordance with A.R.S § 41-621(B).
- B. RM shall not include the cost of labor in property loss reimbursement if state employee labor cost for repair or replacement is allocated from appropriated funds. RM shall determine whether to use state employees or contractors for repair work based upon availability.
- C. Property loss coverage includes all state-owned property except: roads, bridges, tunnels, dams, dikes, and retaining walls.

Historical Note

Adopted effective June 12, 1989 (Supp. 89-2). Former Section R2-10-106 renumbered to R2-10-105, new Section R2-10-106 renumbered from R2-10-105(A) and (B) and amended effective December 18, 1992 (Supp. 92-4). Amended effective January 12, 1995 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 1717, effective April 20, 2000 (Supp. 00-2). Amended by final rulemaking at 23 A.A.R. 3239, effective January 8, 2018 (Supp. 17-4).

R2-10-107. Liability Coverage and Limitations

- A. The following coverage and limitations apply in this Chapter:
 - 1. The Department provides liability coverage within the limitations of A.R.S. § 41-621 for an officer, agent, or employee while driving a state-owned or other vehicle in the course and scope of employment.
 - a. Coverage shall be on a primary basis for a state-owned, leased, or rented vehicle and on an excess basis for any other vehicle.
 - b. The state shall not provide coverage for damage or loss of a personal vehicle.
 - 2. An officer, agent, or employee operates a state-owned vehicle within the course and scope of employment if driving:
 - a. On authorized state business,
 - b. To and from work,
 - c. To and from lunch on a working day,
 - d. To and from meals while on out-of-town travel.
 - 3. An officer, agent, or employee does not operate a personal vehicle within the course and scope of employment when driving:
 - a. To and from work,
 - b. To and from lunch in the area of employment and not on authorized state business,

- c. On other than state-authorized business.
- B. A volunteer acting at the direction of a state official, within the course and scope of state-authorized activities, is covered under A.R.S. § 41-621.
- C. A claim alleging a civil rights violation is covered through RM, except there is no coverage for payment of that portion of a settlement or judgment for position status adjustments.
- D. The state shall cover an agent, officer, or employee for liability on an excess basis while using the agent, officer, or employee's personal aircraft within the course and scope of employment with the state under the following guidelines:
 1. An agent, officer, or employee shall carry a minimum of \$1,000,000 in aircraft liability coverage.
 2. RM shall approve an agent, officer, or employee pilot prior to flying on state business. To obtain this approval, an agent, officer, or employee shall complete an RM pilot application form that requests the pilot's name, airman's certificate number, driver's license number, aircraft description, rating, and flying hours, and submit it to RM for review with a certificate of insurance evidencing the required limits of coverage on a personal aircraft. To maintain RM approval, an agent, officer, or employee pilot shall submit an updated pilot application form and certificate of insurance annually.
 3. RM shall send a letter to an agent, officer, or employee approving or rejecting an application to fly a personal aircraft on state business. The approval letter shall be presented to the appropriate department head and a copy sent to the agency's loss prevention coordinator.
 4. An agent, officer, or employee shall maintain a current FAA pilot certification.
 5. An agent, officer, or employee shall meet the pilot warranties in the aircraft insurance policy owned by the state.
 6. An agent, officer, or employee shall hold all licenses, certificates, endorsements, and other qualifications, including proficiency checks and recent experience, required by the FAA or other federal, state, or local statutes and rules to act as pilot-in-command or as a required crew member for the aircraft being flown. The pilot-in-command shall meet current requirements for carrying passengers.
 7. Course and scope of employment with the state does not include:
 - a. Personal use of an aircraft;
 - b. An aircraft for hire, reward or commercial use;
 - c. Agricultural operations;
 - d. Carrying external loads;
 - e. Performing aerial acrobatics.
 8. An agent, officer, or employee shall carry no more passengers on an aircraft than the number defined in the aircraft insurance policy purchased by RM.
 9. The Department shall not cover damage or loss of the agent, officer, or employee-owned aircraft.
 10. The guidelines in this Section apply to a non-state employee pilot flying on behalf of an agent, officer, or employee on authorized state business.
 11. All aircraft used for state business shall comply with all statutes and rules of the FAA and other federal, state, and local jurisdictions for flight.

Historical Note

Renumbered from R2-10-105(C) through (J) and amended effective December 18, 1992 (Supp. 92-4). Amended effective January 12, 1995 (Supp. 95-1).

Section corrected to reflect amendment on file with the Office of the Secretary of State effective January 12, 1995 (Supp. 97-1). Amended by final rulemaking at 6 A.A.R. 1717, effective April 20, 2000 (Supp. 00-2). Amended by final rulemaking at 23 A.A.R. 3239, effective January 8, 2018 (Supp. 17-4).

R2-10-108. Deductibles and Waivers

- A. Agency Claim Settlement or Judgment More Than \$150,000.
 1. The Department shall charge each agency a deductible of not more than \$10,000 on each claim settlement or judgment approved for payment of more than \$150,000.
 2. RM shall waive the deductible if the agency provides a response to RM containing an agency action plan to be taken to eliminate or limit similar future risk to the state, and:
 - a. The agency action plan is submitted to RM within 60 days of the agency's notification of claim approval or payment. The agency action plan shall include the following:
 - i. Findings outlining the cause or causes of the claim;
 - ii. Actions that will be implemented to prevent recurrence of similar losses or claims;
 - iii. Development of action items and timelines for completion; and
 - iv. Appointment of an agency contact to act as a liaison for all matters relating to the plan.
 - b. RM approves the agency action plan as reasonable and effective; and
 - c. The agency implements the plan within 30 days of RM approval, and provides periodic status reports as outlined in the approved Agency Action Plan.
 3. If the agency fails to comply with all the conditions outlined in subsection (A)(2), RM shall charge a deductible of \$10,000 on the subject judgment or claim payment as well as each subsequent claim resulting from that cause or exposure until the agency fully complies with subsection (A)(2).

- B. RM may waive any deductible to any agency for just cause. Just cause may exist when the application of a deductible is not warranted due to the circumstances of the claim, or is in the best interest of the state.
- C. If a dispute arises between RM and the agency pertaining to this Section, one or more meetings shall be held at progressively upward, incremental Department of Administration management levels until the agency and RM reach a solution.

Historical Note

Adopted effective September 15, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 1717, effective April 20, 2000 (Supp. 00-2). Amended by final rulemaking at 12 A.A.R. 4384, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 23 A.A.R. 3239, effective January 8, 2018 (Supp. 17-4).

R2-10-109. Computation of Time

In computing any period of time prescribed or allowed in this Chapter, the day from which the designated period begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal state holiday. When the period of time is less than 7 days, intermediate Saturdays, Sundays, and legal state holidays shall be excluded in the computation.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 1717, effective April 20, 2000 (Supp. 00-2).

ARTICLE 2. LOSS PREVENTION

R2-10-201. Submission of Building Plans

If an agency anticipates the cost to construct, alter, or repair a state-owned or leased building to exceed \$100,000, the agency shall submit building plans to RM prior to a pre-planning conference with an architect to allow RM to offer recommendations for loss prevention measures.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Amended effective June 12, 1989 (Supp. 89-1). Amended effective December 18, 1992 (Supp. 92-4). Amended effective January 12, 1995 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 1717, effective April 20, 2000 (Supp. 00-2). Amended by final rulemaking at 23 A.A.R. 3239, effective January 8, 2018 (Supp. 17-4).

R2-10-202. Purchase of Specialized Hazard Control Equipment

- A. An agency shall notify the RM Loss Prevention Manager prior to starting the procurement process for any specialized safety or security equipment or system exceeding \$50,000. RM shall assist each agency to determine whether the equipment or system will adequately perform its specialized function and is in compliance with applicable codes.
- B. RM shall submit any comments or recommendations regarding specialized safety or security equipment or system to the agency within 10 days from the date RM receives notification of a planned procurement.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Amended effective June 12, 1989 (Supp. 89-2). Amended effective December 18, 1992 (Supp. 92-4). Amended effective January 12, 1995 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 1717, effective April 20, 2000 (Supp. 00-2). Amended by final rulemaking at 23 A.A.R. 3239, effective January 8, 2018 (Supp. 17-4).

R2-10-203. Hazard Reporting

Any agency, officer, agent, or employee shall advise a supervisor, loss prevention coordinator, or loss prevention committee chairperson of any suspected or potential hazards that may require inspection, investigation, or requires action to correct. A supervisor shall report an identified hazard that cannot be corrected to the agency head. The agency head shall notify RM of any hazard that cannot be corrected by the agency or that requires further evaluation and assessment before corrective action can be taken.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Amended effective June 12, 1989 (Supp. 89-2). Amended effective December 18, 1992 (Supp. 92-4). Amended effective January 12, 1995 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 1717, effective April 20, 2000 (Supp. 00-2).

R2-10-204. RM Loss Prevention Consultative Services

- A. The Risk Manager shall schedule, evaluate, and assess each state agency's loss prevention programs and facilities to identify program deficiencies or hazardous conditions that might lead to loss. Following an evaluation or assessment, RM shall submit a written report to the agency head and loss prevention coordinator, with recommendations to eliminate or control physical hazards or correct unsafe practices and procedures.
- B. An agency shall respond in writing to RM recommendations detailing the agency's corrective action plan within 60 days. The agency shall review the recommendations to determine cost feasibility and integration into agency plans. The agency shall notify RM of the corrective action it intends to take. An agency shall report in writing every 30 days until the agency completes corrective action or Risk Management determines the agency has taken all reasonable corrective action.

- C. Subsection (B) does not apply to an RM recommendation in response to an agency request for a hazard assessment.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Amended effective June 12, 1989 (Supp. 89-2). Amended effective December 18, 1992 (Supp. 92-4). Amended effective January 12, 1995 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 1717, effective April 20, 2000 (Supp. 00-2).

R2-10-205. Development and Implementation of Agency Loss Prevention Programs

- A. An agency head shall develop and implement an agency loss prevention program that integrates loss prevention and safety policy into all agency activities. The agency shall incorporate into the loss prevention program the requirements of this Section, applicable state and federal standards, state worker and property protection measures, and programs, practices, and procedures to protect the state from third-party liability claims.
- B. An agency head, in coordination with RM, shall develop and implement policies, practices, and procedures to reduce the frequency and severity of a future incident if:
1. The agency has or may have a loss; and
 2. Federal or state rules, or National Consensus Standards have not been developed, or do not apply to protect the state from such losses.
- C. RM shall publish criteria and program information as guidance for an agency to use in its loss prevention program and shall interpret and explain state, federal, and National Consensus Standards.

Historical Note

Adopted effective Aug. 12, 1985 (Supp. 85-4). Amended effective June 12, 1989 (Supp. 89-2). Section repealed, new Section adopted effective December 18, 1992 (Supp. 92-4). Amended effective January 12, 1995 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 1717, effective April 20, 2000 (Supp. 00-2).

R2-10-206. Agency Loss Prevention Program Management

- A. An agency shall issue a policy letter to all agency employees that expresses the agency commitment to prevent or control losses. The letter shall solicit the support of agency personnel to the goals and objectives of loss prevention. The agency shall include the letter in the agency loss prevention program document, which shall be available for review by all agency personnel.
- B. An agency head shall appoint a qualified management level or professional employee as loss prevention coordinator. The loss prevention coordinator shall conduct and coordinate the agency's loss prevention program. The loss prevention coordinator shall be an ex-officio member of the agency's loss prevention committee and report to the agency head on matters pertaining to administration of the loss prevention program and safety within the agency. The loss prevention coordinator interprets and applies policies and procedures, chairs and coordinates the agency safety committee, reviews agency loss claims, and makes recommendations to prevent future losses. The loss prevention coordinator shall provide technical information to employees and agency management concerning Arizona Department of Safety and Health (ADOSH) and Arizona Department of Environmental Quality (ADEQ) requirements as well as RM policies, procedures, and the rules in this Chapter.
- C. Each agency head shall establish an agency loss prevention committee to develop, implement and monitor the agency's loss prevention program. The agency shall appoint to the committee management level personnel representing each major division within the agency. An agency with multi-level organizational structures shall ensure that committee membership is representative of the functional and geographical divisions of the agency.

Historical Note

Adopted effective December 18, 1992 (Supp. 92-4). Amended effective January 12, 1995 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 1717, effective April 20, 2000 (Supp. 00-2).

R2-10-207. Agency Loss Prevention Program Elements

Each agency loss prevention committee or individuals designated by the agency head shall develop, implement, and monitor the following loss prevention program elements of an occupational health and safety program (as applicable to their agency):

1. New employee and continuous in-service training programs that include:
 - a. Safety and loss prevention education regarding property protection, liability exposure, and workplace safety;
 - b. Agency-specific safety training regarding emergency plans, actions, and first-aid; and
 - c. Job-specific safety training to employees performing tasks where:
 - i. Frequent or severe accidents have occurred; or
 - ii. There is a potential for frequent or severe accidents.
2. Documentation and recordkeeping of employee training;
3. An emergency plan for each agency location that establishes procedures to follow in the event of serious injury, fire, or other emergency that can be reasonably foreseen at the specific agency location. The emergency plan shall:
 - a. Designate an employee responsible for formulating, implementing, testing, and maintaining the emergency plan;
 - b. Contain procedures for notification of emergency response personnel and safe evacuation of personnel from the location, including an evacuation diagram that shall be visibly posted throughout each location;

- c. Contain procedures for obtaining first-aid, medical treatment, and emergency transportation in the event of serious injury; and
 - d. Require that the plan be periodically tested and evaluated and identified deficiencies corrected;
 4. Procedures for scheduled safety inspections of buildings, grounds, equipment, and machinery. An agency shall document the results of each inspection and forward notice of any deficiencies to the loss prevention coordinator for corrective action. The agency loss prevention committee or coordinator shall follow-up on inspection recommendations to ensure action is taken to remedy a noted deficiency. The agency loss prevention committee or coordinator shall bring an uncorrected deficiency to the attention of the agency head;
 5. Procedures for accident and incident investigations:
 - a. An agency shall develop procedures for reporting an accident or incident involving personnel, property, automobile, liability, industrial injury, environmental damage, and a mishap or near miss to the agency's loss prevention coordinator or loss prevention committee. The loss prevention coordinator and loss prevention committee shall review the accident and incident reports and identify the corrective action necessary to prevent recurrence;
 - b. Procedures for reporting, investigating, and recording maintenance of a work-related accident or incident shall include:
 - i. Timely and accurate reporting of each work-related accident or incident;
 - ii. Investigation of each accident or incident to gather pertinent information, determine cause, and recommend a solution to prevent recurrence of a similar accident or incident;
 - iii. Compiling, analyzing, and evaluating all data derived from the investigation to determine the frequency, severity, and location of an accident or incident and communicating the information to appropriate agency personnel; and
 - iv. Maintaining records of employee injury under A.A.C. R20-5-629;
 6. A maintenance program for state-owned vehicles, equipment, and grounds under the control of that agency that includes:
 - a. A preventive maintenance program with a written schedule of routine inspection, adjustment, cleaning, lubrication, and testing of equipment including boilers and machinery, fire protection, security and emergency equipment, and motor vehicles;
 - b. Safety procedures such as "lock-out-tagout" and "buddy procedures" for jobs subject to a serious accident such as those involving working in a confined space, operating dangerous equipment and machinery, and working on electrical equipment; and
 - c. Personal protective equipment for a specific job or area including training on proper fit, use, care, maintenance, inspection, cleaning, and storage;
 7. A fire protection program that complies with the Arizona State Fire Code, located in A.A.C. Title 4, Chapter 36. This program shall incorporate best practices and standards that protect state of Arizona employees, the general public, and resources entrusted to the agency.
 8. Systems and procedures to protect the personal security of each employee and prevent loss of or damage to state property, including:
 - a. Security escorts, exterior lighting, identification badges, and electronic access systems;
 - b. Labeling systems, inventory control procedures, property removal procedures, and key control systems; and
 - c. Building and ground security systems, alarms systems, electronic surveillance, perimeter fencing, and security patrol services.
 9. A land, facility, equipment, or process environmental protection program that includes:
 - a. Procedures to ensure compliance with all applicable local, state, and federal environmental laws;
 - b. Identification of equipment, processes, and practices that may cause water pollution, air pollution, or land and property contamination;
 - c. Procedures to prevent or control emissions and discharges in excess of local, state, and federal laws and rules; and
 - d. Procedures to investigate, report, and remediate any discharge or contamination in excess of local, state, or federal laws and rules;
 10. An industrial hygiene program that encompasses an existing or potential health hazard within an agency, or that agency personnel may be exposed to during the course of work. The program shall include a documented survey of agency facilities and work practices to identify areas of concern such as noise, air contamination, ergonomic factors, lighting and confined spaces. The program shall include procedures to notify employees of health hazards, medical monitoring when applicable, and personal protective equipment requirements including training, fit testing, and care. The industrial hygiene program shall include the following program elements as applicable:
 - a. Hazard communication;
 - b. Laboratory safety (Chemical Hygiene Plan);
 - c. Hearing conservation;
 - d. Confined space entry;
 - e. Handling and disposing of hazardous waste;
 - f. Back protection;

- g. Ergonomics;
 - h. Asbestos management;
 - i. Building air quality;
 - j. Chemical exposure assessment;
 - k. Personal protective equipment;
 - l. Respiratory protection;
 - m. Bloodborne pathogen protection; and
 - n. Tuberculosis protection;
11. Motor vehicle safety program. For the purpose of this Section, an authorized driver is an employee whose job position description questionnaire or similar document requires the use of a vehicle; an employee who operates a state vehicle; or an employee who operates a leased, rented or personal vehicle where the state provides 100% of that vehicle lease, rental or operational costs.
- a. Standards: Each agency shall develop standards to ensure that an authorized driver who drives on state business is capable of operating a motor vehicle in a safe manner. At a minimum, the program shall include the following standards:
 - i. An authorized driver shall use and ensure use of seat belts by all occupants, as required by law.
 - ii. An authorized driver shall possess a valid driver's license of the appropriate class with any required endorsements.
 - iii. An authorized driver who operates a personally owned vehicle on state business shall maintain the statutorily required liability insurance.
 - b. Defensive driver training: The agency shall develop and implement programs and procedures to ensure that authorized drivers attend defensive driver training no later than three months from initial hire date or appointment to a position requiring the operation of a motor vehicle. All other authorized drivers who have not attended defensive driver training within the 36 months prior to August 5, 2007 shall attend defensive driver training within 12 months of this date. Defensive driver training and defensive driver refresher training shall cover, at a minimum, the following topics:
 - i. Defensive driving techniques,
 - ii. Traffic and vehicle regulations,
 - iii. Driver and passenger restraints,
 - iv. Inclement weather and night-vision driving hazards,
 - v. Dealing with emergencies,
 - vi. Alcohol and drug use hazards and laws,
 - vii. Vehicle insurance and financial responsibility, and
 - viii. Motor Vehicle Record (MVR) Check.

RM may provide Defensive Driver/Van Safety training assistance or coordination upon request of the agency or the agency may elect to develop and implement agency-specific training.
 - c. Records: The agency shall ensure records are maintained regarding training under subsections (b), (c) and (e) that reflect topics, date of training, instructor name and qualifications of instructor, length of training, location of training, participant's name, and job title.
 - d. Passenger van and specialty vehicle training: In addition to subsection (b), the agency shall include a training element for drivers of passenger or cargo vans that are designed, modified, or could otherwise be configured for an occupancy of nine to 15 persons (including the driver). The training component for vans shall include: classroom instruction, behind-the-wheel instruction (on the road, on a closed course or using a driving simulator) and a certificate or card of completion. For a motorized specialty vehicle or specialty mobile equipment, the agency shall ensure that instruction is conducted before initial operation of the vehicle or equipment. The instruction shall be based on nationally recognized industry standards and training time lines or manufacturer's operator instructions. For the purpose of this subsection, a motorized "specialty vehicle" or "specialty mobile equipment" means a conveyance designed for the transport of people or cargo that is not licensed or intended for use on public roadways.
 - e. Vehicle incident review: An agency shall ensure that the motor fleet safety program includes a vehicle incident review element. A Vehicle Incident Review Committee shall conduct a review of each incident that involves collision or damage to determine the cause and preventability of the incident, and recommend any corrective action to prevent recurrence. If the committee determines the incident was preventable, the driver shall attend defensive driver refresher training within three months of committee determination. Based on the circumstances, the agency head may direct additional corrective action. An authorized driver involved in any motor vehicle collision on state business shall promptly notify the authorized driver's immediate supervisor.
 - f. Driving record review: An agency shall develop and implement procedures for the review of an authorized driver's record maintained by the Motor Vehicle Division (MVD) of the Arizona Department of Transportation (ADOT). The agency shall establish a schedule for reviewing driving records based on agency-specific exposures and RM claims history data. The agency shall ensure that the driving record of each authorized driver is reviewed at least annually. The review shall cover the most recent 39-month period. For driving record reviews, each

authorized driver shall, upon request, provide name, driver license number, expiration date and date of birth. A copy of a driving record release form is available upon request from RM. An authorized driver shall promptly notify the authorized driver's immediate supervisor of any license suspension, revocation, or restriction placed on the driver's license or privilege to drive a motor vehicle. If the license of an authorized driver is suspended or revoked, authorization to drive on state business is suspended on the date of driver's license suspension or revocation and remains suspended until the date of driver's license reinstatement. If a review of a driving record reveals one or more convictions totaling six or more points for the 39-month period, the appropriate agency management shall be notified. The driver shall attend defensive driver training or similar action designed to improve the person's driving skills. For the purpose of this Section, RM considers similar action to be successful completion of the MVD Traffic Survival School within 12 months of the record review.

- g. Driving record review guidelines and criteria: Agencies may develop criteria that meet or exceed the requirements of this Section relating to accumulated MVD points or driving behavior. At a minimum, the following criteria are to be followed when evaluating a 39-month driving record and recommending agency action:
 - i. 5 or fewer points = Acceptable record: Continue annual driving record and driver insurance status checks.
 - ii. 6 to 7 points = Conditional record: Conduct driving record and driver insurance status checks at least twice a year. Driver attends defensive driver training or similar action designed to improve driving skill.
 - iii. 8 or more points = High-risk record: Request that the agency head limit driving on state business. If an agency head allows the authorized driver to drive on state business, the agency head shall provide to the driver, in writing, the limitations and the duration of the authorization to drive. An agency head shall not circumvent an order or action of the Motor Vehicle Division or any court.
- 12. A safety and security standard for a construction site where state employees work, that includes:
 - a. Site-specific safety rules and procedures for the type of risks expected to be encountered on the site;
 - b. Routine inspection of construction sites to ensure compliance with local, state, and federal safety laws and rules;
 - c. Training of each employee in safe practices and procedures;
 - d. Availability of first-aid, medical, and emergency equipment and services at the construction site, including arrangements for emergency transportation;
 - e. Procedures to prevent theft, vandalism, and other losses at the construction site; and
 - f. Periodic testing and evaluation of the plan and correction of identified deficiencies.

Historical Note

Adopted effective December 18, 1992 (Supp. 92-4). Amended effective January 12, 1995 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 1717, effective April 20, 2000 (Supp. 00-2). Amended by final rulemaking at 13 A.A.R. 2043, effective August 4, 2007 (Supp. 07-2). Amended by final rulemaking at 23 A.A.R. 3239, effective January 8, 2018 (Supp. 17-4).

18, 1992 (Supp. 92-4).

ARTICLE 4. PROVIDER INDEMNITY PROGRAM (PIP)

R2-10-401. Coverages and Limitations

- A. The Department of Administration shall purchase insurance or self-insure the parties and programs as set forth in A.R.S. § 41-621(B) for losses caused by an occurrence or wrongful act which is the result of either the actions of a state client or the actions of an individual provider while providing direct or incidental care of a state client.
- B. Coverages which shall apply under this program are as follows:
 - 1. Liability coverage for providers and clients is provided pursuant to A.R.S. § 41-621(A).
 - 2. Coverage is provided on a replacement-cost-less-depreciation basis for the loss of or damage to real or personal property owned by a provider as a result of the actions of a client.
- C. Coverages that are excluded from this program include:
 - 1. Mysterious disappearance of property;
 - 2. Intentional, unlawful or illegal acts except claims pursuant to A.R.S. § 12-661;
 - 3. Automobile physical damage resulting from permissive use by a client;
 - 4. Benefits covered under any workers' compensation, unemployment compensation, or disability benefits law; and
 - 5. All claims or lawsuits, including defense costs, which result from physical abuse, sexual abuse or sexual molestation except claims pursuant to A.R.S. § 12-661.

Historical Note

Adopted effective June 12, 1989 (Supp. 89-2). Amended effective December 18, 1992 (Supp. 92-4). Amended effective January 12, 1995 (Supp. 95-1).

R2-10-402. Repealed

Historical Note

Adopted effective June 12, 1989 (Supp. 89-2). Repealed effective December 18, 1992 (Supp. 92-4).

R2-10-403. Repealed

Historical Note

Adopted effective June 12, 1989 (Supp. 89-2). Repealed effective December 18, 1992 (Supp. 92-4).

R2-10-404. Repealed

Historical Note

Adopted effective June 12, 1989 (Supp. 89-2). Repealed effective December 18, 1992 (Supp. 92-4).

R2-10-405. Repealed

Historical Note

Adopted effective June 12, 1989 (Supp. 89-2). Repealed effective December 18, 1992 (Supp. 92-4).

R2-10-406. Repealed

Historical Note

Adopted effective June 12, 1989 (Supp. 89-2). Repealed effective December 18, 1992 (Supp. 92-4).

ARTICLE 5. ENVIRONMENTAL LOSSES

R2-10-501. Investigation, Feasibility Study, and Remediation of the Release of Hazardous Substances

- A. RM will provide funding for a site investigation, feasibility study, and remediation of any hazardous materials, operations, or wastes which have resulted in or may result in environmental damage and/or a health threat associated with property and/or facilities owned or operated by the state or at which such operations are conducted or materials/wastes are located.
- B. RM will provide funding to determine the horizontal and vertical extent of the hazardous substance/waste discovered during the site investigation. This will include:
 - 1. Sample collection and analysis of laboratory results from:
 - a. Soil boring samples
 - b. Trenching samples
 - c. Bedrock core samples
 - d. Groundwater monitoring well samples
 - e. Structural facilities
 - 2. Geophysical surveys
 - 3. If a feasibility study indicates remediation is necessary, RM will provide funding to the agency for an environmental remediation contractor as explained in R2-10-502.
- C. RM shall not pay for site investigations and feasibility studies for agencies planning to obtain property by any means including lease, purchase, and gift, where there may be potential damage to the air, water, or soil.

Historical Note

Adopted effective January 12, 1995 (Supp. 95-1).

R2-10-502. Contracting for Site Investigation, Feasibility Study, Remediation, and Other Related Environmental Work

- A. If an environmental project is anticipated to exceed \$10,000 (for both the site assessment and the remediation), an agency shall obtain cost proposals from at least three environmental contractors on contract through DOA, State Purchasing Office. Agencies without environmental expertise shall receive assistance from RM in selecting an environmental contractor.
- B. A higher cost proposal may be selected by an agency if a more detailed scope of work is submitted by another environmental contractor justifying the additional cost. A letter of explanation justifying the selection of a higher cost proposal will be sent to RM for consideration before approval is granted by RM to proceed with the site investigation/assessment or remediation.
- C. RM shall have the right to reject the selection of any environmental contractor by a state agency for just cause. Just cause exists when a major deficiency in the proposed scope of work occurs. If the agency disagrees with RM's decision, one or more meetings will be held at progressively upward, incremental management levels until a solution is reached with the Director of the Department of Administration.
- D. The remediation cost proposals will be based upon the alternative that has been recommended by the feasibility study remedial action plan.
- E. A verbal approval on a contract for site investigation, feasibility study, remediation, and other related environmental work (followed by an original hard copy) will be given by RM when an emergency exists.

Historical Note

Adopted effective January 12, 1995 (Supp. 95-1).

R2-10-503. Site Maintenance

RM shall, if the agency so requests, provide funding for site maintenance of closed hazardous substance/waste sites where remediation has been complete as required by the Arizona Department of Environmental Quality (ADEQ) or the Environmental Protection Agency (EPA).

Historical Note

Adopted effective January 12, 1995 (Supp. 95-1).

R2-10-504. Expired

Historical Note

Adopted effective January 12, 1995 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 448, effective January 11, 2017 (Supp. 17-1).

ARTICLE 6. COMPUTATION OF INTEREST ON APPEALED JUDGEMENTS

R2-10-601. Computation Procedures

- A.** Interest payable on judgments against the state that are appealed shall be computed by averaging the investment yields on three-month and six-month Treasury Bills as reported in the Federal Reserve's H 15 statistical release of selected interest rates for the period of time the case is on appeal.
- B.** Averages are calculated for each individual month of the appeal period and then averaged for the total months of the appeal period, excluding those months in which the case was on appeal for less than 15 days.

Historical Note

Adopted effective January 12, 1995 (Supp. 95-1).

**A COPY OF THE GENERAL AND SPECIFIC STATUTES
AUTHORIZING THE RULES**

A.A.C. Title 2, Chapter 10
Arizona Department of Administration
Risk Management Division

41-621. Purchase of insurance; coverage; limitations; exclusions; definitions

A. The department of administration shall obtain insurance against loss, to the extent it is determined necessary and in the best interests of this state as provided in subsection F of this section, on the following:

1. All state-owned buildings, including those of the universities, excluding buildings of community colleges, whether financed in whole or in part by state monies or buildings in which the state has an insurable interest as determined by the department of administration.
2. Contents in any buildings owned, leased or rented, in whole or in part, by or to this state, excluding buildings of community colleges, and reported to the department of administration.
3. This state and its departments, agencies, boards and commissions and all officers, agents and employees thereof and such others as may be necessary to accomplish the functions or business of the state and its departments, agencies, boards and commissions against liability for acts or omissions of any nature while acting in authorized governmental or proprietary capacities and in the course and scope of employment or authorization except as prescribed by this chapter.
4. All personal property reported to the department of administration, including vehicles and aircraft owned by the state and its departments, agencies, boards and commissions and all nonowned personal property that is under the clear responsibility of this state because of written leases or other written agreements.
5. This state and its departments, agencies, boards and commissions against casualty, use and occupancy and liability losses of every nature except as prescribed by this chapter.
6. Workers' compensation and employers' liability insurance.
7. Design and construction of buildings, roads, environmental remediations and other construction projects.
8. Other exposures to loss where insurance may be required to protect this state and its departments, agencies, boards and commissions and all officers, agents and employees acting in the course and scope of employment or authorization except as prescribed by this chapter.

B. To the extent it is determined necessary and in the best interests of this state, the department of administration shall obtain insurance or provide for state self-insurance against property damage caused by clients and liability coverage resulting from the direct or incidental care of clients participating in programs of this state and its departments, agencies, boards or commissions relating to custodial care. The insurable programs shall include foster care, programs for persons with developmental disabilities, an independent living program pursuant to section 8-521 and respite-sitter service programs. The department shall obtain insurance or provide for state self-insurance pursuant to this subsection to protect the clients participating in

these programs and individual providers of these program services on behalf of this state and its departments, agencies, boards or commissions. The insurance provided under this subsection does not include medical or workers' compensation coverage for providers. The department may include in its annual budget request pursuant to section 41-622, subsection D a charge for the insurance or self-insurance provided in this subsection. To assist in carrying out this subsection, the department shall establish a seven-member advisory board in accordance with the following provisions:

1. The board shall consist of three members appointed by the director of the department of administration, at least one of whom shall be a foster parent, one member appointed by the director of the department of economic security, one member appointed by the director of the department of child safety, one member appointed by the director of the state department of corrections, and one member appointed by the administrative director of the courts.
 2. The board shall elect a chairman from among its members.
 3. The board shall hold at least two meetings a year or shall meet at the call of the chairman.
 4. Board members shall serve for three-year terms.
 5. Board members are not eligible to receive compensation but are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.
 6. The board shall provide advice to the department regarding coverage and administration of this subsection and shall assist the department in coordinating its activities pursuant to this subsection with state departments, agencies, boards and commissions.
- C. The department of administration may obtain insurance against loss, to the extent it is determined necessary and in the best interests of this state as provided in subsection F of this section for the professional liability of individual physicians and psychiatrists who provide services under a contract with the state department of corrections. Coverage is limited to acts and omissions committed inside a state department of corrections facility while in the performance of the contract and to individual physicians and psychiatrists who demonstrate to the satisfaction of the state department of corrections that they cannot otherwise obtain professional liability coverage for the services required by the contract. The director of the department of administration may impose on the state department of corrections a deductible for each loss that arises out of a professional liability claim pursuant to this subsection. Any changes in deductible amounts established by the director shall be subject to review by the joint legislative budget committee.
- D. The department of administration may obtain property, liability, disability or workers' compensation insurance, self-insure or develop risk retention pools to provide for payment of property loss or casualty claims or disability insurance claims against contractors of this state with the approval of the joint legislative budget committee. With respect to insurance, self-insurance or risk retention pools for contractors licensed and contracted to do work for this

state, the coverage afforded applies with respect to the conduct of the business entity of that contractor. The pool is available to all contractors regardless of the amount that the state-contracted work bears in relation to the amount of nonstate contracted work. The contractor shall be terminated from the pool if the contractor ceases to be a state contractor.

E. The department of administration may determine, in the best interests of this state, that state self-insurance is necessary or desirable and, if that decision is made, shall provide for state self-insurance for losses arising out of state property, liability or workers' compensation claims prescribed by subsection A of this section. If the department of administration provides state self-insurance, such coverage shall be excess over any other valid and collectible insurance. The director of the department of administration may impose on state departments, agencies, boards and commissions a deductible for each loss that arises out of a property, liability or workers' compensation loss pursuant to this subsection. Any changes in deductible amounts established by the director shall be subject to review by the joint legislative budget committee.

F. In carrying out this chapter, the department of administration shall establish and provide the state with some or all of the necessary risk management services, or shall contract for risk management services pursuant to chapter 23 of this title, as the director of the department of administration deems necessary in the best interest of the state, and in addition to other specifications of such coverage as deemed necessary, may determine self-insurance to be established. Chapter 23 of this title does not apply to the department of administration's procurement of insurance to cover losses arising out of state property or liability claims prescribed in subsections A and D of this section or excess loss insurance for the state's workers' compensation liability for individual or aggregate claims, or both, in such amounts and at such primary retention levels as the department of administration deems in the best interest of this state. In purchasing insurance to cover losses arising out of state property or liability claims prescribed by subsection A of this section, the department of administration is not subject to title 20, chapter 2, article 5.

G. A successful bidder for risk management services pursuant to this section is not entitled to receive directly or indirectly any sales commission, contingent commission, excess profit commission, or other commissions, or anything of value, as payment for the risk management services except those amounts received directly from this state as payment for the risk management services.

H. The department of administration shall pay for purchased risk management services, premiums for insurance on state property and state liability and workers' compensation pursuant to this chapter.

I. A state officer, agent or employee acting in good faith, without wanton disregard of statutory duties and under the authority of an enactment that is subsequently declared to be unconstitutional, invalid or inapplicable, is not personally liable for an injury or damage caused thereby except to the extent that the officer, agent or employee would have been personally liable had the enactment been constitutional, valid and applicable.

J. A state officer, agent or employee, except as otherwise provided by statute, is not personally liable for an injury or damage resulting from an act or omission in a public official capacity where the act or omission was the result of the exercise of the discretion vested in the officer, agent or employee and if the exercise of the discretion was done in good faith without wanton disregard of statutory duties.

K. This state and its departments, agencies, boards and commissions are immune from liability for losses arising out of a judgment for wilful and wanton conduct resulting in punitive or exemplary damages.

L. The following exclusions shall apply to subsections A, B and E of this section:

1. Losses against this state and its departments, agencies, boards and commissions that arise out of and are directly attributable to an act or omission determined by a court to be a felony by a person who is provided coverage pursuant to this article unless the state knew of the person's propensity for that action, except those acts arising out of the operation or use of a motor vehicle.

2. Losses arising out of contractual breaches.

M. If self-insurance coverage is determined to exist, the attorney general, with funds provided by the department of administration, shall provide for the defense, either through the attorney general's office or by appointment of outside legal counsel, of this state and its departments, agencies, boards and commissions and all officers, agents and employees thereof and such others as are insured by the department of administration for or on account of their acts or omissions covered pursuant to this chapter. All state departments, agencies, boards and commissions, all officers, agents and employees thereof and such others as are insured by the department of administration shall cooperate fully with the attorney general and department of administration in the defense of claims arising pursuant to this chapter.

N. A claim for liability damages made pursuant to this chapter may be settled and payment made up to the amount of \$25,000 or such higher limit as may be established by the joint legislative budget committee with the approval of the director of the department of administration. A claim over the amount of \$25,000 up to \$50,000 or such higher limit as may be established by the joint legislative budget committee may be settled and payment made with the approval of the director of the department of administration and the attorney general. Any claim over the amount of \$50,000 or such higher limit as may be established by the joint legislative budget committee may be settled and payment made with the approval of the director of the department of administration, the attorney general and the joint legislative budget committee. If it is in the best interest of this state, the joint legislative budget committee may establish higher settlement limits. Any settlements involving amounts in excess of \$50,000 or such higher limit as may be established by the joint legislative budget committee shall be approved by the department of administration, the attorney general and the joint legislative budget committee pursuant to the authority granted. The settlement of liability claims shall be solely the authority of the department of administration, the attorney general and the joint legislative budget committee. No state department, agency, board or commission or any officer, agent or employee of this state

may voluntarily make any payment, assume any obligation, incur any expense or maintain the individual right of consent for liability claims made pursuant to this chapter except as provided by this section.

O. Neither the authority provided by this section to insure, nor the exercise of such authority, shall:

1. Impose any liability on this state or the departments, agencies, boards and commissions or any officers, agents and employees of this state unless such liability otherwise exists.
2. Impair any defense this state or the departments, agencies, boards and commissions or any officers, agents and employees of this state otherwise may have.

P. The department of administration shall pay, on behalf of any state officer, agent or employee, any damages, excluding punitive damages, for which the officer, agent or employee becomes legally responsible if the acts or omissions resulting in liability were within the officer's, agent's or employee's course and scope of employment. The department of administration may pay for all damages however designated that the officer, agent or employee becomes legally responsible for if the acts or omissions resulting in liability are determined by the director of the department of administration to be within the person's course and scope of employment.

Q. The department of administration shall adopt such rules as are deemed necessary to carry out, implement and limit this chapter.

R. For the purposes of determining whether a state officer, agent or employee is entitled to coverage under this chapter, "within the course and scope of employment or authorization" means:

1. The acts or omissions that the state officer, agent or employee is employed or authorized to perform.
2. The acts or omissions of the state officer, agent or employee occur substantially within the authorized time and space limit.
3. The acts or omissions are activated at least in part by a purpose to serve this state or its departments, agencies, boards or commissions.

S. To the extent it is determined necessary and in the best interest of this state, the department of administration may obtain design and construction insurance or provide for self-insurance against property damage caused by this state, its departments, agencies, boards and commissions and all officers and employees of this state in connection with the construction of public works projects. Workers' compensation liability insurance may be purchased to cover both general contractors and subcontractors doing work on a specific contracted worksite. The department may include in its annual budget request, pursuant to section 41-622, subsection D, the cost of

the insurance purchased or provided. In connection with the construction of public works projects, the department of administration may also use an owner-controlled or wrap-up insurance program if all of the following conditions are met:

1. The total cost of the project is over \$50,000,000.
 2. The program maintains completed operations coverage for a term during which coverage is reasonably commercially available as determined by the director of the department of insurance and financial institutions, but in no event for less than three years.
 3. Bid specifications clearly specify for all bidders the insurance coverage provided under the program and the minimum safety requirements that shall be met.
 4. The program does not prohibit a contractor or subcontractor from purchasing any additional insurance coverage that a contractor believes is necessary for protection from any liability arising out of the contract. The cost of the additional insurance shall not be passed through to this state on a contract bid.
 5. The program does not include surety insurance.
- T. The state may purchase an owner-controlled or wrap-up policy that has a deductible or self-insured retention as long as the deductible or self-insured retention does not exceed \$1,000,000.

U. For the purposes of subsections S and T of this section:

1. "Owner-controlled or wrap-up insurance" means a series of insurance policies issued to cover this state and all of the contractors, subcontractors, architects and engineers on a specified contracted worksite for purposes of general liability, property damage and workers' compensation.
2. "Specific contracted worksite" means construction being performed at one site or a series of contiguous sites separated only by a street, roadway, waterway or railroad right-of-way, or along a continuous system for the provision of water and power.

V. Notwithstanding any other statute the department of administration may:

1. Limit the liability of a person who contracts to provide goods, software or other services to this state.
2. Allow the person to disclaim incidental or consequential damages.
3. Indemnify or hold harmless any party to the contract.

41-623. Risk management and loss control

A. The department of administration shall promulgate rules and regulations to initiate and implement a risk management and loss control program for all state departments, agencies, boards and commissions for the purpose of reducing risks, accidents and property liability and workers' compensation losses.

B. The department of administration shall annually provide each state department, agency, board and commission with a report of property, liability and workers' compensation claims filed and an analysis of the cause of loss. State departments, agencies, boards and commissions shall submit a reply to the department of administration outlining plans to correct property and liability exposures to loss.

C. The department of administration shall annually issue to the governor and legislature a summary report of property, liability and workers' compensation losses incurred by state departments, agencies, boards and commissions. The report shall include loss control plans and recommendations for corrective action.

D. All state departments, agencies, boards and commissions shall cooperate with, assist and provide requested information to the department of administration in the initiation, implementation and operation of the risk management and loss control program.

E. Concurrent with the commencement of planning for the construction, alteration or additions to state-owned or leased buildings, and the purchase of specialized personal property, the department of administration shall be consulted for the purpose of implementing the risk management and loss control program and to assure compliance with generally accepted loss control practices.

DEPARTMENT OF HEALTH SERVICES

Title 9, Chapter 25, Articles 3-4



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 2, 2022

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: July 13, 2022

SUBJECT: Department of Health Services
Title 9, Chapter 25, Articles 3 & 4

This Five-Year-Review Report from the Department of Health Services relates to rules in Title 9, Chapter 25 regarding Emergency Medical Services. The report covers the following Articles:

Article 3 - Training Programs

Article 4 - EMCT Certification

Proposed Action

For the reasons mentioned in the report, the Department is proposing to amend several of its rules to improve their overall clarity, conciseness, understandability, enforcement, effectiveness, and consistency with other rules and statutes. The Department is planning to submit a Notice of Final Rulemaking to the Council by February 2023.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes, the Department cites to both the general and specific statutory authority.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

A.R.S. § 36-2202 requires the Department to certify and recertify emergency medical care technicians (EMCTs). The Department adopts standard and criteria that pertain to the quality of emergency care pursuant to A.R.S. § 36-2204. Requirements for EMCTs have been established by the Department in 9 A.A.C. 25. The rules in 9 A.A.C. 25, Articles 3 and 4 were last revised in an exempt rulemaking, effective December 1, 2013, and two expedited rulemakings effective January 9, 2018 and December 4, 2018. Under A.R.S. § 41-1055(D)(2), the Department was not required to provide an economic, small business, and consumer impact statement for any of these rulemakings.

Four rules (R9-25-302, R9-25-304, R9-25-307, and R9-25-404) were last revised through exempt rulemaking to comply with Laws 2012, Ch. 94, and published in the Arizona Administrative Register (A.A.R.) at 19 A.A.R. 4032, effective December 1, 2013. Nine rules (R9-25-306, R9-25-401, R9-25-402, R9-25-403, R9-25-405, R9-25-406, R9-25-407, R9-25-408, and R9-25-409) were last revised through expedited rulemaking effective January 9, 2018. Three rules (R9-25-301, R9-25-303, and R9-25-305) were last revised, effective December 4, 2018. The Department believes that these rule changes may have provided a significant benefit to a training program and EMCTs. The Department estimates that the actual costs and benefits experienced by persons affected by the rules are generally consistent with the costs and benefits considered in developing the rules.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The rules establish minimum health and safety standards for the training and certification of EMCTs. Any failure of an EMCT to meet the minimum requirements prescribed by rule poses a threat to the health and safety of patients and vulnerable individuals seeking emergency care. Thus, the probable benefits of the rules outweigh the probable costs. Despite the minor issues identified in this report, which may impose a slightly increased regulatory burden, the rules in 9 A.A.C. 25, Articles 3 and 4 impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Department indicates they did not receive any written criticisms to the rules.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Department indicates the rules are overall clear, concise, and understandable with the exception of the following:

- R9-25-304 - Course and Examination Requirements
- R9-25-305 - Supplemental Requirements for Specific Courses
- R9-25-402 - EMCT Certification and Recertification Requirements
- R9-25-403 - Application of Requirements for EMCT Certification
- R9-25-404 - Application Requirements for EMCT Recertification
- R9-25-408 - Unprofessional Conduct; Physical or Mental Incompetence; Gross Incompetence; Gross Negligence

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes, the Department indicates the rules are consistent with other rules and statutes with the exception of the following:

- R9-25-302 - Administration
- R9-25-305 - Supplemental Requirements for Specific Courses
- R9-25-403 - Application of Requirements for EMCT Certification
- R9-25-408 - Unprofessional Conduct; Physical or Mental Incompetence; Gross Incompetence; Gross Negligence

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Department indicates the rules are effective in achieving their objectives with the exception of the following:

- R9-25-305 - Supplemental Requirements for Specific Courses
- R9-25-403 - Application of Requirements for EMCT Certification

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Department indicates the rules are enforced as written with the exception of the following:

- R9-25-408 - Unprofessional Conduct; Physical or Mental Incompetence; Gross Incompetence; Gross Negligence

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

Not applicable, there are no corresponding federal laws.

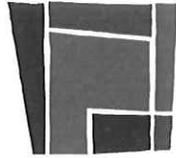
10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Department indicates the rules require the issuance of a specific agency authorization, authorized by A.R.S. 36-2202 (A)(2) and (H) for EMCT Certification and training programs, so a general permit is not applicable.

11. Conclusion

As mentioned above, the Department is proposing to amend several of its rules to improve their overall clarity, conciseness, understandability, enforcement, effectiveness, and consistency with other rules and statutes. The Department indicates it plans to submit a Notice of Final Rulemaking to the Council by February 2023.

Council staff recommends approval of this report.



ARIZONA DEPARTMENT OF HEALTH SERVICES

May 18, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsin, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 25, Articles 3 and 4, Five-Year-Review Report for
Emergency Medical Services

Dear Ms. Sornsin:

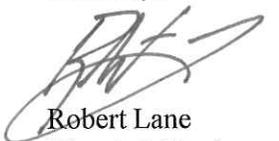
Please find enclosed the Five-Year Review Report (Report) from the Arizona Department of Health Services (Department) for 9 A.A.C. 25, Articles 3 and 4, Training Programs and EMCT Certification, which is due on June 30, 2022.

The Department reviewed the rules in 9 A.A.C. 25, Articles 3 and 4, with the intention that the rules do not expire pursuant to A.R.S. § 41-1056(J).

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact me at (602) 542-1020.

Sincerely,



Robert Lane
Director's Designee

RL:tk

Enclosures

Douglas A. Ducey | Governor

Don Herrington | Interim Director



Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 25. Department of Health Services

Emergency Medical Services

Article 3. Training Programs

Article 4. EMCT Certification

May 2022

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 36-136(A)(7), 36-136(G), and 36-2209(A)(2)

Specific Statutory Authority: A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6) and (H), and 36-2204(1), (2), (3), (4), (6) and (7).

2. The objective of each rule:

Rule	Objective
R9-25-301	To establish the requirements for an application of certification.
R9-25-302	To define and establish administration requirements for the training program.
R9-25-303	To establish the requirements for changing a training program certificate.
R9-25-304	To establish course and examination requirements.
R9-25-305	To establish requirements for supplemental specific courses.
R9-25-306	To specify the requirements for notifications and recordkeeping.
R9-25-307	To define the training program enforcement actions.
R9-25-401	To establish general requirements relating to EMCT certification.
R9-25-402	To establish eligibility standards for certifying and recertifying EMCTs.
R9-25-403	To establish application requirements for initial EMCT certification.
R9-25-404	To establish requirements related to application for EMCT recertification.
R9-25-405	To establish standards for requesting and obtaining an extension to file for EMCT recertification.
R9-25-406	To establish requirements for downgrading to a lower classification of certification during the certification period. To clarify that downgrading may also be done upon recertification.
R9-25-407	To establish requirements for EMCTs to notify the Department upon the occurrence of specified events.
R9-25-408	To clarify the meaning of terms used in A.R.S. § 36-2211 that may be grounds for enforcement actions.
R9-25-409	To establish: a. The grounds for enforcement, and b. The potential enforcement actions that may be taken against an applicant or EMCT.

3. **Are the rules effective in achieving their objectives?** Yes X No

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation
R9-25-305	The rule is effective but could be improved by adding options for other EMCT credentials and endorsements to certificates. If the administrative medical director for a Paramedic with an endorsement, such as Critical Care or Community Paramedicine, authorizes the Paramedic, the Paramedic could perform services in an expanded scope of practice, under Table 5.1.
R9-25-403	The rule is effective but could be improved by adding options for other EMCT credentials and endorsements to certificates. If the administrative medical director for a Paramedic with an endorsement, such as Critical Care or Community Paramedicine, authorizes the Paramedic, the Paramedic could perform services in an expanded scope of practice, under Table 5.1. In addition, the rule could be improved by requiring background checks within 60 days before submitting an application. It could be a potential public health and safety risk for an individual to be certified before their criminal history is checked. This would not cause a burden for most applicants since the rule sets out certain types of convictions that would bar certification for a period of time. However, background checks for EMCT applicants are not under the Department’s current statutory authority.

4. **Are the rules consistent with other rules and statutes?** Yes No X

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation
R9-25-302	Subsection (A)(2)(d) is inconsistent with the rule because the cross-reference should be corrected to R9-25-201(A)(1)(f)(i) through (iii).
R9-25-305	The rule is consistent with statute, however, there currently are no rules established for specific course supplemental requirements for Emergency Medical Responders (EMRs). To be consistent with statute, it would be beneficial to create a new subsection to include training requirements for EMRs. Pursuant to A.R.S. § 36-2201(16), an EMR “has been trained in an emergency medical responder program certified by the director or in an equivalent training program and who is certified by the director to render services pursuant to section 36-2205.”
R9-25-403	The rule is consistent with statute, however there currently are no rules established for specific application requirements for emergency medical responders (EMRs). To be consistent with statute, it would be beneficial to create a new subsection to include certification requirements specifically for EMRs. Pursuant to A.R.S. § 36-2201(16) an EMR “has been trained in an emergency medical responder program certified by the director or in an equivalent training program and who is certified by the director to render services pursuant to section 36-2205.”

5. **Are the rules enforced as written?** Yes X No

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency’s proposal for resolving the issue.

Rule	Explanation
R9-25-408	The rule is enforced as written. However, an individual who had a healthcare provider license revoked (i.e. nurse, doctor, etc.) does not have to report as would an individual who has had an EMCT license revoked, as specified in subsection (A). To help protect the health and safety for patients, it could be beneficial for any license revocation history to be reported to the Department with an explanation as to why the license was revoked.

6. **Are the rules clear, concise, and understandable?** Yes X No

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation
R9-25-304	The rule is clear, concise, and understandable, but could be improved in subsection (A)(4) by replacing the word “present” with “available” to clarify that the instructor needs to be reachable through two-way communication, but may not be physically in the classroom.
R9-25-305	The rule is clear, concise, and understandable, but could be improved by creating a new subsection (A) to clarify what the term “contact hour” means. Creating a new subsection would require renumbering the subsequent subsections. In addition, the rule could be improved by adding the word “classification” before the word “level” in the current subsections (A), (C), (D), (E), and (F) to improve clarity and consistency as this terminology is used elsewhere throughout the text.
R9-25-402	The rule is clear, concise, and understandable, but could be improved in subsections (A)(3) and (D)(2) by adding the statutory reference to clarify the meaning of the term “moral turpitude” as defined in A.R.S. 1-215(24).
R9- 25-403	The rule is clear, concise, and understandable, but could be improved in subsection (B)(5) by replacing the text and simplifying it with the statutory reference, A.R.S. § 41-1080, which includes the documentation required for identification purposes on the application. Additionally, inserting the word “classification” before the word “level” would improve clarity and consistency as this terminology is used elsewhere throughout the text.
R9- 25-404	The rule is clear, concise, and understandable, but could be improved by adding the word “classification” before the word “level” in subsections (A) and (C). This would improve clarity and allow for more consistency as this terminology is used elsewhere throughout the text.
R9- 25-408	The rule is clear, concise, and understandable, but could be improved by adding the word “classification” before the word “level” in subsection (A)(1). This would improve clarity and allow for more consistency as this terminology is used elsewhere throughout the text.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No X

If yes, please fill out the table below:

Rule	Explanation

8. **Economic, small business, and consumer impact comparison:**

A.R.S. § 36-2202 requires the Department to certify and recertify emergency medical care technicians (EMCTs). The Department adopts standard and criteria that pertain to the quality of emergency care pursuant to A.R.S. § 36-2204. Requirements for EMCTs have been established by the Department in 9 A.A.C. 25. The rules in 9 A.A.C. 25, Articles 3 and 4 were last revised in an exempt rulemaking, effective December 1, 2013, and two expedited rulemakings effective January 9, 2018 and December 4, 2018. Under A.R.S. § 41-1055(D)(2), the Department was not required to provide an economic, small business, and consumer impact statement for any of these rulemakings. In this economic, small business, and consumer impact comparison, annual cost/revenues are designated as “minimal” when less than \$1,000.00; “moderate” when between \$1,000.00 and \$10,000.00; “substantial” when \$10,000.00 or more; and “significant” when meaningful or important, but not readily subject to quantification.

Currently, 69 training programs are regulated under Article 3. Of these, 20 provide Basic Life Support (BLS) training, one provides only Advanced Life Support (ALS) training, and 42 provide both BLS and ALS training. Of these, 20 are associated with community colleges, 25 are governmental, two are associated with hospitals, and 16 are private businesses. During calendar year 2021, a total of 551 courses/refresher challenge examinations were provided, 314 courses leading to EMT certification, 36 for Paramedic certification, 145 EMT refresher courses, 45 ALS refresher courses, and 11 refresher challenge examinations. In the 22 months between April 15, 2020 and February 14, 2022, the number of students in training courses included: 5,570 in EMT certification courses, 2,071 in EMT refresher courses, 704 in Paramedic certification courses, and 470 in ALS refresher courses. Some training programs, especially those associated with smaller fire departments or with fire districts, provide courses to 10 or fewer students per year, while others, especially those associated with community colleges, may provide training to 100 or more students per year and offer multiple courses running concurrently. The Department receives an average of four new applications per year and expects to provide reviews of 30 existing training programs in 2022, and has 33 scheduled in 2023. In the past five years, the Department has received five complaints about compliance that have been investigated. Three of these resulted in a corrective action plan being accepted, one resulted in probation, and one was found to be non-substantive.

Approximately 21,140 EMCTs are regulated under Article 4. Of these, approximately 13,037 are EMTs, approximately 135 are AEMTs, 11 are EMT-I(99)s, and approximately 7,957 are Paramedics. Certification is for a two-year period. During 2020 and 2021, the Department received a total of 4,890 initial applications, of which 4,737 were approved; 16,251 applications for recertification, of which 15,915 were approved; 1,208 requests for extensions, 908 of which were approved; and 42 requests for downgrading, of which 41 were approved. In addition, 804 applications were received from EMCTs requesting certification at a higher classification of EMCT, 723 of which were approved. During the same time period, the Department conducted 58 investigations involving EMCTs, resulting in 14 EMCTs on probation, nine decrees of censure, and five revocations.

Four rules (R9-25-302, R9-25-304, R9-25-307, and R9-25-404) were last revised through exempt rulemaking to comply with Laws 2012, Ch. 94, and published in the Arizona Administrative Register (A.A.R.) at 19 A.A.R. 4032, effective December 1, 2013. As part of the 2013 rulemaking, the Department updated requirements in R9-

25-302 for training programs, medical directors, and program directors. Requirements were created in R9-25-304 for a training program director to have training related to instructional methodology; to notify students of eligibility requirements and prerequisite knowledge, skill, and abilities for a course; and to document and maintain documentation that a student meets eligibility requirements and prerequisites for a course or refresher challenge examination. R9-25-404 was amended to clarify requirements for the two-year certification and recertification periods, and allowed for electronic applications to be submitted to the Department. R9-25-307 and R9-25-404 were both revised to improve language using clearer terminology. The Department estimates that these changes may have caused a minimal cost and benefit to training programs.

Nine rules (R9-25-306, R9-25-401, R9-25-402, R9-25-403, R9-25-405, R9-25-406, R9-25-407, R9-25-408, and R9-25-409) were last revised through expedited rulemaking effective January 9, 2018. As part of the 2017 five-year-review report for 9 A.A.C. 25, Articles 3 and 4, the Department identified several minor issues that affect the clarity of the rules. As stated in the 2017 five-year-review report, the Department amended R9-25-306 to clarify the retention period for records and correct statutory references. In Article 4, the rulemaking updated statutory cross-references and clarified notification requirements by adding email communication as an option when an individual needs to contact the Department regarding a name, address, or email address update. The Department believes these changes provided a benefit to training programs and individuals regulated under the rules without increasing the cost of regulatory compliance or reducing the procedural rights of a regulated person.

Three rules (R9-25-301, R9-25-303, and R9-25-305) were last revised, effective December 4, 2018. Through expedited rulemaking, the rules were amended to update the web address where information may be found related to equipment and facilities that a training program must have available or provide a list of knowledge, skills, and competencies covered in a course.

The Department believes that these rule changes may have provided a significant benefit to a training program and EMCTs. On the basis of the information described above, the Department estimates that the actual costs and benefits experienced by persons affected by the rules are generally consistent with the costs and benefits considered in developing the rules.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No X

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

In the 2017 five-year-review-report, the Department stated a plan to revise the rules to address identified issues. Through expedited rulemaking found in 24 A.A.R 268, the Department completed the course of action.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The rules establish minimum health and safety standards for the training and certification of EMCTs. Any failure of an EMCT to meet the minimum requirements prescribed by rule poses a threat to the health and safety of patients and vulnerable individuals seeking emergency care. Thus, the probable benefits of the rules outweigh the probable costs. Despite the minor issues identified in this report, which may impose a slightly increased regulatory burden, the rules in 9 A.A.C. 25, Articles 3 and 4 impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

12. **Are the rules more stringent than corresponding federal laws?** Yes No

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?

Federal laws do not apply to the rules in 9 A.A.C. 25, Articles 3 and 4.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The rules require the issuance of a specific agency authorization, which is authorized by A.R.S. § 36-2202 (A)(2) and (H) for EMCT certification and training programs, so a general permit is not applicable. The Department considers EMCT certification as a general permit in that the certificate specifies the individual and level of service the individual is authorized to provide, but does not limit the location at which the services can be provided.

14. **Proposed course of action**

If possible, please identify a month and year by which the agency plans to complete the course of action.

The Department plans to amend the rules in 9 A.A.C. 25, Articles 3 and 4 as described under sections 3, 4, and 6 of this five-year review report. These described changes will improve the effectiveness of the rules and the health and safety of patients receiving care from an EMCT. Therefore, the Department plans to submit a Notice of Final Expedited Rulemaking to the Council by February 2023.

TITLE 9. HEALTH SERVICES
CHAPTER 25. DEPARTMENT OF HEALTH SERVICES - EMERGENCY MEDICAL
SERVICES

ARTICLE 3. TRAINING PROGRAMS

R9-25-301. Application for Certification (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

- A.** To apply for certification as a training program, an applicant shall submit an application to the Department, in a Department-provided format, including:
1. The applicant's name, address, and telephone number;
 2. The name, telephone number, and e-mail address of the applicant's chief administrative officer;
 3. The name of each course the applicant plans to provide;
 4. Attestation that the applicant has the equipment and facilities that meet the requirements established according to A.R.S. § 36-2204 and available through the Department at www.azdhs.gov/ems-regulatory-references for the courses specified in subsection (A)(3);
 5. The name, telephone number, and e-mail address of the training program medical director;
 6. The name, telephone number, and e-mail address of the training program director;
 7. Attestation that the applicant will comply with all requirements in A.R.S. Title 36, Chapter 21.1 and 9 A.A.C. 25;
 8. Attestation that all information required as part of the application has been submitted and is true and accurate; and
 9. The signature or electronic signature of the applicant's chief administrative officer or the chief administrative officer's designated representative and date of signature or electronic signature.
- B.** An applicant may submit to the Department a copy of an accreditation report if the applicant is currently accredited by a national accrediting organization.
- C.** The Department shall certify a training program if the applicant:
1. Has not operated a training program that has been decertified by the Department within five years before submitting the application,
 2. Submits an application that is complete and compliant with requirements in this Article, and
 3. Has not knowingly provided false information on or with an application required by this Article.
- D.** The Department:
1. Shall assess a training program at least once every 24 months after certification to determine ongoing compliance with the requirements of this Article; and
 2. May inspect a training program according to A.R.S. § 41-1009:
 - a. As part of the substantive review time-frame required in A.R.S. §§ 41-1072 through 41-1079,

or

- b. As necessary to determine compliance with the requirements of this Article.
- E. The Department shall approve or deny an application under this Article according to Article 12 of this Chapter.
- F. A training program certificate is valid only for the name of the training program certificate holder and the courses listed by the Department on the certificate and may not be transferred to another person.

R9-25-302. Administration (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

- A. A training program certificate holder shall ensure that a training program medical director:
 - 1. Is a physician or exempt from physician licensing requirements under A.R.S. §§ 32-1421(A)(7) or 32-1821(3);
 - 2. Meets one of the following:
 - a. Has emergency medicine certification issued by a member board of the American Board of Medical Specialties,
 - b. Has emergency medical services certification issued by the American Board of Emergency Medicine,
 - c. Has completed an emergency medicine residency training program accredited by the Accreditation Council for Graduate Medical Education or approved by the American Osteopathic Association, or
 - d. Is an emergency medicine physician in an emergency department located in Arizona and has current certification that meets the requirements in R9-25-201(A)(1)(d)(i) through (iii); and
 - 3. Before the start date of a course session, reviews the course content outline and final examinations to ensure consistency with the national educational standards for the applicable EMCT classification level.
- B. A training program certificate holder shall ensure that a training program director:
 - 1. Is one of the following:
 - a. A physician with at least two years of experience providing emergency medical services as a physician;
 - b. A doctor of allopathic medicine or osteopathic medicine licensed in another state or jurisdiction with at least two years of experience providing emergency medical services as a doctor of allopathic medicine or osteopathic medicine;
 - c. An individual who meets the definition of registered nurse in A.R.S. § 32-1601 with at least two years of experience providing emergency medical services as a registered nurse;
 - d. A physician assistant with at least two years of experience providing emergency medical

- services as a physician assistant; or
- e. An EMCT with at least two years of experience at that classification of EMCT, only for courses to prepare an individual for certification or recertification at the same or lower level of EMCT;
2. Has completed 24 hours of training related to instructional methodology including:
 - a. Organizing and preparing materials for didactic instruction, clinical training, field training, and skills practice;
 - b. Preparing and administering tests and practical examinations;
 - c. Using equipment and supplies;
 - d. Measuring student performance;
 - e. Evaluating student performance;
 - f. Providing corrective feedback; and
 - g. Evaluating course effectiveness;
 3. Supervises the day-to-day operation of the courses offered by the training program;
 4. Supervises and evaluates the lead instructor for a course session;
 5. Monitors the training provided by all preceptors providing clinical training or field training; and
 6. Does not participate as a student in a course session, take a refresher challenge examination, or receive a certificate of completion for a course given by the training program.
- C.** A training program certificate holder shall:
1. Maintain with an insurance company authorized to transact business in this state:
 - a. A minimum single claim professional liability insurance coverage of \$500,000, and
 - b. A minimum single claim general liability insurance coverage of \$500,000 for the operation of the training program; or
 2. Be self-insured for the amounts in subsection (C)(1).
- D.** A training program certificate holder shall ensure that policies and procedures are:
1. Established, documented, and implemented covering:
 - a. Student enrollment, including verification that a student has proficiency in reading at the 9th grade level and meets all course admission requirements;
 - b. Maintenance of student records and medical records, including compliance with all applicable state and federal laws governing confidentiality, privacy, and security; and
 - c. For each course offered:
 - i. Student attendance requirements, including leave, absences, make-up work, tardiness, and causes for suspending or expelling a student for unsatisfactory attendance;
 - ii. Grading criteria, including the minimum grade average considered satisfactory for

- continued enrollment and standards for suspending or expelling a student for unsatisfactory grades;
 - iii. Administration of final examinations; and
 - iv. Student conduct, including causes for suspending or expelling a student for unsatisfactory conduct;
2. Reviewed annually and updated as necessary; and
 3. Maintained on the premises and provided to the Department at the Department's request.

R9-25-303. Changes Affecting a Training Program Certificate (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

- A.** No later than 10 days after a change in the name, address, or e-mail address of the training program certificate holder listed on a training program certificate, the training program certificate holder shall notify the Department of the change, in a Department-provided format, including:
 1. The current name, address, and e-mail address of the training program certificate holder;
 2. The certificate number for the training program;
 3. The new name, new address, or new e-mail address and the date of the name, address, or e-mail address change;
 4. If applicable, attestation that the training program certificate holder has insurance required in R9-25-302(C) that is valid for the new name or new address;
 5. Attestation that all information submitted to the Department is true and correct; and
 6. The signature or electronic signature of the applicant's chief administrative officer or the chief administrative officer's designated representative and date of signature or electronic signature.
- B.** No later than 10 days after a change in the training program medical director or training program director, a training program certificate holder shall notify the Department, in a Department-provided format, including:
 1. The name and address of the training program certificate holder;
 2. The certificate number for the training program;
 3. The name, telephone number, and e-mail address of the new training program medical director or training program director and the date of the change; and
 4. The signature or electronic signature of the applicant's chief administrative officer or the chief administrative officer's designated representative and date of signature or electronic signature.
- C.** A training program certificate holder that intends to add a course shall submit to the Department a request for approval, in a Department-provided format, including:
 1. The name and address of the training program certificate holder;

2. The certificate number for the training program;
 3. The name, telephone number, and e-mail address of the applicant's chief administrative officer;
 4. The name of each course the training program certificate holder plans to add;
 5. Attestation that the training program certificate holder has the equipment and facilities that meet the requirements established according to A.R.S. § 36-2204 and available through the Department at www.azdhs.gov/ems-regulatory-references for the courses specified in subsection (C)(4);
 6. Attestation that all information required as part of the request is true and accurate; and
 7. The signature or electronic signature of the applicant's chief administrative officer or the chief administrative officer's designated representative and date of signature or electronic signature.
- D.** For notification made under subsection (A) of a change in the name or address of a certificate holder, the Department shall issue an amended certificate to the training program certificate holder that incorporates the new name or address but retains the date on the current certificate.
- E.** The Department shall approve or deny a request for the addition of a course in subsection (C) according to Article 12 of this Chapter.
- F.** A training program certificate holder shall not conduct a course until an amended certificate is issued by the Department.

R9-25-304. Course and Examination Requirements (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1), (2), and (3))

- A.** For each course provided, a training program director shall ensure that:
1. The required equipment and facilities established for the course are available for use;
 2. The following are prepared and provided to course applicants before the start date of a course session:
 - a. A description of requirements for admission, course content, course hours, course fees, and course completion, including whether the course prepares a student for:
 - i. A national certification organization examination for the specific EMCT classification level,
 - ii. A statewide standardized certification test under the state certification process, or
 - iii. Recertification at a specific EMCT classification level;
 - b. A list of books, equipment, and supplies that a student is required to purchase for the course;
 - c. Notification of eligibility for the course as specified in R9-25-305(B), (D)(1) and (2), or (F)(1) and (2), as applicable;
 - d. Notification of any specific requirements for a student to begin any component of the course, including, as applicable:

- i. Prerequisite knowledge, skill, and abilities;
 - ii. Physical examinations;
 - iii. Immunizations;
 - iv. Documentation of freedom from infectious tuberculosis;
 - v. Drug screening; and
 - vi. The ability to perform certain physical activities; and
 - e. The policies for the course on student attendance, grading, student conduct, and administration of final examinations, required in R9-25-302(D)(1)(c)(i) through (iv);
3. Information is provided to assist a student to:
 - a. Register for and take an applicable national certification organization examination;
 - b. Complete application forms for registration in a national certification organization; and
 - c. Complete application forms for certification under 9 A.A.C. 25, Article 4;
4. A lead instructor is assigned to each course session who:
 - a. Is one of the following:
 - i. A physician with at least two years of experience providing emergency medical services;
 - ii. A doctor of allopathic medicine or osteopathic medicine licensed in another state or jurisdiction with at least two years of experience providing emergency medical services;
 - iii. An individual who meets the definition of registered nurse in A.R.S. § 32-1601 with at least two years of experience providing emergency medical services;
 - iv. A physician assistant with at least two years of experience providing emergency medical services; or
 - v. An EMCT with at least two years of experience at that classification of EMCT, only for courses to prepare an individual for certification or recertification at the same or lower EMCT classification level;
 - b. Has completed training related to instructional methodology specified in R9-25-302(B)(2);
 - c. Except as provided in subsection (A)(4)(d), is available for student-instructor interaction during all course hours established for the course session; and
 - d. Designates an individual who meets the requirements in subsections (A)(4)(a) and (b) to be present and act as the lead instructor when the lead instructor is not present; and
5. Clinical training and field training are provided:
 - a. Under the supervision of a preceptor who has at least two years of experience providing emergency medical services and is one of the following:
 - i. An individual licensed in this or another state or jurisdiction as a doctor of allopathic medicine or osteopathic medicine;

- ii. An individual licensed in this or another state or jurisdiction as a registered nurse;
 - iii. An individual licensed in this or another state or jurisdiction as a physician assistant; or
 - iv. An EMCT, only for courses to prepare an individual for certification or recertification at the same or lower EMCT classification level;
 - b. Consistent with the clinical training and field training requirements established for the course; and
 - c. If clinical training or field training are provided by a person other than the training program certificate holder, under a written agreement with the person providing the clinical training or field training that includes a termination clause that provides sufficient time for a student to complete the training upon termination of the written agreement.
- B.** A training program director may combine the students from more than one course session for didactic instruction.
- C.** For a final examination or refresher challenge examination for each course offered, a training program director shall ensure that:
 - 1. The final examination or refresher challenge examination for the course is completed onsite at the training program or at a facility used for course instruction;
 - 2. Except as provided in subsection (D), the final examination or refresher challenge examination for a course includes a:
 - a. Written test:
 - i. With one absolutely correct answer, two incorrect answers, and one distractor, none of which is “all of the above” or “none of the above”;
 - ii. With 150 multiple-choice questions for the:
 - (1) Final examination for a refresher course, or
 - (2) Refresher challenge examination for a course;
 - iii. That covers the learning objectives of the course with representation from all topics covered by the course; and
 - iv. That requires a passing score of 75% or higher in no more than three attempts for a final examination and no more than one attempt for a refresher challenge examination; and
 - b. Comprehensive practical skills test:
 - i. Evaluating the student’s technical proficiency in skills consistent with the national education standards for the applicable EMCT classification level, and
 - ii. Reflecting the skills necessary to pass a national certification organization examination at the applicable EMCT classification level;
 - 3. The identity of each student taking the final examination or refresher challenge examination is

verified;

4. A student does not receive verbal or written assistance from any other individual or use notes, books, or documents of any kind as an aid in taking the examination;
 5. A student who violates subsection (C)(4) is not permitted to complete the examination or to receive a certificate of completion for the course or refresher challenge examination; and
 6. An instructor who allows a student to violate subsection (C)(4) or assists a student in violating subsection (C)(4) is no longer permitted to serve as an instructor.
- D.** A training program director shall ensure that a standardized certification test for a student under the state certification process includes:
1. A written test that meets the requirements in subsection (C)(2)(a); and
 2. Either:
 - a. A comprehensive practical skills test that meets the requirements in subsection (C)(2)(b), or
 - b. An attestation of practical skills proficiency on a Department-provided form.
- E.** A training program director shall ensure that:
1. A student is allowed no longer than six months after the date of the last day of classroom instruction for a course session to complete all course requirements,
 2. There is a maximum ratio of four students to one preceptor for the clinical training portion of a course, and
 3. There is a maximum ratio of one student to one preceptor for the field training portion of a course.
- F.** A training program director shall:
1. For a student who completes a course, issue a certificate of completion containing:
 - a. Identification of the training program,
 - b. Identification of the course completed,
 - c. The name of the student who completed the course,
 - d. The date the student completed all course requirements,
 - e. Attestation that the student has met all course requirements, and
 - f. The signature or electronic signature of the training program director and the date of signature or electronic signature; and
 2. For an individual who passes a refresher challenge examination, issue a certificate of completion containing:
 - a. Identification of the training program,
 - b. Identification of the refresher challenge examination administered,
 - c. The name of the individual who passed the refresher challenge examination,

- d. The date or dates the individual took the refresher challenge examination,
- e. Attestation that the individual has passed the refresher challenge examination, and
- f. The signature or electronic signature of the training program director and the date of signature or electronic signature.

R9-25-305. Supplemental Requirements for Specific Courses (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

- A. Except as specified in subsection (B), a training program certificate holder shall ensure that a certification course offered by the training program:
 1. Covers knowledge, skills, and competencies comparable to the national education standards established for a specific EMCT classification level;
 2. Prepares a student for:
 - a. A national certification organization examination for the specific EMCT classification level, or
 - b. A standardized certification test under the state certification process;
 3. Has no more than 24 students enrolled in each session of the course; and
 4. Has a minimum course length of:
 - a. For an EMT certification course, 130 hours;
 - b. For an AEMT certification course, 244 hours, including:
 - i. A minimum of 100 contact hours of didactic instruction and practical skills training, and
 - ii. A minimum of 144 contact hours of clinical training and field training; and
 - c. For a Paramedic certification course, 1000 hours, including:
 - i. A minimum of 500 contact hours of didactic instruction and practical skills training, and
 - ii. A minimum of 500 contact hours of clinical training and field training.
- B. A training program director shall ensure that, for an AEMT certification course or a Paramedic certification course, a student has one of the following:
 1. Current certification from the Department as an EMT or higher EMCT classification level,
 2. Documentation of completion of prior training in an EMT course or a course for a higher EMCT classification level provided by a training program certified by the Department or an equivalent training program, or
 3. Documentation of current registration in a national certification organization at the EMT classification level or higher EMCT classification level.
- C. A training program director shall ensure that for a course to prepare an EMT-I(99) for Paramedic certification:

1. A student has current certification from the Department as an EMT-I(99);
2. The course covers the knowledge, skills, and competencies established according to A.R.S. § 36-2204 and available through the Department at www.azdhs.gov/ems-regulatory-references;
3. The minimum course length is 600 hours, including:
 - a. A minimum of 220 contact hours of didactic instruction and practical skills training, and
 - b. A minimum of 380 contact hours of clinical training and field training; and
4. A minimum of 60 contact hours of training in anatomy and physiology are completed by the student:
 - a. As a prerequisite to the course,
 - b. As preliminary instruction completed at the beginning of the course session before the didactic instruction required in subsection (C)(3)(a) begins, or
 - c. Through integration of the anatomy and physiology material with the units of instruction required in subsection (C)(3).

D. A training program director shall ensure that for an EMT refresher course:

1. A student has one of the following:
 - a. Current certification from the Department as an EMT or higher EMCT classification level,
 - b. Documentation of completion of prior training in an EMT course or a course for a higher EMCT classification level provided by a training program certified by the Department or an equivalent training program,
 - c. Documentation of current registration in a national certification organization at the EMT classification level or higher EMCT classification level, or
 - d. Documentation from a national certification organization requiring the student to complete the EMT refresher course to be eligible to apply for registration in the national certification organization;
2. A student has documentation of current certification in adult, pediatric, and infant cardiopulmonary resuscitation through instruction consistent with American Heart Association recommendations for emergency cardiovascular care by EMCTs;
3. The EMT refresher course cover the knowledge, skills, and competencies in the national education standards established at the EMT classification level;
4. No more than 32 students are enrolled in each session of the course; and
5. The minimum course length is 24 contact hours.

E. A training program authorized to provide an EMT refresher course may administer a refresher challenge examination covering materials included in the EMT refresher course to an individual eligible for admission into the EMT refresher course.

- F.** A training program director shall ensure that for an ALS refresher course:
1. A student has one of the following:
 - a. Current certification from the Department as an AEMT, EMT-I(99), or Paramedic;
 - b. Documentation of completion of a prior training course, at the AEMT classification level or higher, provided by a training program certified by the Department or an equivalent training program;
 - c. Documentation of current registration in a national certification organization at the AEMT or Paramedic classification level; or
 - d. Documentation from a national certification organization requiring the student to complete the ALS refresher course to be eligible to apply for registration in the national certification organization;
 2. A student has documentation of current certification in:
 - a. Adult, pediatric, and infant cardiopulmonary resuscitation through instruction consistent with American Heart Association recommendations for emergency cardiovascular care by EMCTs, and
 - b. For a student who has current certification as an EMT-I(99) or higher level of EMCT classification, advanced emergency cardiac life support;
 3. The ALS refresher course covers:
 - a. For a student who has current certification as an AEMT or documentation of completion of prior training at an AEMT classification level, the knowledge, skills, and competencies in the national education standards established for an AEMT;
 - b. For a student who has current certification as an EMT-I(99), the knowledge, skills, and competencies established according to A.R.S. § 36-2204 for an EMT-I(99) as of the effective date of this Section and available through the Department at www.azdhs.gov/ems-regulatory-references;and
 - c. For a student who has current certification as a Paramedic or documentation of completion of prior training at a Paramedic classification level, the knowledge, skills, and competencies in the national education standards established for a Paramedic;
 4. No more than 32 students are enrolled in each session of the course; and
 5. The minimum course length is 48 contact hours.
- G.** A training program authorized to provide an ALS refresher course may administer a refresher challenge examination covering materials included in the ALS refresher course to an individual eligible for admission into the ALS refresher course.

R9-25-306. Training Program Notification and Recordkeeping (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

- A.** At least 10 days before the start date of a course session, a training program certificate holder shall submit to the Department the following information in a Department-provided format:
1. Identification of the training program;
 2. Identification of the course;
 3. The name of the training program medical director;
 4. The name of the training program director;
 5. The name of the course session's lead instructor;
 6. The course session start date and end date;
 7. The physical location at which didactic training and practical skills training will be provided;
 8. The days of the week and times of each day during which didactic training and practical skills training will be provided;
 9. The number of clock hours of didactic training and practical skills training;
 10. If applicable, the number of hours of clinical training and field training included in the course session;
 11. The date, start time, and location of the final examination for the course;
 12. Attestation that the lead instructor is qualified under R9-25-304(A)(4)(a); and
 13. The name and signature of the chief administrative officer or program director and the date signed.
- B.** The Department shall review the information submitted according to subsection (A) and, within five days after receiving the information:
1. Approve a course session, issue an identifying number to the course session, and notify the training program certificate holder of the approval and identifying number; or
 2. Disapprove a course session that does not comply with requirements in this Article and notify the training program certificate holder of the disapproval.
- C.** A training program certificate holder shall ensure that:
1. No later than 10 days after the date a student completes all course requirements, the training program director submits to the Department the following information in a Department-provided format:
 - a. Identification of the training program;
 - b. The name of the training program director;
 - c. Identification of the course and the start date and end date of the course session completed by

- the student;
 - d. The name, date of birth, and mailing address of the student who completed the course;
 - e. The date the student completed all course requirements;
 - f. The score the student received on the final examination;
 - g. Attestation that the student has met all course requirements;
 - h. Attestation that all information submitted is true and accurate; and
 - i. The signature of the training program director and the date signed; and
2. No later than 10 days after the date an individual passes a refresher challenge examination administered by the training program, the training program director submits to the Department the following information in a Department-provided format;
- a. Identification of the training program;
 - b. Identification of the:
 - i. Refresher challenge examination administered, and
 - ii. Course for which the refresher challenge examination substitutes;
 - c. The name of the training program medical director;
 - d. The name of the training program director;
 - e. The name, date of birth, and mailing address of the individual who passed the refresher challenge examination;
 - f. The date and location at which the refresher challenge examination was administered;
 - g. The score the individual received on the refresher challenge examination;
 - h. Attestation that the individual:
 - i. Met the requirements for taking the refresher challenge examination, and
 - ii. Passed the refresher challenge examination;
 - i. Attestation that all information submitted is true and accurate; and
 - j. The name and signature of the training program director and the date signed.
- D.** A training program certificate holder shall ensure that:
- 1. A record is established for each student enrolled in a course session, including;
 - a. The student's name and date of birth;
 - b. A copy of the student's enrollment agreement or contract;
 - c. Identification of the course in which the student is enrolled;
 - d. The start date and end date for the course session;
 - e. Documentation supporting the student's eligibility to enroll in the course;
 - f. Documentation that the student meets prerequisites for the course, established as specified in R9-25-304(A)(2)(d)(i);

- g. The student's attendance records;
- h. The student's clinical training records, if applicable;
- i. The student's field training records, if applicable;
- j. The student's grades;
- k. Documentation of the final examination for the course, including:
 - i. A copy of each scored written test attempted or completed by the student, and
 - ii. All forms used as part of the comprehensive practical skills test attempted or completed by the student; and
- l. A copy of the student's certificate of completion required in R9-25-304(F)(1);
- 2. A student record required in subsection (D)(1) is maintained for at least three years after the end date of a student's course session and provided to the Department at the Department's request;
- 3. A record is established for each individual to whom a refresher challenge examination is administered, including:
 - a. The individual's name and date of birth;
 - b. Identification of the refresher challenge examination administered to the individual;
 - c. Documentation supporting the individual's eligibility for a refresher challenge examination;
 - d. The date the refresher challenge examination was administered;
 - e. Documentation of the refresher challenge examination, including:
 - i. A copy of the scored written test attempted or completed by the individual, and
 - ii. All forms used as part of the comprehensive practical skills test attempted or completed by the individual; and
 - f. A copy of the individual's certificate of completion required in R9-25-304(F)(2); and
- 4. A record required in subsection (D)(3) is maintained for at least three years after the date the refresher challenge examination was administered and provided to the Department at the Department's request.

R9-25-307. Training Program Enforcement Actions (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

- A.** The Department may take an action listed in subsection (B) against a training program certificate holder who:
 - 1. Violates the requirements in A.R.S. Title 36, Chapter 21.1 or 9 A.A.C. 25; or
 - 2. Knowingly or negligently provides false documentation or information to the Department.
- B.** The Department may take the following action against a training program certificate holder:
 - 1. After notice is provided according to A.R.S. Title 41, Chapter 6, Article 10, issue:

- a. A letter of censure, or
 - b. An order of probation; or
2. After notice and opportunity to be heard is provided according to A.R.S. Title 41, Chapter 6, Article 10:
- a. Suspend the training program certificate, or
 - b. Decertify the training program.

ARTICLE 4. EMCT CERTIFICATION

R9-25-401. EMCT General Requirements (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and (H) and 36-2204(1), (6), and (7))

- A.** Except as provided in R9-25-404(E) and R9-25-405, an individual shall not act as an EMCT unless the individual has current certification or recertification from the Department.
- B.** An EMCT shall act as an EMCT only:
1. As authorized under the EMCT's scope of practice as specified in Article 5 of this Chapter; and
 2. For an EMCT required to have medical direction according to A.R.S. Title 36, Chapter 21.1 and R9-25-502, as authorized by the EMCT's administrative medical director under:
 - a. Treatment protocols, triage protocols, and communication protocols approved by the EMCT's administrative medical director as specified in R9-25-201(E)(2); and
 - b. Medical recordkeeping, medical reporting, and prehospital incident history report requirements approved by the EMCT's administrative medical director as specified in R9-25-201(E)(3)(b).
- C.** Except as provided in A.R.S. § 36-2211, the Department shall certify or re-certify an individual as an EMCT for a period of two years.
- D.** An individual whose EMCT certificate is expired shall not apply for recertification, except as provided in R9-25-404(A).
- E.** The Department shall comply with the confidentiality requirements in A.R.S. §§ 36-2220(E) and 36-2245(M).

R9-25-402. EMCT Certification and Recertification Requirements (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and (H) and 36-2204(1), (6), and (7))

- A.** The Department shall not certify an EMCT if the applicant:
1. Is currently:
 - a. Incarcerated for a criminal conviction,
 - b. On parole for a criminal conviction,

- c. On supervised release for a criminal conviction, or
 - d. On probation for a criminal conviction;
 2. Within 10 years before the date of filing an application for certification required by this Article, has been convicted of any of the following crimes, or any similarly defined crimes in this state or in any other state or jurisdiction, unless the conviction has been absolutely discharged, expunged, or vacated:
 - a. 1st or 2nd degree murder;
 - b. Attempted 1st or 2nd degree murder;
 - c. Sexual assault;
 - d. Attempted sexual assault;
 - e. Sexual abuse of a minor;
 - f. Attempted sexual abuse of a minor;
 - g. Sexual exploitation of a minor;
 - h. Attempted sexual exploitation of a minor;
 - i. Commercial sexual exploitation of a minor;
 - j. Attempted commercial sexual exploitation of a minor;
 - k. Molestation of a child;
 - l. Attempted molestation of a child; or
 - m. A dangerous crime against children as defined in A.R.S. § 13-705;
 3. Within five years before the date of filing an application for certification required by this Article, has been convicted of a misdemeanor involving moral turpitude or a felony in this state or any other state or jurisdiction, other than a misdemeanor involving moral turpitude or a felony listed in subsection (A)(2), unless the conviction has been absolutely discharged, expunged, or vacated;
 4. Within five years before the date of filing an application for certification required by this Article, has had EMCT certification or recertification revoked in this state or certification, recertification, or licensure at an EMCT classification level revoked in any other state or jurisdiction; or
 5. Knowingly provides false information in connection with an application required by this Article.
- B.** The Department shall not re-certify an EMCT, if:
1. While certified, the applicant has been convicted of a crime listed in subsection (A)(2), or any similarly defined crimes in this state or in any other state or jurisdiction, unless the conviction has been absolutely discharged, expunged, or vacated; or
 2. The applicant knowingly provides false information in connection with an application required by this Article.
- C.** The Department shall make probation a condition of EMCT certification if, within two years before

the date of filing an application under R9-25-403, an applicant has been convicted of a misdemeanor in this state or in any other state or jurisdiction, involving:

1. Possession, use, administration, acquisition, sale, manufacture, or transportation of an intoxicating liquor, dangerous drug, or narcotic drug, as defined in A.R.S. § 13-3401, unless the conviction has been absolutely discharged, expunged, or vacated; or
2. Driving or being in physical control of a vehicle while under the influence of an intoxicating liquor, a dangerous drug, or a narcotic drug, as defined in A.R.S. § 13-3401, unless the conviction has been absolutely discharged, expunged, or vacated.

D. Except as provided in subsection (E), the Department shall make probation a condition of EMCT recertification if an applicant:

1. Is currently:
 - a. Incarcerated for a criminal conviction,
 - b. On parole for a criminal conviction,
 - c. On supervised release for a criminal conviction, or
 - d. On probation for a criminal conviction; or
2. Within five years before the date of filing an application under R9-25-404, has been convicted of a misdemeanor involving moral turpitude or a felony in this state or any other state or jurisdiction, other than those listed in subsection (A)(2), unless the conviction has been absolutely discharged, expunged, or vacated.

E. As specified in R9-25-409, the Department may make probation a condition of EMCT recertification if an applicant, within two years before the date of filing an application under R9-25-404, has been convicted of a misdemeanor in this state or in any other state or jurisdiction, involving:

1. Possession, use, administration, acquisition, sale, manufacture, or transportation of an intoxicating liquor, dangerous drug, or narcotic drug, as defined in A.R.S. § 13-3401, unless the conviction has been absolutely discharged, expunged, or vacated; or
2. Driving or being in physical control of a vehicle while under the influence of an intoxicating liquor, a dangerous drug, or a narcotic drug, as defined in A.R.S. § 13-3401, unless the conviction has been absolutely discharged, expunged, or vacated.

F. If the Department makes probation a condition of EMCT certification or recertification, the Department shall fix the period and terms of probation that will:

1. Protect the public health and safety, and
2. Rehabilitate and educate the applicant.

R9-25-403. Application Requirements for EMCT Certification (Authorized by A.R.S. §§

36-2202(A)(2), (A)(3), (A)(4), and (H) and 36-2204(1) and (6)

- A.** An individual may apply for initial EMCT certification if:
1. The individual is at least 18 years of age;
 2. The individual complies with the requirements in A.R.S. § 41-1080;
 3. The individual is not ineligible under R9-25-402; and
 4. One of the following applies to the individual:
 - a. The individual has not previously applied for certification from the Department or has withdrawn an application for certification;
 - b. An application for certification submitted by the individual was denied by the Department two or more years before the present date;
 - c. Except as provided in R9-25-404(A)(2) or (3), the individual's certification as an EMCT is expired;
 - d. The individual's certification as an EMCT was revoked by the Department five or more years before the present date; or
 - e. The individual has current certification as an EMCT and is applying for certification at a different classification level of EMCT.
- B.** An applicant for initial EMCT certification shall submit to the Department an application in a Department-provided format, including:
1. A form containing:
 - a. The applicant's name, address, telephone number, email address, date of birth, gender, and Social Security number;
 - b. The level of EMCT certification being requested;
 - c. Responses to questions addressing the applicant's criminal history according to R9-25-402(A)(1) through (3) and (C);
 - d. Whether the applicant has within the five years before the date of the application had:
 - i. EMCT certification or recertification revoked in Arizona; or
 - ii. Certification, recertification, or licensure at an EMCT classification level revoked in another state or jurisdiction;
 - e. Attestation that all information required as part of the application has been submitted and is true and accurate; and
 - f. The applicant's signature or electronic signature and date of signature;
 2. For each affirmative response to a question addressing the applicant's criminal history required in subsection (B)(1)(c), a detailed explanation on a Department-provided form and supporting documentation;

3. For each affirmative response to subsection (B)(1)(d), a detailed explanation on a Department-provided form and supporting documentation;
4. If applicable, a copy of certification, recertification, or licensure at an EMCT classification level issued to the applicant in another state or jurisdiction;
5. A copy of one of the following for the applicant:
 - a. U.S. passport, current or expired;
 - b. Birth certificate;
 - c. Naturalization documents; or
 - d. Documentation of legal resident alien status; and
6. One of the following:
 - a. Either:
 - i. A certificate of completion showing that within two years before the date of the application, the applicant completed statewide standardized training; and
 - ii. A statewide standardized certification test; or
 - b. Documentation of current registration in a national certification organization at the applicable or higher level of EMCT classification.

B. The Department shall approve or deny an application for initial EMCT certification according to Article 12 of this Chapter.

C. If the Department denies an application for initial EMCT certification, the applicant may request a hearing according to A.R.S. Title 41, Chapter 6, Article 10.

R9-25-404. Application Requirements for EMCT Recertification (Authorized by A.R.S. §§ 36-2202(A)(2), (3), (4), and (6), (B), and (H) and 36-2204(1), (4), and (6))

- A.** An individual may apply for recertification at the same level of EMCT certification held or at a lower level of EMCT certification:
1. Within 90 days before the expiration date of the individual's current EMCT certification;
 2. Within the 30-day period after the expiration date of the individual's EMCT certification, as provided in subsection (E); or
 3. Within the extension time period granted under R9-25-405.
- B.** To apply for recertification, an applicant shall submit to the Department an application, in a Department-provided format, including:
1. A form containing:
 - a. The applicant's name, address, telephone number, email address, date of birth, and Social Security number;

- b. The applicant's current certification number;
 - c. Responses to questions addressing the applicant's criminal history according to R9-25-402(B), (D), and (E);
 - d. Whether the applicant has within the five years before the date of the application had:
 - i. EMCT certification or recertification revoked in Arizona; or
 - ii. Certification, recertification, or licensure at an EMCT classification level revoked in another state or jurisdiction;
 - e. An indication of the level of EMCT certification held currently or within the past 30 days and of the level of EMCT certification for which recertification is requested;
 - f. Attestation that all information required as part of the application has been submitted and is true and accurate; and
 - g. The applicant's signature or electronic signature and date of signature;
2. For each affirmative response to a question addressing the applicant's criminal history required in subsection (B)(1)(c), a detailed explanation on a Department-provided form and supporting documentation;
 3. For an affirmative response to subsection (B)(1)(d), a detailed explanation on a Department-provided form; and
 4. For an application submitted within 30 days after the expiration date of EMCT certification, a nonrefundable certification extension fee of \$150.
- C. In addition to the application in subsection (B), an applicant for EMCT recertification shall submit one of the following to the Department:
1. A certificate of course completion issued by the training program director under R9-25-304(F) showing that within two years before the date of the application, the applicant completed either the applicable refresher course or applicable refresher challenge examination;
 2. Documentation of current registration in a national certification organization at the applicable or higher level of EMCT classification; or
 3. Attestation on a Department-provided form that the applicant:
 - a. Has documentation of current certification in adult, pediatric, and infant cardiopulmonary resuscitation through instruction consistent with American Heart Association recommendations for emergency cardiovascular care by EMCTs;
 - b. For EMT-I(99) recertification or Paramedic recertification, has documentation of current certification in advanced emergency cardiac life support;
 - c. Has documentation of having completed within the previous two years the following number of hours of continuing education in topics that are consistent with the content of the

applicable refresher course:

- i. For EMT recertification, a minimum of 24 hours;
 - ii. For AEMT recertification, EMT-I(99) recertification, or Paramedic recertification, a minimum of 48 hours; and
 - iii. Included in the hours required in subsections (C)(3)(c)(i) or (ii), as applicable, a minimum of 5 hours in pediatric emergency care; and
- d. For EMT recertification, has functioned in the capacity of an EMT for at least 240 hours during the previous two years.
- D.** An applicant who submits an attestation under subsection (C)(3) shall maintain the applicable documentation for at least three years after the date of the application.
- E.** If an individual submits an application for recertification, with a certification extension fee, within 30 days after the expiration date of the individual's EMCT certification, the individual:
1. Was authorized to act as an EMCT during the period between the expiration date of the individual's EMCT certification and the date the application was submitted, and
 2. Is authorized to act as an EMCT until the Department makes a final determination on the individual's application for recertification.
- F.** If an individual does not submit an application for recertification before the expiration date of the individual's EMCT certification or, with a certification extension fee, within 30 days after the expiration date of the individual's EMCT certification, the individual:
1. Is not an EMCT,
 2. Was not authorized to act as an EMCT during the 30-day period after the expiration date of the individual's EMCT certification, and
 3. May submit an application to the Department for initial EMCT certification according to R9-25-403.
- G.** The Department shall approve or deny an application for recertification according to Article 12 of this Chapter.
- H.** If the Department denies an application for recertification, the applicant may request a hearing according to A.R.S. Title 41, Chapter 6, Article 10.
- I.** The Department may deny, based on failure to meet the standards for recertification in A.R.S. Title 36, Chapter 21.1 and this Article, an application submitted with a certification extension fee.

R9-25-405. Extension to File an Application for EMCT Recertification (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and (H) and 36-2204(1), (4), (5), and (7))

- A.** Before the expiration of a current certificate, an EMCT who is unable to meet the recertification

requirements in R9-25-404 because of personal or family illness, military service, or authorized federal or state emergency response deployment may apply to the Department in writing for an extension of time to file for recertification by submitting:

1. The following information in a Department-provided format:
 - a. The EMCT's name, address, telephone number, and email address;
 - b. The EMCT's current certification number;
 - c. The reason for requesting the extension; and
 - d. The EMCT's signature or electronic signature and date of signature; and
 2. For an exemption based on military service or authorized federal or state emergency response deployment, a copy of the EMCT's military orders or documentation of authorized federal or state emergency response deployment.
- B.** The Department may grant an extension of time to file for recertification:
1. For personal or family illness, for no more than 180 days; or
 2. For each military service or authorized federal or state emergency response deployment, for the term of service or deployment plus 180 days.
- C.** An individual applying for or granted an extension of time to file for recertification:
1. Remains certified according to A.R.S. § 41-1092.11 during the extension period, and
 2. Shall submit an application for recertification according to R9-25-404.
- D.** An individual who does not meet the recertification requirements in R9-25-404 within the extension period or has the application for recertification denied by the Department:
1. Is not an EMCT, and
 2. May submit an application to the Department for initial EMCT certification according to R9-25-403.
- E.** The Department shall approve or deny a request for an extension to file for EMCT recertification according to Article 12 of this Chapter.
- F.** If the Department denies a request for an extension to file for EMCT recertification, the applicant may request a hearing according to A.R.S. Title 41, Chapter 6, Article 10.

R9-25-406. Requirements for Downgrading of Certification (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), and (H) and 36-2204(1) and (6))

An individual who holds current EMCT certification at a classification level higher than EMT and who is not under investigation according to A.R.S. § 36-2211 may apply for:

1. Continued certification at a lower EMCT classification level for the remainder of the certification period by submitting to the Department:

- a. A written request containing:
 - i. The EMCT's name, address, email address, telephone number, date of birth, and Social Security number;
 - ii. The lower EMCT classification level requested;
 - iii. Attestation that the applicant has not committed an act or engaged in conduct that would warrant revocation of a certificate under A.R.S. § 36-2211;
 - iv. Attestation that all information submitted is true and accurate; and
 - v. The applicant's signature or electronic signature and date of signature; and
 - b. Either:
 - i. A written statement from the EMCT's administrative medical director attesting that the EMCT is able to perform at the lower EMCT classification level requested; or
 - ii. If applying for continued certification as an EMT, an Arizona EMT refresher certificate of completion or an Arizona EMT refresher challenge examination certificate of completion signed by the training program director designated for the Arizona EMT refresher course; or
2. Recertification at a lower EMCT classification level according to R9-25-404.

R9-25-407. Notification Requirements (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), and (A)(4), 36-2204(1) and (6), and 36-2211)

- A.** No later than 30 days after the date an EMCT's name legally changes, the EMCT shall submit to the Department:
1. A completed form provided by the Department containing:
 - a. The name under which the EMCT is currently certified by the Department;
 - b. The EMCT's address, telephone number, and Social Security number; and
 - c. The EMCT's new name; and
 2. Documentation showing that the name has been legally changed.
- B.** No later than 30 days after the date an EMCT's address or email address changes, the EMCT shall submit to the Department a completed form provided by the Department containing:
1. The EMCT's name, telephone number, and Social Security number; and
 2. The EMCT's new address or email address.
- C.** An EMCT shall notify the Department in writing no later than 10 days after the date the EMCT:
1. Is incarcerated or is placed on parole, supervised release, or probation for any criminal conviction;
 2. Is convicted of:

- a. A crime specified in R9-25-402(A)(2),
 - b. A misdemeanor involving moral turpitude,
 - c. A felony in this state or any other state or jurisdiction, or
 - d. A misdemeanor specified in R9-25-402(E);
3. Has registration revoked or suspended by a national certification organization; or
 4. Has certification, recertification, or licensure at an EMCT classification level revoked or suspended in another state or jurisdiction.

R9-25-408. Unprofessional Conduct; Physical or Mental Incompetence; Gross Incompetence; Gross Negligence (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and (H), 36-2204(1), (6), and (7), and 36-2211)

- A. For purposes of A.R.S. § 36-2211(A)(1), unprofessional conduct is an act or omission made by an EMCT that is contrary to the recognized standards or ethics of the Emergency Medical Technician profession or that may constitute a danger to the health, welfare, or safety of a patient or the public, including:
1. Impersonating an EMCT of a higher level of certification or impersonating a health professional as defined in A.R.S. § 32-3201;
 2. Permitting or allowing another individual to use the EMCT's certification for any purpose;
 3. Aiding or abetting an individual who is not certified according to this Chapter in acting as an EMCT or in representing that the individual is certified as an EMCT;
 4. Engaging in or soliciting sexual relationships, whether consensual or non-consensual, with a patient while acting as an EMCT;
 5. Physically or verbally harassing, abusing, threatening, or intimidating a patient or another individual while acting as an EMCT;
 6. Making false or materially incorrect entries in a medical record or willful destruction of a medical record;
 7. Failing or refusing to maintain adequate records on a patient;
 8. Soliciting or obtaining monies or goods from a patient by fraud, deceit, or misrepresentation;
 9. Aiding or abetting an individual in fraud, deceit, or misrepresentation in meeting or attempting to meet the application requirements for EMCT certification or EMCT recertification contained in this Article, including the requirements established for:
 - a. Completing and passing a course provided by a training program; and
 - b. The national certification organization examination process and national certification organization registration process;

10. Providing false information or making fraudulent or untrue statements to the Department or about the Department during an investigation conducted by the Department;
 11. Being incarcerated or being placed on parole, supervised release, or probation for any criminal conviction;
 12. Being convicted of a misdemeanor identified in R9-25-402(E), which has not been absolutely discharged, expunged, or vacated;
 13. Having national certification organization registration revoked or suspended by the national certification organization for material noncompliance with national certification organization rules or standards; and
 14. Having certification, recertification, or licensure at an EMCT classification level revoked or suspended in another state or jurisdiction.
- B.** Under A.R.S. § 36-2211, physical or mental incompetence of an EMCT is the EMCT's lack of physical or mental ability to provide emergency medical services as required under this Chapter.
- C.** Under A.R.S. § 36-2211 gross incompetence or gross negligence is an EMCT's willful act or willful omission of an act that is made in disregard of an individual's life, health, or safety and that may cause death or injury.

R9-25-409. Enforcement Actions (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and (H), 36-2204(1), (6), and (7), and 36-2211)

- A.** If the Department determines that an applicant or EMCT is not in substantial compliance with applicable laws and rules, under A.R.S. §§ 36-2204 or 36-2211, the Department may:
1. Take the following action against an applicant or EMCT:
 - a. After notice is provided according to A.R.S. § 36-2211 and, if applicable, A.R.S. Title 41, Chapter 6, Article 10, issue:
 - i. A decree of censure to the EMCT, or
 - ii. An order of probation to the EMCT; or
 - b. After notice and opportunity to be heard is provided according to A.R.S. Title 41, Chapter 6, Article 10:
 - i. Deny an application,
 - ii. Suspend the EMCT's certificate, or
 - iii. Revoke the EMCT's certificate; and
 2. Assess civil penalties against the EMCT.
- B.** In determining which action in subsection (A) is appropriate, the Department shall consider:
1. Prior disciplinary actions;

2. The time interval since a prior disciplinary action, if applicable;
3. The applicant's or EMCT's motive;
4. The applicant's or EMCT's pattern of conduct;
5. The number of offenses;
6. Whether the applicant or EMCT failed to comply with instructions from the Department;
7. Whether interim rehabilitation efforts were made by the applicant or EMCT;
8. Whether the applicant or EMCT refused to acknowledge the wrongful nature of the misconduct;
9. Whether the applicant or EMCT made timely and good-faith efforts to rectify the consequences of the misconduct;
10. The submission of false evidence, false statements, or other deceptive practices during an investigation or disciplinary process;
11. The vulnerability of a patient or other victim of the applicant's or EMCT's conduct, if applicable;
and
12. How much control the applicant or EMCT had over the processes or situation leading to the misconduct.

36-136. Powers and duties of director; compensation of personnel; rules; definitions

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.
3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.
7. Prepare sanitary and public health rules.
8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease

agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. If in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe

that a serious threat to public health and welfare exists. Emergency measures are effective for not longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

(a) Served at a noncommercial social event such as a potluck.

(b) Prepared at a cooking school that is conducted in an owner-occupied home.

(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or

distribution for noncommercial purposes.

(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fundraising or an employee social event.

(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.

(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

(g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

(i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

(j) Spirituous liquor produced on the premises licensed by the department of liquor licenses and control. This exemption includes both of the following:

(i) The area in which production and manufacturing of spirituous liquor occurs, as defined in an active basic permit on file with the United States alcohol and tobacco tax and trade bureau.

(ii) The area licensed by the department of liquor licenses and control as a microbrewery, farm winery or craft distiller that is open to the public and serves spirituous liquor and commercially prepackaged food, crackers or pretzels for consumption on the premises. A producer of spirituous liquor may not provide, allow or expose for common use any cup, glass or other receptacle used for drinking purposes. For the purposes of this item, "common use" means the use of a drinking receptacle for drinking purposes by or for more than one person without the receptacle being thoroughly cleansed and sanitized between consecutive uses by methods prescribed by or acceptable to the department.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for preserving or storing food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal,

garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparing food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is

washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (j) of this section, spirituous liquor and commercially prepackaged food, crackers or pretzels that meet the requirements of subsection I, paragraph 4, subdivision (j) of this section are exempt from the rules prescribed in subsection I of this section.

R. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

36-2202. Duties of the director; qualifications of medical director

A. The director shall:

1. Appoint a medical director of the emergency medical services and trauma system.

2. Adopt standards and criteria for the denial or granting of certification and recertification of emergency medical care technicians. These standards shall allow the department to certify qualified emergency medical care technicians who have completed statewide standardized training required under section 36-2204, paragraph 1 and a standardized certification test required under section 36-2204, paragraph 2 or who hold valid certification with a national certification organization. Before the director may consider approving a statewide standardized training or a standardized certification test, or both, each of these must first be recommended by the medical direction commission and the emergency medical services council to ensure that the standardized training content is consistent with national education standards and that the standardized certification tests examines comparable material to that examined in the tests of a national certification organization.

3. Adopt standards and criteria that pertain to the quality of emergency care pursuant to section 36-2204.

4. Adopt rules necessary to carry out this chapter. Each rule shall identify all sections and subsections of this chapter under which the rule was formulated.

5. Adopt reasonable medical equipment, supply, staffing and safety standards, criteria and procedures for issuance of a certificate of registration to operate an ambulance.

6. Maintain a state system for recertifying emergency medical care technicians, except as otherwise provided by section 36-2202.01, that is independent from any national certification organization recertification process. This system shall allow emergency medical care technicians to choose to be recertified under the state or the national certification organization recertification system subject to subsection H of this section.

B. Emergency medical technicians who choose the state recertification process shall recertify in one of the following ways:

1. Successfully completing an emergency medical technician refresher course approved by the department.

2. Successfully completing an emergency medical technician challenge course approved by the department.

3. For emergency medical care technicians who are currently certified at the emergency medical technician level by the department, attesting on a form provided by the department that the applicant holds a valid and current cardiopulmonary resuscitation certification, has and will maintain documented proof of a minimum of twenty-four hours of continuing medical education within the last two years consistent with department rules and has functioned in the capacity of an emergency medical technician for at least two hundred forty hours during the last two years.

C. After consultation with the emergency medical services council the director may authorize pilot programs designed to improve the safety and efficiency of ambulance inspections for governmental or quasi-governmental entities that provide emergency medical services in this state.

D. The rules, standards and criteria adopted by the director pursuant to subsection A, paragraphs 2, 3, 4 and 5 of this section shall be adopted in accordance with title 41, chapter 6, except that the director may adopt on an emergency basis pursuant to section 41-1026 rules relating to the regulation of ambulance services in this state necessary to protect the public peace, health and safety in advance of adopting rules, standards and criteria as otherwise provided by this subsection.

E. The director may waive the requirement for compliance with a protocol adopted pursuant to

section 36-2205 if the director determines that the techniques, drug formularies or training makes the protocol inconsistent with contemporary medical practices.

F. The director may suspend a protocol adopted pursuant to section 36-2205 if the director does all of the following:

1. Determines that the rule is not in the public's best interest.
2. Initiates procedures pursuant to title 41, chapter 6 to repeal the rule.
3. Notifies all interested parties in writing of the director's action and the reasons for that action. Parties interested in receiving notification shall submit a written request to the director.

G. To be eligible for appointment as the medical director of the emergency medical services and trauma system, the person shall be qualified in emergency medicine and shall be licensed as a physician in one of the states of the United States.

H. Applicants for certification shall apply to the director for certification. Emergency medical care technicians shall apply for recertification to the director every two years. The director may extend the expiration date of an emergency medical care technician's certificate for thirty days. The department shall establish a fee for this extension by rule. Emergency medical care technicians shall pass an examination administered by the department as a condition for recertification only if required to do so by the advanced life support base hospital's medical director or the emergency medical care technician's medical director.

I. The medical director of the emergency medical services and trauma system is exempt from title 41, chapter 4, articles 5 and 6 and is entitled to receive compensation pursuant to section 38-611, subsection A.

J. The standards, criteria and procedures adopted by the director pursuant to subsection A, paragraph 5 of this section shall require that ambulance services serving a rural or wilderness certificate of necessity area with a population of less than ten thousand persons according to the most recent United States decennial census have at least one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (a) and one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (b) staffing an ambulance while transporting a patient and that ambulance services serving a population of ten thousand persons or more according to the most recent United States decennial census have at least one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (a) and one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (a), (c), (d) or (e) staffing an ambulance while transporting a patient.

K. If the department determines there is not a qualified administrative medical director, the department shall ensure the provision of administrative medical direction for an emergency medical technician if the emergency medical technician meets all of the following criteria:

1. Is employed by a nonprofit or governmental provider employing less than twelve full-time emergency medical technicians.
2. Stipulates to the inability to secure a physician who is willing to provide administrative medical direction.
3. Stipulates that the provider agency does not provide administrative medical direction for its employees.

36-2204. Medical control

The medical director of the statewide emergency medical services and trauma system, the emergency medical services council and the medical direction commission shall recommend to the director the following standards and criteria that pertain to the quality of emergency patient care:

1. Statewide standardized training, certification and recertification standards for all classifications of emergency medical care technicians.
2. A standardized and validated testing procedure for all classifications of emergency medical care technicians.
3. Medical standards for certification and recertification of training programs for all classifications of emergency medical care technicians.
4. Standardized continuing education criteria for all classifications of emergency medical care technicians.
5. Medical standards for certification and recertification of certified emergency receiving facilities and advanced life support base hospitals and approval of physicians providing medical control or medical direction for any classification of emergency medical care technicians who are required to be under medical control or medical direction.
6. Standards and mechanisms for monitoring and ongoing evaluation of performance levels of all classifications of emergency medical care technicians, emergency receiving facilities and advanced life support base hospitals and approval of physicians providing medical control or medical direction for any classification of emergency medical care technicians who are required to be under medical control or medical direction.
7. Objective criteria and mechanisms for decertification of all classifications of emergency medical care technicians, emergency receiving facilities and advanced life support base hospitals and for disapproval of physicians providing medical control or medical direction for any classification of emergency care technicians who are required to be under medical control or medical direction.

8. Medical standards for nonphysician prehospital treatment and prehospital triage of patients requiring emergency medical services.
9. Standards for emergency medical dispatcher training, including prearrival instructions. For the purposes of this paragraph, "emergency medical dispatch" means the receipt of calls requesting emergency medical services and the response of appropriate resources to the appropriate location.
10. Standards for a quality assurance process for components of the statewide emergency medical services and trauma system, including standards for maintaining the confidentiality of the information considered in the course of quality assurance and the records of the quality assurance activities pursuant to section 36-2403.
11. Standards for ambulance service and medical transportation that give consideration to the differences between urban, rural and wilderness areas.
12. Standards to allow an ambulance to transport a patient to a health care institution that is licensed as a special hospital and that is physically connected to an emergency receiving facility.

36-2209. Powers and duties of the director

A. The director shall:

1. Appoint and define the duties and prescribe the terms of employment of all employees of the bureau.
2. Adopt rules necessary for the operation of the bureau and for carrying out the purposes of this chapter.
3. Cooperate with and assist the personnel of emergency receiving facilities and other health care institutions in preparing a plan to be followed by these facilities and institutions in the event of a major disaster.
4. Cooperate with the state director of emergency management when a state of emergency or a state of war emergency has been declared by the governor.

B. The director may:

1. Request the cooperation of utilities, communications media and public and private agencies to aid and assist in the implementation and maintenance of a statewide emergency medical services system.
2. Enter into contracts and agreements with any local governmental entity, agency, facility or group that provides a similar program of emergency medical services in a contiguous state.
3. Enter into contracts and agreements for the acquisition and purchase of any equipment, tools,

supplies, materials and services necessary in the administration of this chapter.

4. Enter into contracts with emergency receiving facilities, governmental entities, emergency rescue services and ambulance services, and the director may establish emergency medical services, including emergency receiving facilities, if necessary to assure the availability and quality of these services.

5. Accept and expend federal funds and private grants, gifts, contributions and devises to assist in carrying out the purposes of this chapter. These funds do not revert to the state general fund at the close of a fiscal year.

6. Establish an emergency medical services notification system that uses existing telephone communications networks.

7. Contract with private telephone companies for the establishment of a statewide emergency reporting telephone number.

8. Authorize the testing entity to collect fees determined by the director. In determining fees for testing entities the director shall consider the fees required by national certification organizations.

DEPARTMENT OF HEALTH SERVICES

Title 9, Chapter 8, Article 3



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 2, 2022

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: June 30, 2022

SUBJECT: DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 8, Article 3

Summary

This Five-Year Review Report (5YRR) from the Department of Health Services (Department) relates to four (4) rules in Title 9, Chapter 8, Article 3, regarding Public Portable Toilets. These rules establish the duties of a responsible person, establish that a violation of this article constitutes a public nuisance, specifies health and safety requirements for portable public toilets, and establish inspection requirements.

In the last 5YRR of these rules, the Department proposed to amend its rules. The Department completed the proposed changes in a rulemaking approved by the Council in 2018.

Proposed Action

The Department is not proposing any changes to the rules.

1. **Has the agency analyzed whether the rules are authorized by statute?**

Yes, the Department cites both general and specific authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department completed an expedited rulemaking in 2018 to revise rules in Article 3 to address matters identified in the 2017 five-year-review report for the public portable toilet facilities rules, including amending rules that were not consistent with a statutory change under Laws 2001, Ch. 19, § 1, which removed the Department's authority to regulate sanitary conditions for public and semi public buildings. The Department indicates that other changes were made to improve efficiency and effectiveness of the rules and to revise incorrect citations to rules in A.A.C. Title 18. The Department believed, and in approving the rulemaking the Council agreed, these changes provide a significant benefit to all stakeholders, which include the Department, county agencies, owners or managers of public portable toilets, and the general public by eliminating confusion and reducing regulatory burdens.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department indicates that the rules are designed to prevent conditions that would negatively affect public health and are used while conducting complaint inspections of public portable toilets. In addition, the Department states that without the rules, conditions dangerous to the public health would not be detected and mitigated. For these reasons, the Department has determined that the probable benefits of the rules outweigh the costs and that the rules provide the least burden and cost to achieve the underlying regulatory objective.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Department has not received any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Department indicates the rules are clear, concise and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes, the Department indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Department indicates the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Department states the rules are enforced as written.

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

Not applicable. The Department indicates there is no corresponding federal law.

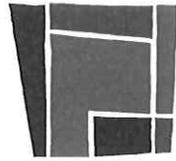
10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

No, the rules do not require the issuance of a permit or license.

11. **Conclusion**

This Five-Year Review Report (5YRR) from the Department of Health Services relates to rules in Title 9, Chapter 8, Article 3, regarding Public Portable Toilets. The Department indicates the rules are generally clear, concise, understandable, consistent, effective and enforced as written. The Department does not intend to take any action regarding these rules.

Council staff finds the Department submitted a report that meets the requirements of A.R.S. § 41-1056. Council staff recommends approval of this report.



ARIZONA DEPARTMENT
OF HEALTH SERVICES

March 31, 2022

Nicole Sornsin, Chairperson
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Report for A.A.C. Title 9, Chapter 8, Article 3, Public Portable Toilets

Dear Ms. Sornsin:

Please find enclosed the Five Year Review Report of the Department of Health Services for A.A.C. Title 9, Chapter 8, Article 3 which is due on March 31, 2022.

The Department of Health Services reviewed the rules in A.A.C. Title 9, Chapter 8, Article 3 with the intention that the rules do not expire pursuant to A.R.S. § 41-1056(J).

The Department of Health Services hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Lucinda Feeley at (602) 542-1574 or Lucinda.Feeley@azdhs.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'RL', written over a white background.

Robert Lane
Director's Designee

RL:tk

Enclosures

Douglas A. Ducey | Governor

Don Herrington | Interim Director



ARIZONA DEPARTMENT OF HEALTH SERVICES

Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 8. Department of Health Services – Food, Recreational, And Institutional Sanitation

Article 3. Public Portable Toilets

March 2022

1. **Authorization of the rule by existing statutes**

Authorizing statutes: A.R.S. §§ 36-104(1)(b)(i), 36-136(A)(4) through (7) and 36-136(G)

Implementing statutes: A.R.S. §§ 36-136(A)(6) and (7) and 36-601

2. **The objective of each rule:**

Rule	Objective
R9-8-301	To define terms used in the Article so the reader can consistently interpret the requirements.
R9-8-302	To establish the duties of a responsible person and notify that a violation of the Article is a public nuisance.
R9-8-303	To specify health and safety requirements for portable public toilets, including disposal requirements.
R9-8-304	To establish inspection requirements.

3. **Are the rules effective in achieving their objectives?**

Yes No

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation

4. **Are the rules consistent with other rules and statutes?**

Yes No

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation

5. **Are the rules enforced as written?**

Yes No

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

Rule	Explanation

6. **Are the rules clear, concise, and understandable?** Yes No

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

If yes, please fill out the table below:

Commenter	Comment	Agency's Response

8. **Economic, small business, and consumer impact comparison (summary):**

A.R.S. § 36-136(A)(6) requires the Department to provide “general supervision over all matters relating to sanitation and health throughout the state[,] including “public toilet[s].” Pursuant to A.R.S. § 36-136(A)(7), the Department is required to “[p]repare sanitary and public health rules.” To implement A.R.S. § 36-136(A)(6) and (7), the Department adopted rules at 9 A.A.C. 8, Article 3 for public toilets. The rules in Article 3 prescribe measures necessary to ensure that public portable toilets are built, operated, and maintained in a sanitary manner, and specifically provide minimum standards for sewage, human excreta and refuse disposal, construction, and maintenance of facilities. The Department revised the rules in 2018 through expedited rulemaking, which included changing the name of Article 3 to “Public Portable Toilets.”

The Department, pursuant to A.R.S. § 36-136(E), has delegated its public portable toilet inspection and abatement authority under A.R.S. § 36-136(A)(6) to the local health departments and environmental service departments. These county agencies use the rules when inspecting portable public toilets for general sanitation practices including, but not limited to, garbage and trash removal, sewage connections, and water and wastewater, and while conducting complaint inspections of public portable toilets. During fiscal year 2021, county sanitarians conducted five complaint inspections of public portable toilets in all counties except for Maricopa. Maricopa county reported 940 inspections, 34 violations found, and two complaints. Additionally, in fiscal year 2021, the

Department did not conduct any public portable toilet complaint inspections. Due to the COVID-19 pandemic, special event inspections have decreased by 70% in fiscal year 2021 compared to fiscal year 2018. This resulted in a 100% decrease in inspections for the same two fiscal years comparatively. The percent inspected at special events changed from 24.1% for fiscal year 2014-2018 to 1.8% for fiscal year 2021. Due to the decreased number of special events, there was a lower demand for the use of public portable toilets. However when there are special events, counties ensure a sufficient number of public portable toilets are to be provided based on the estimated number of event attendees. Pinal county reported to be using 9 A.A.C. 8 Article 3 for special events to determine the number of portable toilets required based on attendance. The public's response to COVID-19 during fiscal year 2021 and lack of special events has significantly impacted the use of public portable toilets.

With the 2018 expedited rulemaking, the rules in Article 3 were revised to address matters identified in the 2017 five-year-review report for the public portable toilet facilities rules, including that the rules were not consistent with a statutory change under Laws2001, Ch. 19, § 1, which removed the Department's authority to regulate sanitary conditions for public and semipublic buildings. Other changes were made to improve efficiency and effectiveness of the rules and to revise incorrect citations to A.A.C. Title 18 rules. In the 2018 rulemaking, the Department was exempt from providing an economic, small business, and consumer impact statement under A.R.S. § 41-1055(D)(2). However, the Department believed, and in approving the rulemaking the Council agreed these changes provide a significant benefit to all stakeholders, which include the Department, county agencies, owners or managers of public portable toilets, and the general public by eliminating confusion and reducing regulatory burdens. The Department also believed the benefits of having the new portable public toilets rules outweighed any costs incurred by the Department, county agencies, and owners or managers of public portable toilets.

The Department believes that the benefit of the rules continue to outweigh any associated costs.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

Yes, the Department completed a rulemaking in response to the Department's 2017 five-year-review report, with the Notice of Final Expedited Rulemaking approved by the Governor's Regulatory Review Council on February 6, 2018, with an immediate effective date. The new rules became effective on February 7, 2018, when submitted to the Office of the Secretary of State.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The rules are designed to prevent conditions that would negatively affect public health and are used while conducting complaint inspections of public portable toilets. Without the rules, conditions dangerous to the public health would not be detected and mitigated. For these reasons, the Department has determined that the probable benefits of the rules outweigh their costs and that the rules provide the least burden and cost to achieve the underlying regulatory objective.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?

The rules are not related to any federal laws.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The rules do not require the issuance of a regulatory permit, license, or agency authorization; however, the Department, pursuant to A.R.S. § 36-136(E) delegates its complaint inspection authority to local health departments and environmental service departments. Local health departments and environmental departments holding such a delegation issue permits under their own respective authority.

14. **Proposed course of action:**

Due to a recent revision of the rules and because the Department is unaware of any health, safety, or other urgent issues with the rules, the Department does not intend to conduct any rulemaking activities related to the rules. If any such matters arise, the Department will reevaluate whether a rulemaking is necessary.

TITLE 9. HEALTH SERVICES
CHAPTER 8. DEPARTMENT OF HEALTH SERVICES - FOOD, RECREATIONAL, AND
INSTITUTIONAL SANITATION
ARTICLE 3. PUBLIC PORTABLE TOILETS

R9-8-301. Definitions

In this Article:

1. "Clean" means free of dirt, litter, and the remains of something that has broken or torn into pieces.
2. "Complaint" means information indicating the need for inspection due to possible violations of this Article.
3. "Durable" means capable of withstanding expected use and remaining easily cleanable.
4. "Food establishment" means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption.
5. "Human excreta" means fecal and urinary discharges and includes any waste that contains this material.
6. "Leakproof" means designed and constructed to prevent a substance from escaping.
7. "Non-absorbent" means incapable of being penetrated by liquid, such as a material coated or treated with rubber, plastic, or other sealing surface.
8. "Portable hand-wash station" means a transportable sink or basin with a faucet for cleaning hands that supplies water and is:
 - a. Not connected to a sewage collection system,
 - b. Connected to a leakproof tank to receive and store waste water, and
 - c. Located in a public place.
9. "Portable toilet enclosure" means a structure that is capable of being moved and that houses a public portable toilet.
10. "Public nuisance" means activities or conditions that may be subject to A.R.S. § 36-601.
11. "Public place" means all or any portion of an area, land, or structure that is open to or may be accessed by any individual.
12. "Public portable toilet" means a toilet seat and toilet, or toilet seat, toilet, and urinal that is:
 - a. Not connected to a sewage collection system,
 - b. Connected to a leakproof tank to receive and store sewage temporarily,
 - c. Located in a public place, and
 - d. Housed in a portable toilet enclosure.
13. "Public restroom" means a structure or room that:
 - a. Is not connected to living or sleeping quarters;
 - b. Contains a lavatory and water closet or a lavatory, water closet, and urinal connected to a sewage collection system; and
 - c. Is located in a public place.
14. "Refuse" means the same as in A.A.C. R18-13-302.
15. "Regular basis" means at recurring, fixed, or uniform intervals.
16. "Regulatory authority" means:
 - a. The Arizona Department of Health Services; or
 - b. One of the following entities as specified in A.R.S. § 36-136(E):
 - i. A local health department;

- ii. A county environmental department; or
- iii. A public health services district.

17. "Responsible person" means an individual, partnership, corporation, association, governmental subdivision, state agency, or a public or private organization of any character that owns or manages the direct use of a public portable toilet within the state.

18. "Sanitary" means free from filth, bacteria, viruses, mold, and fungi.

19. "Sewage" means the waste from a toilet, urinal, sink, and portable hand-wash station.

20. "Sewage collection system" has the same meaning as in A.A.C. R18-9-101.

21. "Sewage storage tank" means a receptacle for the collection and holding of the waste from a portable toilet.

22. "Toilet" means a water-flushed, chemical-flushed, or no-flush bowl for the disposal of human excreta.

23. "Toilet seat" means a detachable, split or U-shaped seat made of non-absorbent material hinged to the top of a toilet and used for sitting.

24. "Urinal" means a water-flushed, chemical-flushed, or no-flush upright basin used for urination only.

25. "Vent pipe" means a hollow cylinder of metal, plastic, or other material that allows gas to escape from a sewage storage tank.

26. "Water closet" means the same as in A.R.S. § 45-311.

R9-8-302. General Requirements

A. A responsible person or the responsible person's designee shall comply with the requirements in this Article and with federal and state laws and rules and local codes and ordinances governing public portable toilets.

B. A violation of this Article shall constitute a public nuisance under A.R.S. § 36-601.

R9-8-303. Public Portable Toilet Requirements

A. A responsible person or the responsible person's designee shall ensure that:

1. A public portable toilet:

a. Is clean;

b. Is sanitary;

c. Is maintained to avoid odors and insect or vermin infestation;

d. Has a non-absorbent, durable, smooth, leakproof, and rustproof floor, wall, ceiling, and door materials;

e. Has a vent pipe connected to a sewage storage tank that:

i. Is wide enough in diameter to prevent the build up of gasses, and

ii. Extends upwards from the sewage storage tank through the roof of the portable toilet enclosure;

f. Has a supply of toilet paper that is replenished before running out; and

g. Has a self-closing door and privacy latch on the door;

2. Except as provided in subsection (B), one public portable toilet is deployed for the first 100 individuals using or expected to use public portable toilet facilities and one additional public portable toilet is deployed for each additional 100 individuals;

3. Each public portable toilet's sewage storage tank is pumped out on a regular basis to keep the public portable toilet operating as designed;

4. Facilities for washing or sanitizing hands are provided as follows:

a. Except as provided in subsection (B), working portable hand-wash stations are deployed at a minimum rate of one per 10 public portable toilets;

b. Soap, water, and single use towels are continuously provided at each portable hand-wash station; and

c. Where conditions make the use of soap and water impractical, the regulatory authority may allow sanitizing gel in place of soap and water; and

5. Public portable toilets are located a minimum of 100 feet from any food establishment.

B. A responsible person or the responsible person's designee shall ensure that sewage, human excreta, and refuse produced in a public portable toilet:

1. Does not create a public nuisance; and

2. Is disposed of according to 18 A.A.C. 13, Article 3 or 18 A.A.C. 13, Article 11.

C. The regulatory authority may adjust the number of public portable toilets required in subsection (A)(2) and portable hand-wash stations required in (A)(5)(a) provided based on the estimated number of users, the duration of use, and the availability of public restrooms within 200 feet of the public portable toilet.

R9-8-304. Inspections

A. If a regulatory authority receives a complaint regarding a public portable toilet, the regulatory authority may conduct an inspection.

B. If a regulatory authority conducts an inspection, the regulatory authority's inspector shall conduct the inspection according to A.R.S. § 41-1009.

36-104. Powers and duties

This section is not to be construed as a statement of the department's organization. This section is intended to be a statement of powers and duties in addition to the powers and duties granted by section 36-103. The director shall:

1. Administer the following services:

(a) Administrative services, which shall include at a minimum the functions of accounting, personnel, standards certification, electronic data processing, vital statistics and the development, operation and maintenance of buildings and grounds used by the department.

(b) Public health support services, which shall include at a minimum:

(i) Consumer health protection programs, consistent with paragraph 25 of this section, that include at least the functions of community water supplies, general sanitation, vector control and food and drugs.

(ii) Epidemiology and disease control programs that include at least the functions of chronic disease, accident and injury control, communicable diseases, tuberculosis, venereal disease and others.

(iii) Laboratory services programs.

(iv) Health education and training programs.

(v) Disposition of human bodies programs.

(c) Community health services, which shall include at a minimum:

(i) Medical services programs that include at least the functions of maternal and child health, preschool health screening, family planning, public health nursing, premature and newborn program, immunizations, nutrition, dental care prevention and migrant health.

(ii) Dependency health care services programs that include at least the functions of need determination, availability of health resources to medically dependent individuals, quality control, utilization control and industry monitoring.

(iii) Children with physical disabilities services programs.

(iv) Programs for the prevention and early detection of an intellectual disability.

(d) Program planning, which shall include at least the following:

(i) An organizational unit for comprehensive health planning programs.

(ii) Program coordination, evaluation and development.

(iii) Need determination programs.

(iv) Health information programs.

2. Include and administer, within the office of the director, staff services, which shall include at a minimum budget preparation, public information, appeals, hearings, legislative and federal government liaison, grant development and management and departmental and interagency coordination.

3. Make rules for the organization and proper and efficient operation of the department.

4. Determine when a health care emergency or medical emergency situation exists or occurs within this state that cannot be satisfactorily controlled, corrected or treated by the health care delivery systems and facilities available. When such a situation is determined to exist, the director shall immediately report that situation to the legislature and the governor. The report shall include information on the scope of the emergency, recommendations for solution of the emergency and estimates of costs involved.

5. Provide a system of unified and coordinated health services and programs between this state and county governmental health units at all levels of government.
6. Formulate policies, plans and programs to effectuate the missions and purposes of the department.
7. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of monies.
8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.
9. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of the department's duties subject to the departmental rules and regulations on the confidentiality of information.
10. Establish and maintain separate financial accounts as required by federal law or regulations.
11. Advise with and make recommendations to the governor and the legislature on all matters concerning the department's objectives.
12. Take appropriate steps to reduce or contain costs in the field of health services.
13. Encourage and assist in the adoption of practical methods of improving systems of comprehensive planning, of program planning, of priority setting and of allocating resources.
14. Encourage an effective use of available federal resources in this state.
15. Research, recommend, advise and assist in the establishment of community or area health facilities, both public and private, and encourage the integration of planning, services and programs for the development of the state's health delivery capability.
16. Promote the effective use of health manpower and health facilities that provide health care for the citizens of this state.
17. Take appropriate steps to provide health care services to the medically dependent citizens of this state.
18. Certify training on the nature of sudden infant death syndrome, which shall include information on the investigation and handling of cases involving sudden and unexplained infant death for use by law enforcement officers as part of their basic training requirement.
19. Adopt protocols on the manner in which an autopsy shall be conducted under section 11-597, subsection D in cases of sudden and unexplained infant death.
20. 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.
21. Administer the federal family violence prevention and services act grants, and the department is designated as this state's recipient of federal family violence prevention and services act grants.
22. Accept and spend private grants of monies, gifts and devises for the purposes of methamphetamine education. The department shall disburse these monies to local prosecutorial or law enforcement agencies with existing programs, faith-based organizations and nonprofit entities that are qualified under section 501(c)(3) of the United States internal

revenue code, including nonprofit entities providing services to women with a history of dual diagnosis disorders, and that provide educational programs on the repercussions of methamphetamine use. State general fund monies shall not be spent for the purposes of this paragraph. If the director does not receive sufficient monies from private sources to carry out the purposes of this paragraph, the director shall not provide the educational programs prescribed in this paragraph. Grant monies received pursuant to this paragraph are not lapsing and do not revert to the state general fund at the close of the fiscal year.

23. Identify successful methamphetamine prevention programs in other states that may be implemented in this state.

24. Pursuant to chapter 13, article 8 of this title, coordinate all public health and risk assessment issues associated with a chemical or other toxic fire event if a request for the event is received from the incident commander, the emergency response commission or the department of public safety and if funding is available. Coordination of public health issues shall include general environmental health consultation and risk assessment services consistent with chapter 13, article 8 of this title and, in consultation with the Arizona poison control system, informing the public as to potential public health risks from the environmental exposure. Pursuant to chapter 13, article 8 of this title, the department of health services shall also prepare a report, in consultation with appropriate state, federal and local governmental agencies, that evaluates the public health risks from the environmental exposure. The department of health services' report shall include any department of environmental quality report and map of smoke dispersion from the fire, the results of any environmental samples taken by the department of environmental quality and the toxicological implications and public health risks of the environmental exposure. The department of health services shall consult with the Arizona poison control system regarding toxicology issues and shall prepare and produce its report for the public as soon as practicable after the event. The department of health services shall not use any monies pursuant to section 49-282, subsection E to implement this paragraph.

25. Consult, cooperate, collaborate and, if necessary, enter into interagency agreements and memoranda of understanding with the Arizona department of agriculture concerning its administration, pursuant to title 3, chapter 3, article 4.1, of this state's authority under the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252).

26. Adopt rules pursuant to title 32, chapter 32, article 5 prescribing the designated database information to be collected by health profession regulatory boards for the health professionals workforce database.

36-136. Powers and duties of director; compensation of personnel; rules; definitions

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.
3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all

personnel. The director may abolish any office or position in the department that the director believes is unnecessary.

4. Administer and enforce the laws relating to health and sanitation and the rules of the department.

5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.

6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. If in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for not longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing,

handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

- (a) Served at a noncommercial social event such as a potluck.
- (b) Prepared at a cooking school that is conducted in an owner-occupied home.
- (c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.
- (d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fundraising or an employee social event.
- (e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.
- (f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.
- (g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.
- (h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.
- (i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the

purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

(j) Spirituous liquor produced on the premises licensed by the department of liquor licenses and control. This exemption includes both of the following:

(i) The area in which production and manufacturing of spirituous liquor occurs, as defined in an active basic permit on file with the United States alcohol and tobacco tax and trade bureau.

(ii) The area licensed by the department of liquor licenses and control as a microbrewery, farm winery or craft distiller that is open to the public and serves spirituous liquor and commercially prepackaged food, crackers or pretzels for consumption on the premises. A producer of spirituous liquor may not provide, allow or expose for common use any cup, glass or other receptacle used for drinking purposes. For the purposes of this item, "common use" means the use of a drinking receptacle for drinking purposes by or for more than one person without the receptacle being thoroughly cleansed and sanitized between consecutive uses by methods prescribed by or acceptable to the department.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for preserving or storing food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The

rules shall prescribe minimum standards for preparing food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district,

but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (j) of this section, spirituous liquor and commercially prepackaged food, crackers or pretzels that meet the requirements of subsection I, paragraph 4, subdivision (j) of this section are exempt from the rules prescribed in subsection I of this section.

R. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

36-601. Public nuisances dangerous to public health

A. The following conditions are specifically declared public nuisances dangerous to the public health:

1. Any condition or place in populous areas that constitutes a breeding place for flies, rodents, mosquitoes and other insects that are capable of carrying and transmitting disease-causing organisms to any person or persons or any condition or place that constitutes a feral colony of honeybees that is not currently maintained by a beekeeper and that poses a health or safety hazard to the public.
2. Any spoiled or contaminated food or drink intended for human consumption.
3. Any restaurant, food market, bakery or other place of business or any vehicle where food is prepared, packed, processed, stored, transported, sold or served to the public that is not constantly maintained in a sanitary condition.
4. Any place, condition or building that is controlled or operated by any governmental agency and that is not maintained in a sanitary condition.
5. All sewage, human excreta, wastewater, garbage or other organic wastes deposited, stored, discharged or exposed so as to be a potential instrument or medium in the transmission of disease to or between any person or persons.
6. Any vehicle or container that is used in the transportation of garbage, human excreta or other organic material and that is defective and allows leakage or spillage of contents.
7. The presence of ectoparasites such as bedbugs, lice, mites and others in any place where sleeping accommodations are offered to the public.
8. The maintenance of any overflowing septic tank or cesspool, the contents of which may be accessible to flies.
9. The pollution or contamination of any domestic waters.
10. The use of the so-called common drinking cup used for drinking purposes by more than one person. This paragraph does not apply to receptacles properly washed and sanitized after each service.
11. The presence of common towels for use of the public in any public or semipublic place unless properly washed and sanitized following each use.
12. Buildings or any parts of buildings that are in a filthy condition and that may endanger the health of persons living in the vicinity.
13. Spitting or urinating on sidewalks, or floors or walls of a public building or buildings used for public assemblage, or a building used for manufacturing or industrial purposes, or on the floors or platforms or any part of a railroad or other public conveyance.
14. The use of the contents of privies, cesspools or septic tanks or the use of sewage or sewage plant effluents for fertilizing or irrigation purposes for crops or gardens except by specific approval of the department of health services or the department of environmental quality.

15. The maintenance of public assemblage or places of assemblage without providing adequate sanitary facilities. Open surface privies are adequate sanitary facilities if they are outside populous areas and meet reasonable health requirements.

16. Hotels, tourist courts and other lodging establishments that are not kept in a clean and sanitary condition or for which suitable and adequate toilet facilities are not provided.

17. The storage, collection, transportation, disposal and reclamation of garbage, trash, rubbish, manure and other objectionable wastes other than as provided and authorized by law.

18. Water, other than that used by irrigation, industrial or similar systems for nonpotable purposes, that is sold to the public, distributed to the public or used in production, processing, storing, handling, servicing or transportation of food and drink and that is unwholesome, poisonous or contains deleterious or foreign substances or filth or disease causing substances or organisms.

19. The emission of mercaptan in a concentration level that causes endangerment to the health or safety of any considerable number of persons of a neighborhood or community.

20. The operation of an environmental laboratory in violation of chapter 4.3, article 1 of this title.
B. If the director has reasonable cause to believe from information furnished to the director or from investigation made by the director that any person is maintaining a nuisance or engaging in any practice contrary to the health laws of this state, the director shall promptly serve on that person by certified mail a cease and desist order requiring the person, on receipt of the order, promptly to cease and desist from that act. Within fifteen days after receipt of the order, the person to whom it is directed may request the director to hold a hearing. The director, as soon as practicable, shall hold a hearing, and if the director determines the order is reasonable and just and that the practice engaged in is contrary to the health laws of this state, the director shall order the person to comply with the cease and desist order.

C. If a person fails or refuses to comply with the order of the director, or if a person to whom the order is directed does not request a hearing and fails or refuses to comply with the cease and desist order served by mail under subsection B, the director may file an action in the superior court in the county in which a violation occurred, restraining and enjoining the person from engaging in further acts. The court shall proceed as in other actions for injunctions.

D. Notwithstanding subsection A, paragraph 19, the emission of mercaptan as a by-product of a pesticide is not a nuisance if applied according to state and federal restrictions.

E. Notwithstanding subsection A, paragraph 3, a restaurant that uses sawdust on the floors of its dining areas is not in violation of this section or local health department sanitary rules if the restaurant replaces the sawdust each day with clean sawdust and complies with applicable standards for fire safety.

41-1009. Inspections and audits; applicability; exceptions

A. An agency inspector, auditor or regulator who enters any premises of a regulated person for the purpose of conducting an inspection or audit shall, unless otherwise provided by law:

1. Present photo identification on entry of the premises.

2. On initiation of the inspection or audit, state the purpose of the inspection or audit and the legal authority for conducting the inspection or audit.

3. Disclose any applicable inspection or audit fees. Notwithstanding any other law, a regulated person being inspected or audited is responsible for only the direct and reasonable costs of the

inspection or audit and is entitled to receive a detailed billing statement as described in paragraph 5, subdivision (e) of this subsection.

4. Afford an opportunity to have an authorized on-site representative of the regulated person accompany the agency inspector, auditor or regulator on the premises, except during confidential interviews.

5. Provide notice of the right to have on request:

(a) Copies of any original documents taken by the agency during the inspection or audit if the agency is allowed by law to take original documents.

(b) A split of any samples taken during the inspection if the split of any samples would not prohibit an analysis from being conducted or render an analysis inconclusive.

(c) Copies of any analysis performed on samples taken during the inspection.

(d) Copies of any documents to be relied on to determine compliance with licensure or regulatory requirements if the agency is otherwise allowed by law to do so.

(e) A detailed billing statement that provides reasonable specificity of the inspection or audit fees imposed pursuant to paragraph 3 of this subsection and that cites the statute or rule that authorizes the fees being charged.

6. Inform each person whose conversation with the agency inspector, auditor or regulator during the inspection or audit is tape recorded that the conversation is being tape recorded.

7. Inform each person who is interviewed during the inspection or audit that:

(a) Statements made by the person may be included in the inspection or audit report.

(b) Participation in an interview is voluntary, unless the person is legally compelled to participate in the interview.

(c) The person is allowed at least twenty-four hours to review and revise any written witness statement that is drafted by the agency inspector, auditor or regulator and on which the agency inspector, auditor or regulator requests the person's signature.

(d) The agency inspector, auditor or regulator may not prohibit the regulated person from having an attorney or any other experts in their field present during the interview to represent or advise the regulated person.

B. On initiation of an audit or an inspection of any premises of a regulated person, an agency inspector, auditor or regulator shall provide the following in writing:

1. The rights described in subsection A of this section and section 41-1001.01, subsection C.

2. The name and telephone number of a contact person who is available to answer questions regarding the inspection or audit.

3. The due process rights relating to an appeal of a final decision of an agency based on the results of the inspection or audit, including the name and telephone number of a person to contact within the agency and any appropriate state government ombudsman.

4. A statement that the agency inspector, auditor or regulator may not take any adverse action, treat the regulated person less favorably or draw any inference as a result of the regulated person's decision to be represented by an attorney or advised by any other experts in their field.

5. A notice that if the information and documents provided to the agency inspector, auditor or regulator become a public record, the regulated person may redact trade secrets and proprietary and confidential information unless the information and documents are confidential pursuant to statute.

6. The time limit or statute of limitations applicable to the right of the agency inspector, auditor or regulator to file a compliance action against the regulated person arising from the inspection or audit, which applies to both new and amended compliance actions.

C. An agency inspector, auditor or regulator shall obtain the signature of the regulated person or on-site representative of the regulated person on the writing prescribed in subsection B of this section and section 41-1001.01, subsection C, if applicable, indicating that the regulated person or on-site representative of the regulated person has read the writing prescribed in subsection B of this section and section 41-1001.01, subsection C, if applicable, and is notified of the regulated person's or on-site representative of the regulated person's inspection or audit and due process rights. The agency inspector, auditor or regulator may provide an electronic document of the writing prescribed in subsection B of this section and section 41-1001.01, subsection C and, at the request of the regulated person or on-site representative, obtain a receipt in the form of an electronic signature. The agency shall maintain a copy of this signature with the inspection or audit report and shall leave a copy with the regulated person or on-site representative of the regulated person. If a regulated person or on-site representative of the regulated person is not at the site or refuses to sign the writing prescribed in subsection B of this section and section 41-1001.01, subsection C, if applicable, the agency inspector, auditor or regulator shall note that fact on the writing prescribed in subsection B of this section and section 41-1001.01, subsection C, if applicable.

D. An agency that conducts an inspection shall give a copy of the inspection report to the regulated person or on-site representative of the regulated person either:

1. At the time of the inspection.
2. Notwithstanding any other state law, within thirty working days after the inspection.
3. As otherwise required by federal law.

E. The inspection report shall contain deficiencies identified during an inspection. Unless otherwise provided by state or federal law, the agency shall provide the regulated person an opportunity to correct the deficiencies unless the agency documents in writing as part of the inspection report that the deficiencies are:

1. Committed intentionally.
2. Not correctable within a reasonable period of time as determined by the agency.
3. Evidence of a pattern of noncompliance.
4. A risk to any person, the public health, safety or welfare or the environment.

F. If the agency is unsure whether a regulated person meets the exemptions in subsection E of this section, the agency shall provide the regulated person with an opportunity to correct the deficiencies.

G. If the agency allows the regulated person an opportunity to correct the deficiencies pursuant to subsection E of this section, the regulated person shall notify the agency when the deficiencies have been corrected. Within thirty days after receipt of notification from the regulated person that the deficiencies have been corrected, the agency shall determine if the regulated person is in substantial compliance and notify the regulated person whether or not the regulated person is in substantial compliance. If the regulated person fails to correct the deficiencies or the agency determines the deficiencies have not been corrected within a reasonable period of time, the agency may take any enforcement action authorized by law for the deficiencies.

H. If the agency does not allow the regulated person an opportunity to correct deficiencies pursuant to subsection E of this section, on the request of the regulated person, the agency shall provide a detailed written explanation of the reason that an opportunity to correct was not allowed.

I. An agency decision pursuant to subsection E or G of this section is not an appealable agency action.

J. At least once every month after the commencement of the inspection, an agency shall provide a regulated person with an update on the status of any agency action resulting from an inspection of the regulated person. An agency is not required to provide an update after the regulated person is notified that no agency action will result from the agency inspection or after the completion of agency action resulting from the agency inspection.

K. For agencies with authority under title 49, if, as a result of an inspection or any other investigation, an agency alleges that a regulated person is not in compliance with licensure or other applicable regulatory requirements, the agency shall provide written notice of that allegation to the regulated person. The notice shall contain the following information:

1. A citation to the statute, regulation, license or permit condition on which the allegation of noncompliance is based, including the specific provisions in the statute, regulation, license or permit condition that are alleged to be violated.
2. Identification of any documents relied on as a basis for the allegation of noncompliance.
3. An explanation stated with reasonable specificity of the regulatory and factual basis for the allegation of noncompliance.
4. Instructions for obtaining a timely opportunity to discuss the alleged violation with the agency.

L. Subsection K of this section applies only to inspections necessary for the issuance of a license or to determine compliance with licensure or other regulatory requirements. Subsection K of this section does not apply to an action taken pursuant to section 11-871, 11-876, 11-877, 49-457.01, 49-457.03 or 49-474.01. Issuance of a notice under subsection K of this section is not a prerequisite to otherwise lawful agency actions seeking an injunction or issuing an order if the agency determines that the action is necessary on an expedited basis to abate an imminent and substantial endangerment to public health or the environment and documents the basis for that determination in the documents initiating the action.

M. This section does not authorize an inspection or any other act that is not otherwise authorized by law.

N. Except as otherwise provided in subsection L of this section, this section applies only to inspections necessary for the issuance of a license or to determine compliance with licensure or other regulatory requirements applicable to a licensee and audits pursuant to enforcement of title 23, chapters 2 and 4. This section does not apply:

1. To criminal investigations, investigations under tribal state gaming compacts and undercover investigations that are generally or specifically authorized by law.
2. If the agency inspector, auditor or regulator has reasonable suspicion to believe that the regulated person may be engaged in criminal activity.
3. To the Arizona peace officer standards and training board established by section 41-1821.
4. To certificates of convenience and necessity that are issued by the corporation commission pursuant to title 40, chapter 2.

- O. If an agency inspector, auditor or regulator gathers evidence in violation of this section, the violation may be a basis to exclude the evidence in a civil or administrative proceeding.
- P. Failure of an agency, board or commission employee to comply with this section:
1. May subject the employee to disciplinary action or dismissal.
 2. Shall be considered by the judge and administrative law judge as grounds for reduction of any fine or civil penalty.
- Q. An agency may make rules to implement subsection A, paragraph 5 of this section.
- R. Nothing in this section shall be used to exclude evidence in a criminal proceeding.
- S. Subsection A, paragraph 7, subdivision (c) and subsection E of this section do not apply to the department of health services for the purposes of title 36, chapters 4 and 7.1.
- T. Subsection B, paragraph 5 and subsection E of this section do not apply to the corporation commission for the purposes of title 44, chapters 12 and 13.
- U. Except as otherwise prescribed by this section and notwithstanding any other law:
1. This section applies to all state agencies that conduct inspections and audits.
 2. If a conflict arises between the rights afforded a regulated person pursuant to this section and the rights afforded a regulated person pursuant to another statute, this section governs.

DEPARTMENT OF HEALTH SERVICES

Title 9, Chapter 25, Articles 1, 2, 5



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 2, 2022

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: June 30, 2022

SUBJECT: DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 25, Articles 1-2, 5

Summary

This Five-Year-Review Report (5YRR) from the Department of Health Services (Department) relates to rules in Title 9, Chapter 25, Article 1-2 and 5, regarding Emergency Medical Services. The rules in Article 1 relate to who is regulated under this Chapter. The rules in Article 2 establish requirements for medical direction of emergency medical care technicians (EMCTs) and certification of advanced life support (ALS) base hospitals. The rules in Article 5 relate to medical direction protocols for emergency medical care technicians.

In the last 5YRR of these rules, the Department proposed changes to Article 2 to address issues identified in the report. The Department completed the proposed course of action in a rulemaking approved by the Council in 2019.

Proposed Action

The Department is not proposing any changes to the rules.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes, the Department cites both general and specific statutory authority for these rules.

2. Summary of the agency’s economic impact comparison and identification of stakeholders:

A.R.S. §§ 36-2202(A)(3) and (4) and 36-2209(A)(2) require the Department to adopt standards and criteria pertaining to the quality of emergency care, rules necessary for the operation of emergency medical services, and rules for carrying out the purposes of A.R.S. Title 36, Chapter 21.1. The Department has implemented these statutes in Arizona Administrative Code (A.A.C.) Title 9, Chapter 25. The rules in 9 A.A.C. 25, Article 1, establish definitions used in the Chapter and who may provide information on or sign an application or other document required by the Chapter. The rules in Article 2 establish requirements for medical direction of emergency medical care technicians (EMCTs) and certification of advanced life support (ALS) base hospitals. The rules in Article 5 contain protocols for EMCTs. The rules in these three Articles were revised in four exempt rulemakings effective December 2013, January 2015, September 2018, and August 2021 and in a regular rulemaking effective July 2019. An economic, small business, and consumer impact statement (EIS) is available for the 2019 rulemaking.

In the 2013 exempt rulemaking, five rules were last revised. One rule, R9-25-504, was last revised in the 2015 exempt rulemaking at the request of stakeholders. The Department believes these changes provided a significant benefit to all stakeholders. In the regular rulemaking effective July 2019, all the rules in Article 2 were last revised to address issues identified in a 2017 five-year-review report or by stakeholders. In the EIS accompanying the rulemaking, changes to make the rules more clear and easier to understand were believed to provide a significant benefit to all affected persons. The Department believes that the costs and benefits identified in this EIS are generally consistent with the actual costs and benefits of the rules. Table 5.1 was last revised in the 2021 exempt rulemaking. As recommended by the Emergency Medical Services Council and the Medical Direction Commission, established by A.R.S. §§ 36-2203 and 36-2203.01, respectively, the Table, which specifies the scope of practice for EMCTs, was reformatted and made more consistent with national standards. The Department believes that these changes provide a significant benefit to all affected persons.

Stakeholders include the Department, certificate of necessity holders, ambulance services, emergency medical services providers, emergency medical care technicians, and advanced life support base hospitals.

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The rules form the basis for the minimum health and safety standards for medical direction and scope of practice for EMCTs. Any failure of an emergency medical services provider, ambulance service, or EMCT to meet the minimum requirements prescribed by the rules poses a threat to the health and safety of patients and vulnerable individuals seeking emergency care. Thus, the probable benefits of the rules outweigh the probable costs. Despite the minor grammatical issues identified in this report, the rules in 9 A.A.C. 25, Articles 1, 2, and 5

impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

4. Has the agency received any written criticisms of the rules over the last five years?

No, the Department has not received any written criticisms of the rules over the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

Yes, the Department indicates that the rules are generally clear, concise and understandable; however, the Department indicates rules R9-9-25-101 and R9-25-503 could be more clear, concise and understandable by making grammatical corrections and adding a definition of "BLS."

6. Has the agency analyzed the rules' consistency with other rules and statutes?

Yes, the Department indicates the rules are consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

Yes, the Department indicates the rules are effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

Yes, the Department states the rules are enforced as written.

9. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

Not applicable. The Department indicates there is no corresponding federal law.

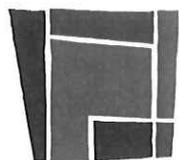
10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

The rules in Article 2 require the issuance of a specific agency authorization, which is authorized by A.R.S § 36-2204(5) and (6), so a general permit is not applicable. The Department is exempt from the general permit requirement pursuant to A.R.S. § 41-1037(A)(2).

11. Conclusion

This Five-Year-review Report (5YRR) from the Department of Health Services relates to rules in Title 9, Chapter 25, Articles 1-2, 5, regarding Emergency Medical Services. The Department indicates the rules are generally clear, concise, understandable, consistent, effective and enforced as written. The Department does not intend to take any action regarding these rules.

Council staff finds the Department submitted a report that meets the requirements of A.R.S. § 41-1056. Council staff recommends approval of this report.



ARIZONA DEPARTMENT OF HEALTH SERVICES

May 20, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsin, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 25, Articles 1, 2, and 5, Five-Year-Review Report for
Emergency Medical Services

Dear Ms. Sornsin:

Please find enclosed the Five-Year Review Report (Report) from the Arizona Department of Health Services (Department) for 9 A.A.C. 25, Articles 1, 2, and 5, which is due on June 30, 2022.

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Ruthann Smejkal at Ruthann.Smejkal@azdhs.gov.

Sincerely,



Robert Lane
Director's Designee

RL:rms

Enclosures



Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 25. Department of Health Services

Emergency Medical Services

Article 1. General

Article 2. Medical Direction; ALS Base Hospital Certification

Article 5. Medical Direction Protocols for Emergency Medical Care Technicians

May 2022

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 36-136(A)(7), 36-136(G), 36-2202, 36-2209(A)(2)

Specific Statutory Authority: A.R.S. §§ 36-2201, 36-2202, 36-2204, and 36-2205.

2. The objective of each rule:

Rule	Objective
R9-25-101	To define terms used in more than one Article in Chapter 25 to enable the reader to understand clearly the requirements of the Chapter and allow for consistent interpretation.
R9-25-102	To establish who may provide information on or sign an application or other document required by the Chapter.
R9-25-201	To establish: a. Requirements for EMS providers and ambulance services related to administrative medical direction; b. General requirements for administrative medical directors; c. Requirements for protocols, policies and procedures, recordkeeping, and reporting related an EMCT's scope of practice; and d. To whom an administrative medical director may delegate responsibilities.
R9-25-202	To establish: a. Who may provide on-line medical direction to an EMCT, and b. Requirements for providing on-line medical direction, recordkeeping, and equipment and staffing related to the provision of on-line medical direction.
R9-25-203	To establish general requirements for an ALS base hospital.
R9-25-204	To establish application requirements for ALS base hospital certification.
R9-25-205	To establish requirements related to a change in the name, address, or ownership of an ALS base hospital.
R9-25-206	To establish requirements for an ALS base hospital: a. To provide administrative medical direction and on-line medical direction, b. To notify the Department of a change in the administrative medical director or the ALS base hospitals qualifications for certification, c. When acting as a training program, and d. When providing agents to an EMS provider or ambulance service.

R9-25-207	To establish: a. The circumstances under which the Department may take action against an ALS base hospital certificate holder, b. The actions the Department may take against an ALS base hospital certificate holder, and c. The jurisdiction for enforcement of an ALS base hospital operated by the U.S. federal government or a sovereign tribal nation.
R9-25-501	To provide definitions of terms used in the Article.
R9-25-502	To establish the scope of practice for EMCTs, including: a. What actions an EMCT is allowed to perform, and b. The responsibilities of an administrative medical director when authorizing an EMCT to perform an action and for monitoring competency.
Table 5.1	To establish the skills that may be performed by each classification of EMCT.
R9-25-503	To establish requirements related to the Department's authorizing, as allowed by A.R.S. § 36-2205, the testing and evaluation of a medical treatment, procedure, technique, practice, medication, or piece of equipment for possible use by an EMCT or an EMS provider.
R9-25-504	To establish: a. Requirements for transport of a patient accessing emergency medical services through a call to 9-1-1 or a similar public emergency dispatch number; and b. If the patient is not being transported to an emergency receiving facility, requirements for ensuring the willingness of the health care institution to accept the patient, transferring care of the patient, and recordkeeping.
R9-25-505	To establish: a. The process by which an EMT-I(99) or Paramedic may be authorized to administer an immunizing agent, and b. The requirements for an EMT-I(99) or Paramedic administering an immunizing agent.

3. **Are the rules effective in achieving their objectives?** Yes X No

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation

4. **Are the rules consistent with other rules and statutes?** Yes X No

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation
Table 5.1	The rule is consistent with rules and statutes, but the rule could be improved by adding the scope of practice for an emergency medical responder, as defined in A.R.S. § 36-2201.

5. **Are the rules enforced as written?** Yes X No

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

Rule	Explanation

6. **Are the rules clear, concise, and understandable?** Yes X No

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation
R9-25-101	The rule is clear, concise, and understandable, but could be improved by adding a definition of "BLS" to the rule, similar to the current definition of "ALS."
R9-25-201	The rule is clear, concise, and understandable, but could be improved by specifying in subsection (E)(4) that protocols are reviewed "at least annually" and correcting a grammatical error in subsection (E)(6)(a).
R9-25-503	The rule is clear, concise, and understandable, but could be improved in subsection (B) by adding the word "and" to the phrase "subsections (C), (D), (E)."

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No X

If yes, please fill out the table below:

Rule	Explanation

8. **Economic, small business, and consumer impact comparison:**

A.R.S. §§ 36-2202(A)(3) and (4) and 36-2209(A)(2) require the Department to adopt standards and criteria pertaining to the quality of emergency care, rules necessary for the operation of emergency medical services, and rules for carrying out the purposes of A.R.S. Title 36, Chapter 21.1. The Department has implemented these statutes in Arizona Administrative Code (A.A.C.) Title 9, Chapter 25. The rules in 9 A.A.C. 25, Article 1, establish definitions used in the Chapter and who may provide information on or sign an application or other document required by the Chapter. The rules in Article 2 establish requirements for medical direction of emergency medical care technicians (EMCTs) and certification of advanced life support (ALS) base hospitals. The rules in Article 5 contain protocols for EMCTs. Currently, approximately 96 certificate of necessity holders, 19 air ambulance services, over 350 emergency medical services providers, 52 base hospitals, and over 21,100 emergency medical care technicians are affected by these rules.

The rules in these three Articles were revised in four exempt rulemakings effective December 2013, January 2015, September 2018, and August 2021 and in a regular rulemaking effective July 2019. An economic, small

business, and consumer impact statement (EIS) is available for the 2019 rulemaking. Consistent with this EIS, the changes to annual costs/revenues in this economic, small business, and consumer impact comparison are designated as minimal when more than \$0 and \$1,000 or less, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or greater in additional costs or revenues. A cost or benefit is listed as significant when meaningful or important, but not readily subject to quantification.

In the 2013 exempt rulemaking, five rules were last revised. R9-25-101 was amended to remove terms no longer used, defined/described in the rules, or defined in A.R.S. § 36-2201 and to clarify definitions to improve the understandability of the rules. A new R9-25-102 was added to consolidate duplicated requirements in several Articles, describing who can act for a regulated person. Three rules in Article 5 were changed to add in R9-25-501 definitions used in the Article; renumber the content previously in R9-25-506 into R9-25-503 and change EMCT classification terminology; and renumber the content previously in R9-25-503 into R9-25-505, remove duplicative requirements, and clarify requirements related to administration of an immunizing agent to be consistent with requirements for pharmacist administration of immunizing agents in A.A.C. R4-23-411. The Department believes these changes provided a significant benefit to all stakeholders.

One rule, R9-25-504, was last revised in the 2015 exempt rulemaking at the request of stakeholders. In this rulemaking, changes were made in subsection (B)(1) to allow for the use of standing orders and in subsection (D) to allow the transfer of care of a patient to the designee of one of the listed health practitioners. Similarly, only one rule, R9-25-502 was last revised in the 2018 exempt rulemaking. In this rulemaking, cross-references were corrected and a web address was added to provide a reference to information previously in three Tables that were being removed from the rules. The Department believes these changes provided a significant benefit to all stakeholders.

In the regular rulemaking effective July 2019, all the rules in Article 2 were last revised to address issues identified in a 2017 five-year-review report or by stakeholders. In the EIS accompanying the rulemaking, changes to make the rules clearer and clearer and easier to understand were believed to provide a significant benefit to all affected persons. Changes increasing the options through which a physician may be eligible to become an administrative medical director or provide on-line medical direction were also believed to provide a significant benefit to affected persons. The Department anticipated that changes that may enable a hospital operating under tribal or federal law to be eligible for certification as an ALS base hospital might increase costs to the Department from having to review more applications and assess on-going compliance for more hospitals. The Department anticipated receiving a minimal-to-moderate benefit, and hospitals up to a moderate benefit, from the change allowing assessment of an ALS base hospital, rather than requiring an inspection, and from lengthening the maximum time between assessments/inspections from 24 months to 36 months. An ALS base hospital that was not in compliance with requirements was thought to receive up to a substantial benefit from being able to submit corrective action plans rather than having enforcement action taken. The increase in the time for notifying the Department of specific changes was expected to provide a significant benefit to an ALS base hospital, while requiring them to institute and carry out a quality assurance process for on-line medical direction, as suggested by

stakeholders, was believed to cause up to a substantial cost and provide up to a substantial benefit, especially to an emergency medical services provider or ambulance service. Requiring ALS base hospitals to notify those for which they were providing medical direction of a plan to stop was expected to cause them a minimal cost in staff time and up to a substantial decrease in revenue if patients were transported to another hospital before the stop-date. This change was anticipated to provide a significant benefit to an emergency medical services provider or ambulance service, as were changes allowing an administrative medical director to better tailor policies and procedures for carrying/storing a controlled substance. An emergency medical services provider or ambulance service that was not in compliance with current requirements might incur up to substantial costs to comply with the clarified requirements related to protocols and policies and procedures, which would be offset by a corresponding reduction in costs related to enforcement. The Department anticipated that EMCTs, patients and their families, and the general public might receive a significant benefit from the changes, which were developed to improve the quality of medical direction and the functioning of ALS base hospitals. The Department believes that the costs and benefits identified in this EIS are generally consistent with the actual costs and benefits of the rules.

Table 5.1 was last revised in the 2021 exempt rulemaking. As recommended by the Emergency Medical Services Council and the Medical Direction Commission, established by A.R.S. §§ 36-2203 and 36-2203.01, respectively, the Table, which specifies the scope of practice for EMCTs, was reformatted and made more consistent with national standards. The Department believes that these changes provide a significant benefit to all affected persons.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No X

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

In the 2017 five-year-review-report, the Department stated that the Department did not plan to revise the rules in Articles 1 or 5 unless a substantive issue arose, but planned to make changes to Article 2 to address issues identified in the report. Through the 2019 regular rulemaking, the Department completed the course of action.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The rules in Article 1 establish definitions used in the Chapter and who may provide information on or sign an application or other document required by the Chapter. The rules in Article 2 establish requirements for medical direction of emergency medical care technicians (EMCTs) and certification of advanced life support (ALS) base hospitals. The rules in Article 5 contain protocols for EMCTs. These requirements form the basis for the minimum health and safety standards for medical direction and scope of practice for EMCTs. Any failure of an emergency

medical services provider, ambulance service, or EMCT to meet the minimum requirements prescribed by these rules poses a threat to the health and safety of patients and vulnerable individuals seeking emergency care. Thus, the probable benefits of the rules outweigh the probable costs. Despite the minor grammatical issues identified in this report, the rules in 9 A.A.C. 25, Articles 1, 2, and 5 impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No X

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?

Federal laws do not apply to the rules in 9 A.A.C. 25, Articles 1, 2, and 5.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

The rules in Article 2 require the issuance of a specific agency authorization, which is authorized by A.R.S. § 36-2204(5) and (6), so a general permit is not applicable.

14. Proposed course of action

If possible, please identify a month and year by which the agency plans to complete the course of action.

The Department does not plan to amend the rules in 9 A.A.C. 25, Articles 1, 2, and 5 unless substantive issues arise.

TITLE 9. HEALTH SERVICES
CHAPTER 25. DEPARTMENT OF HEALTH SERVICES - EMERGENCY MEDICAL SERVICES

ARTICLE 1. GENERAL

Section

- R9-25-101. Definitions (Authorized by A.R.S. §§ 36-2201, 36-2202, 36-2204, and 36-2205)
- R9-25-102. Individuals to Act for a Person Regulated Under This Chapter (Authorized by A.R.S. § 36-2202)

ARTICLE 2. MEDICAL DIRECTION; ALS BASE HOSPITAL CERTIFICATION

Section

- R9-25-201. Administrative Medical Direction (Authorized by A.R.S. §§ 36-2201, 36-2202(A)(3) and (A)(4), 36-2204(5), (6), and (7), 36-2204.01, and 36-2205(A) and (D))
- R9-25-202. On-line Medical Direction (Authorized by A.R.S. §§ 36-2201, 36-2202(A)(3) and (A)(4), 36-2204(5), (6), and (7), 36-2204.01, and 36-2205(A) and (D))
- R9-25-203. ALS Base Hospital General Requirements (Authorized by A.R.S. §§ 36-2201, 36-2202(A)(3) and (A)(4), and 36-2204(5), (6), and (7))
- R9-25-204. Application Requirements for ALS Base Hospital Certification (Authorized by A.R.S. §§ 36-2201, 36-2202(A)(3) and (A)(4), and 36-2204(5))
- R9-25-205. Changes Affecting an ALS Base Hospital Certificate (Authorized by A.R.S. §§ 36-2201, 36-2202(A)(3) and (A)(4), and 36-2204(5) and (6))
- R9-25-206. ALS Base Hospital Authority and Responsibilities (Authorized by A.R.S. §§ 36-2201, 36-2202(A)(3) and (A)(4), 36-2204(5) and (6), 36-2208(A), and 36-2209(A)(2))
- R9-25-207. ALS Base Hospital Enforcement Actions (Authorized by A.R.S. §§ 36-2201, 36-2202(A)(3) and (A)(4), and 36-2204(7))

ARTICLE 5. MEDICAL DIRECTION PROTOCOLS FOR EMERGENCY MEDICAL CARE TECHNICIANS

Section

- R9-25-501. Definitions
- R9-25-502. Scope of Practice for EMCTs
 - Table 5.1. Arizona Scope of Practice Skills
- R9-25-503. Testing of Medical Treatments, Procedures, Medications, and Techniques that May Be Administered or Performed by an EMCT
- R9-25-504. Protocol for Selection of a Health Care Institution for Transport
- R9-25-505. Protocol for an EMT-I(99) or a Paramedic to Become Eligible to Administer an Immunizing Agent

ARTICLE 1. GENERAL

R9-25-101. Definitions (Authorized by A.R.S. §§ 36-2201, 36-2202, 36-2204, and 36-2205)

In addition to the definitions in A.R.S. § 36-2201, the following definitions apply in this Chapter, unless otherwise specified:

1. “Administer” or “administration” means to directly apply or the direct application of an agent to the body of a patient by injection, inhalation, ingestion, or any other means and includes adjusting the administration rate of an agent.
2. “AEMT” has the same meaning as “advanced emergency medical technician” in A.R.S. § 36-2201.
3. “Agent” means a chemical or biological substance that is administered to a patient to treat or prevent a medical condition.
4. “ALS” has the same meaning as “advanced life support” in A.R.S. § 36-2201.
5. “ALS base hospital” has the same meaning as “advanced life support base hospital” in A.R.S. § 36-2201.
6. “Applicant” means a person requesting certification, licensure, approval, or designation from the Department under this Chapter.
7. “Chain of custody” means the transfer of physical control of and accountability for an item from one individual to another individual, documented to indicate the:
 - a. Date and time of the transfer,
 - b. Integrity of the item transferred, and
 - c. Signatures of the individual relinquishing and the individual accepting physical control of and accountability for the item.
8. “Chief administrative officer” means:
 - a. For a hospital, the same as in A.A.C. R9-10-101; and
 - b. For a training program, an individual assigned to act on behalf of the training program by the body organized to govern and manage the training program.
9. “Clinical training” means experience and instruction in providing direct patient care in a health care institution.
10. “Controlled substance” has the same meaning as in A.R.S. § 32-1901.
11. “Course” means didactic instruction and, if applicable, hands-on practical skills training, clinical training, or field training provided by a training program to prepare an individual to become or remain an EMCT.
12. “Course session” means an offering of a course, during a period of time designated by a training program certificate holder, for a specific group of students.
13. “Current” means up-to-date and extending to the present time.
14. “Day” means a calendar day.
15. “Document” or “documentation” means signed and dated information in written, photographic, electronic, or other permanent form.

16. “Drug” has the same meaning as in A.R.S. § 32-1901.
17. “Electronic signature” has the same meaning as in A.R.S. § 44-7002.
18. “EMCT” has the same meaning as “emergency medical care technician” in A.R.S. § 36-2201.
19. “EMT” has the same meaning as “emergency medical technician” in A.R.S. § 36-2201.
20. “EMT-I(99)” means an individual, other than a Paramedic, who:
 - a. Was certified as an EMCT by the Department before January 28, 2013 to perform ALS, and
 - b. Has continuously maintained the certification.
21. “EMS” has the same meaning as “emergency medical services” subsections (17)(a) through (d) in A.R.S. § 36-2201.
22. “Field training” means emergency medical services experience and training outside of a health care institution or a training program facility.
23. “General hospital” has the same meaning as in A.A.C. R9-10-101.
24. “Health care institution” has the same meaning as in A.R.S. § 36-401.
25. “Hospital” has the same meaning as in A.A.C. R9-10-101.
26. “In use” means in the immediate physical possession of an EMCT and readily accessible for potential imminent administration to a patient.
27. “Infusion pump” means a device approved by the U.S. Food and Drug Administration that, when operated mechanically, electrically, or osmotically, releases a measured amount of an agent into a patient’s circulatory system in a specific period of time.
28. “Interfacility transport” means an ambulance transport of a patient from one health care institution to another health care institution.
29. “IV” means intravenous.
30. “Locked” means secured with a key, including a magnetic, electronic, or remote key, or combination so that opening is not possible except by using the key or entering the combination.
31. “Medical direction” means administrative medical direction or on-line medical direction.
32. “Medical record” has the same meaning as in A.R.S. § 36-2201.
33. “Minor” means an individual younger than 18 years of age who is not emancipated.
34. “Monitor” means to observe the administration rate of an agent and the patient’s response to the agent and may include discontinuing administration of the agent.
35. “On-line medical direction” means emergency medical services guidance or information provided to an EMCT by a physician through two-way voice communication.
36. “Patient” means an individual who is sick, injured, or wounded and who requires medical monitoring, medical treatment, or transport.
37. “Pediatric” means pertaining to a child.
38. “Person” has the same meaning as in A.R.S. § 1-215 and includes governmental agencies.
39. “Physician assistant” has the same meaning as in A.R.S. § 32-2501.
40. “Practical nurse” has the same meaning as in A.R.S. § 32-1601.
41. “Practicing emergency medicine” means acting as an emergency medicine physician in a hospital emergency department.

42. “Prehospital incident history report” has the same meaning as in A.R.S. § 36-2220.
43. “Refresher challenge examination” means a test given to an individual to assess the individual’s knowledge, skills, and competencies compared with the national education standards established for the applicable EMCT classification level.
44. “Refresher course” means a course intended to reinforce and update the knowledge, skills, and competencies of an individual who has previously met the national educational standards for a specific level of EMS personnel.
45. “Registered nurse” has the same meaning as in A.R.S. § 32-1601.
46. “Registered nurse practitioner” has the same meaning as in A.R.S. § 32-1601.
47. “Scene” means the location of the patient to be transported or the closest point to the patient at which an ambulance can arrive.
48. “Special hospital” has the same meaning as in A.A.C. R9-10-101.
49. “STR skill” means “Specialty Training Requirement skill,” a medical treatment, procedure, or technique or administration of a medication for which an EMCT needs specific training beyond the training required in 9 A.A.C. 25, Article 4 in order to perform or administer.
50. “Transfer of care” means to relinquish to the control of another person the ongoing medical treatment of a patient.
51. “Transport agent” means an agent that an EMCT at a specified level of certification is authorized to administer only during interfacility transport of a patient for whom the agent’s administration was started at the sending health care institution.

R9-25-102. Individuals to Act for a Person Regulated Under This Chapter (Authorized by A.R.S. § 36-2202)

When a person regulated under this Chapter is required by this Chapter to provide information on or sign an application form or other document, the following individual shall satisfy the requirement on behalf of the person regulated under this Chapter:

1. If the person regulated under this Chapter is an individual, the individual; or
2. If the person regulated under this Chapter is a business organization, political subdivision, government agency, or tribal government, the individual who the business organization, political subdivision, government agency, or tribal government has designated to act on behalf of the business organization, political subdivision, government agency, or tribal government and who:
 - a. Is a U.S. citizen or legal resident, and
 - b. Has an Arizona address.

ARTICLE 2. MEDICAL DIRECTION; ALS BASE HOSPITAL CERTIFICATION

R9-25-201. Administrative Medical Direction (Authorized by A.R.S. §§ 36-2201, 36-2202(A)(3) and (A)(4), 36-2204(5), (6), and (7), 36-2204.01, and 36-2205(A) and (D))

- A. An emergency medical services provider or ambulance service shall:
1. Except as specified in subsection (B) or (C), designate a physician as administrative medical director who meets one of the following:
 - a. Has emergency medicine certification issued by a member board of the American Board of Medical Specialties;
 - b. Has emergency medical services certification issued by the American Board of Emergency Medicine;
 - c. Has emergency medicine certification issued by the American Osteopathic Board of Emergency Medicine;
 - d. Has emergency medicine certification issued by the American Board of Physician Specialties;
 - e. Has completed an emergency medicine residency training program accredited by the Accreditation Council for Graduate Medical Education or approved by the American Osteopathic Association; or
 - f. Is an emergency medicine physician in an emergency department located in Arizona and has current certification in:
 - i. Advanced emergency cardiac life support that includes didactic instruction and a practical skills test, consistent with training recognized by the American Heart Association;
 - ii. Advanced emergency trauma life support that includes didactic instruction and a practical skills test, consistent with training recognized by the American College of Surgeons; and
 - iii. Pediatric advanced emergency life support that includes didactic instruction and a practical skills test, consistent with training recognized by the American Heart Association;
 2. If the emergency medical services provider or ambulance service designates a physician as administrative medical director according to subsection (A)(1), notify the Department in writing:
 - a. Of the identity and qualifications of the designated physician within 10 days after designating the physician as administrative medical director; and
 - b. Within 10 days after learning that a physician designated as administrative medical director is no longer qualified to be an administrative medical director; and
 3. Maintain for Department review:
 - a. A copy of the policies, procedures, protocols, and documentation required in subsection (E); and
 - b. Either:
 - i. The name, e-mail address, telephone number, and qualifications of the physician providing administrative medical direction on behalf of the emergency medical services provider or ambulance service; or

- ii. If the emergency medical services provider or ambulance service provides administrative medical direction through an ALS base hospital or a centralized medical direction communications center, a copy of a written agreement with the ALS base hospital or centralized medical direction communications center documenting that the administrative medical director is qualified under subsection (A)(1).
- B.** Except as provided in R9-25-502(A)(3), if an emergency medical services provider or ambulance service provides only BLS, the emergency medical services provider or ambulance service is not required to have an administrative medical director.
- C.** If an emergency medical services provider or ambulance service provides administrative medical direction through an ALS base hospital or a centralized medical direction communications center, the emergency medical services provider or ambulance service shall ensure that the ALS base hospital or centralized medical direction communications center designates a physician as administrative medical director who meets one of the requirements in subsections (A)(1)(a) through (f).
- D.** An emergency medical services provider or ambulance service may provide administrative medical direction through an ALS base hospital certified according to R9-25-203(C), if the emergency medical services provider or ambulance service:
 - 1. Uses the ALS base hospital for administrative medical direction only for patients who are children, and
 - 2. Has a written agreement for the provision of administrative medical direction with an ALS base hospital that meets the requirements in R9-25-203(B)(1) or a centralized medical direction communications center.
- E.** An emergency medical services provider or an ambulance service shall ensure that:
 - 1. An EMCT receives administrative medical direction as required by A.R.S. Title 36, Chapter 21.1 and this Chapter;
 - 2. Protocols are established, documented, and implemented by an administrative medical director, consistent with A.R.S. Title 36, Chapter 21.1 and this Chapter, that include:
 - a. A communication protocol for:
 - i. How and from what sources an EMCT requests and receives on-line medical direction,
 - ii. When and how an EMCT notifies a health care institution of the EMCT's intent to transport a patient to the health care institution, and
 - iii. What procedures an EMCT follows in the event of a communications equipment failure;
 - b. A triage protocol for:
 - i. How an EMCT assesses and prioritizes the medical condition of a patient,
 - ii. How an EMCT selects a health care institution to which a patient may be transported,
 - iii. How a patient is transported to the health care institution, and
 - iv. When on-line medical direction is required;
 - c. A treatment protocol for:
 - i. How an EMCT performs a medical treatment on a patient or administers an agent to a patient, and

- ii. When on-line medical direction is required while an EMCT is providing treatment; and
 - d. A protocol for the transfer of information to the emergency receiving facility for:
 - i. What information is required to be communicated to emergency receiving facility staff concurrent with the transfer of care and by what method, including the condition of the patient, the treatment provided to the patient, and the patient's response to the treatment;
 - ii. What information is required to be documented on a prehospital incident history report; and
 - iii. The time-frame, which is associated with the transfer of care, for completion and submission of a prehospital incident history report;
- 3. Policies and procedures are established, documented, and implemented by an administrative medical director, consistent with A.R.S. Title 36, Chapter 21.1 and this Chapter, that:
 - a. Are consistent with an EMCT's scope of practice, as specified in Table 5.1;
 - b. Cover:
 - i. Medical recordkeeping;
 - ii. Medical reporting, including to whom and by what method medical reporting is accomplished;
 - iii. Completion and submission of prehospital incident history reports;
 - iv. Obtaining, storing, transferring, and disposing of agents to which an EMCT has access including methods to:
 - (1) Identify individuals authorized by the administrative medical director to have access to agents,
 - (2) Maintain chain of custody for controlled substances, and
 - (3) Minimize potential degradation of agents due to temperature extremes;
 - v. Administration, monitoring, or assisting in patient self-administration of an agent;
 - vi. Monitoring and evaluating an EMCT's compliance with treatment protocols, triage protocols, and communications protocols specified in subsection (E)(2);
 - vii. Monitoring and evaluating an EMCT's compliance with medical recordkeeping, medical reporting, and prehospital incident history report requirements;
 - viii. Monitoring and evaluating an EMCT's compliance with policies and procedures for agents to which the EMCT has access;
 - ix. Monitoring and evaluating an EMCT's competency in performing skills authorized for the EMCT by the EMCT's administrative medical director and within the EMCT's scope of practice, as specified in Table 5.1;
 - x. Ongoing education, training, or remediation necessary to maintain or enhance an EMCT's competency in performing skills within the EMCT's scope of practice, as specified in Table 5.1;
 - xi. The process by which administrative medical direction is withdrawn from an EMCT; and
 - xii. The process for reinstating an EMCT's administrative medical direction; and

- c. Include a quality assurance process to evaluate the effectiveness of the administrative medical direction provided to EMCTs;
 - 4. Protocols in subsection (E)(2) and policies and procedures in subsection (E)(3) are reviewed annually by the administrative medical director and updated as necessary;
 - 5. Requirements in A.R.S. Title 36, Chapter 21.1 and this Chapter are reviewed annually by the administrative medical director; and
 - 6. The Department is notified in writing no later than ten days after the date:
 - a. Administrative medical direction is withdrawn from an EMCT; or
 - b. An EMCT's administrative medical direction is reinstated.
- F. An administrative medical director for an emergency medical services provider or ambulance service shall ensure that:
 - 1. An EMCT for whom the administrative medical director provides administrative medical direction:
 - a. Has access to at least the minimum supply of agents required for the highest level of service to be provided by the EMCT, consistent with requirements in Article 5 of this Chapter;
 - b. Administers, monitors, or assists in patient self-administration of an agent according to the requirements in policies and procedures; and
 - c. Has access to a copy of the policies and procedures required in subsection (F)(2) while on duty for the emergency medical services provider or ambulance service;
 - 2. Policies and procedures for agents to which an EMCT has access:
 - a. Specify that an agent is obtained only from a person:
 - i. Authorized by law to prescribe the agent, or
 - ii. Licensed under A.R.S. Title 36, Chapter 27; A.R.S. Title 32, Chapter 18; and 4 A.A.C. 23 to dispense or distribute the agent;
 - b. Cover chain of custody and transfer procedures for each supply of agents, requiring an EMCT for whom the administrative medical director provides administrative medical direction to:
 - i. Document the name and the EMCT certification number or employee identification number of each individual who takes physical control of the supply of agents;
 - ii. Document the time and date that each individual takes physical control of the supply of agents;
 - iii. Inspect the supply of agents for expired agents, deteriorated agents, damaged or altered agent containers or labels, and depleted, visibly adulterated, or missing agents upon taking physical control of the supply of agents;
 - iv. Document any of the conditions in subsection (F)(2)(b)(iii);
 - v. Notify the administrative medical director of a depleted, visibly adulterated, or missing controlled substance;
 - vi. Obtain a replacement for each affected agent in subsection (F)(2)(b)(iii) for which the minimum supply is not present; and
 - vii. Record each administration of an agent on a prehospital incident history report;

- c. Cover mechanisms for controlling inventory of agents and preventing diversion of controlled substances; and
 - d. Include that an agent is kept inaccessible to all individuals who are not authorized access to the agent by policies and procedures required under subsection (E)(3)(b)(iv)(1) and, when not being administered, is:
 - i. Secured in a dry, clean, washable receptacle;
 - ii. While on a motor vehicle or aircraft registered to the emergency medical services provider or ambulance service, secured in a manner that restricts movement of the agent and the receptacle specified in subsection (F)(2)(d)(i); and
 - iii. If a controlled substance, in a hard-shelled container that is difficult to breach without the use of a power cutting tool and:
 - (1) Locked inside a motor vehicle or aircraft registered to the emergency medical services provider or ambulance service,
 - (2) Otherwise locked and secured in such a manner as to deter misappropriation, or
 - (3) On the person of an EMCT authorized access to the agent;
 - 3. The Department is notified in writing within 10 days after the administrative medical director receives notice, as required subsection (F)(2)(b)(v), that any quantity of a controlled substance is depleted, visibly adulterated, or missing; and
 - 4. Except when the emergency medical services provider or ambulance service obtains all agents from an ALS base hospital pharmacy, which retains ownership of the agents, agents to which an EMCT has access are obtained, stored, transferred, and disposed of according to policies and procedures; A.R.S. Title 36, Chapter 27; A.R.S. Title 32, Chapter 18; 4 A.A.C. 23; and requirements of the U.S. Drug Enforcement Administration.
- G.** An administrative medical director may delegate responsibilities to an individual as necessary to fulfill the requirements in this Section, if the individual is:
- 1. Another physician,
 - 2. A physician assistant,
 - 3. A registered nurse practitioner,
 - 4. A registered nurse,
 - 5. A Paramedic, or
 - 6. An EMT-I(99).

R9-25-202. On-line Medical Direction (Authorized by A.R.S. §§ 36-2201, 36-2202(A)(3) and (A)(4), 36-2204(5), (6), and (7), 36-2204.01, and 36-2205(A) and (D))

- A.** In this Section, “physician” means an individual licensed:
- 1. According to A.R.S. Title 32, Chapter 13 or 17; or
 - 2. When working in a health care institution operating under federal or tribal law as an administrative unit of the U.S. government or a sovereign tribal nation, by a similar licensing board in another state.

- B.** An emergency medical services provider or ambulance service shall:
1. Except as provided in R9-25-203(C)(3), ensure that a physician provides on-line medical direction to EMCTs on behalf of the emergency medical services provider or ambulance service only if the physician meets one of the following:
 - a. Has emergency medicine certification issued by a member board of the American Board of Medical Specialties;
 - b. Has emergency medical services certification issued by the American Board of Emergency Medicine;
 - c. Has emergency medicine certification issued by the American Osteopathic Board of Emergency Medicine;
 - d. Has emergency medicine certification issued by the American Board of Physician Specialties;
 - e. Has completed an emergency medicine residency training program accredited by the Accreditation Council for Graduate Medical Education or approved by the American Osteopathic Association; or
 - f. Is an emergency medicine physician in an emergency department located in Arizona and has current certification that meets the requirements in R9-25-201(A)(1)(f)(i) through (iii);
 2. For each physician providing on-line medical direction on behalf of the emergency medical services provider or ambulance service, maintain for Department review either:
 - a. The name, e-mail address, telephone number, and qualifications of the physician providing on-line medical direction on behalf of the emergency medical services provider or ambulance service; or
 - b. If the emergency medical services provider or ambulance service provides on-line medical direction through an ALS base hospital or a centralized medical direction communications center, a copy of a written agreement with the ALS base hospital or centralized medical direction communications center documenting that the physician providing on-line medical direction is qualified under subsection (B)(1);
 3. Ensure that the on-line medical direction provided to an EMCT on behalf of the emergency medical services provider or ambulance service is consistent with:
 - a. The EMCT's scope of practice, as specified in Table 5.1; and
 - b. Communication protocols, triage protocols, treatment protocols, and protocols for prehospital incident history reports, specified in R9-25-201(E)(2); and
 4. Ensures that a physician providing on-line medical direction on behalf of the emergency medical services provider or ambulance service relays on-line medical direction only through one of the following individuals, under the supervision of the physician and consistent with the individual's scope of practice:
 - a. Another physician,
 - b. A physician assistant,
 - c. A registered nurse practitioner,
 - d. A registered nurse,

- e. A Paramedic, or
 - f. An EMT-I(99).
- C. An emergency medical services provider or ambulance service may provide on-line medical direction through an ALS base hospital certified according to R9-25-203(C), if the emergency medical services provider or ambulance service:
- 1. Uses the ALS base hospital for on-line medical direction only for patients who are children, and
 - 2. Has an additional written agreement for the provision of on-line medical direction with an ALS base hospital that meets the requirements in R9-25-203(B)(1) or a centralized medical direction communications center.
- D. An emergency medical services provider or ambulance service shall ensure that the emergency medical services provider or ambulance service, or an ALS base hospital or a centralized medical direction communications center providing on-line medical direction on behalf of the emergency medical services provider or ambulance service, has:
- 1. Operational and accessible communication equipment that will allow on-line medical direction to be given to an EMCT;
 - 2. A written plan for alternative communications with an EMCT in the event of a disaster, communication equipment breakdown or repair, power outage, or malfunction; and
 - 3. A physician qualified under subsection (B)(1) available to give on-line medical direction to an EMCT 24 hours a day, seven days a week.

R9-25-203. ALS Base Hospital General Requirements (Authorized by A.R.S. §§ 36-2201, 36-2202(A)(3) and (A)(4), and 36-2204(5), (6), and (7))

- A. A person shall not operate as an ALS base hospital without certification from the Department.
- B. The Department shall certify an ALS base hospital if the applicant:
- 1. Is:
 - a. Licensed as a general hospital under 9 A.A.C. 10, Article 2; or
 - b. A facility operated as a hospital in this state by the United States federal government or by a sovereign tribal nation;
 - 2. Maintains at least one current written agreement described in A.R.S. § 36-2201(4);
 - 3. Has not been decertified as an ALS base hospital by the Department within five years before submitting the application;
 - 4. Submits an application that is complete and compliant with the requirements in this Article; and
 - 5. Has not knowingly provided false information on or with an application required by this Article.
- C. The Department may certify as an ALS base hospital a special hospital, which is licensed under 9 A.A.C. 10, Article 2 and provides surgical services and emergency services only to children, if the applicant:
- 1. Meets the requirements in subsection (B)(2) through (5);
 - 2. Provides administrative medical direction or on-line medical direction only for patients who are children; and

3. Ensures that:
 - a. Administrative medical direction is provided by a physician who meets the requirements in R9-25-201(A)(1); and
 - b. On-line medical direction is provided by a physician who meets one of the following:
 - i. Meets the requirements in R9-25-202(B)(1),
 - ii. Has board certification in pediatric emergency medicine from either the American Board of Pediatrics or the American Board of Emergency Medicine, or
 - iii. Is board eligible in pediatric emergency medicine.
- D. An ALS base hospital certificate is valid only for the name and address listed by the Department on the certificate.
- E. At least every 36 months after certification, the Department shall assess an ALS base hospital to determine ongoing compliance with the requirements of this Article.
- F. The Department may inspect an ALS base hospital according to A.R.S. § 41-1009:
 1. As part of the substantive review time-frame required in A.R.S. §§ 41-1072 through 41-1079; or
 2. As necessary to determine compliance with the requirements of this Article.
- G. If the Department determines that an ALS base hospital is not in compliance with the requirements in this Article, the Department may:
 1. Take an enforcement action as described in R9-25-207; or
 2. Require that an ALS base hospital submit to the Department, within 15 days after written notice from the Department, a corrective action plan to address issues of compliance that do not directly affect the health or safety of a patient that:
 - a. Describes how each identified instance of non-compliance will be corrected and reoccurrence prevented, and
 - b. Includes a date for correcting each instance of non-compliance that is appropriate to the actions necessary to correct the instance of non-compliance.

R9-25-204. Application Requirements for ALS Base Hospital Certification (Authorized by A.R.S. §§ 36-2201, 36-2202(A)(3) and (A)(4), and 36-2204(5))

- A. An applicant for ALS base hospital certification shall submit to the Department an application, including:
 1. The following information in a Department-provided format:
 - a. The applicant's name, address, and telephone number;
 - b. The name, email address, and telephone number of the applicant's chief administrative officer;
 - c. The name, email address, and telephone number of the applicant's chief administrative officer's designee if the chief administrative officer will not be the liaison between the ALS base hospital and the Department;
 - d. Whether the applicant is applying for certification of a:
 - i. General hospital licensed under 9 A.A.C. 10, Article 2;

- ii. Special hospital licensed under 9 A.A.C. 10, Article 2, that provides surgical services and emergency services only to children; or
 - iii. Facility operating as a federal or tribal hospital;
 - e. The name of each emergency medical services provider or ambulance service for which the applicant has a proposed written agreement described in A.R.S. § 36-2201(4) to provide administrative medical direction or on-line medical direction;
 - f. The name, address, email address, and telephone number of each administrative medical director;
 - g. The name of each physician providing on-line medical direction;
 - h. Attestation that the applicant meets the requirements in R9-25-202(D);
 - i. Attestation that the applicant will comply with all requirements in A.R.S. Title 36, Chapter 21.1 and this Chapter;
 - j. Attestation that all information required as part of the application has been submitted and is true and accurate; and
 - k. The signature or electronic signature of the applicant's chief administrative officer or the chief administrative officer's designated representative and date of signature or electronic signature;
2. A copy of the applicant's current hospital license issued under 9 A.A.C. 10, Article 2, if applicable; and
 3. A copy of each executed written agreement described in A.R.S. § 36-2201(4), including all attachments and exhibits.
- B.** The Department shall approve or deny an application under this Section according to Article 12 of this Chapter.

R9-25-205. Changes Affecting an ALS Base Hospital Certificate (Authorized by A.R.S. §§ 36-2201, 36-2202(A)(3) and (A)(4), and 36-2204(5) and (6))

- A.** No later than 30 days after the date of a change in the name listed on the ALS base hospital certificate, an ALS base hospital certificate holder shall notify the Department of the change, in a Department-provided format, including:
1. The current name of the ALS base hospital;
 2. The ALS base hospital's certificate number;
 3. The new name and the effective date of the name change;
 4. Documentation supporting the name change;
 5. Documentation of compliance with the requirements in A.A.C. R9-10-109(A), if applicable;
 6. Attestation that all information submitted to the Department is true and correct; and
 7. The signature or electronic signature of the applicant's chief administrative officer or the chief administrative officer's designated representative and date of signature or electronic signature.

- B.** No later than 48 hours after changing the information provided according to R9-25-204(A)(1)(e) by terminating, adding, or amending a written agreement required in R9-25-203(B)(2), an ALS base hospital certificate holder shall notify the Department of the change, including:
1. The following information in a Department-provided format:
 - a. The name of the ALS base hospital;
 - b. The ALS base hospital's certificate number; and
 - c. As applicable, the name of the emergency medical services provider or ambulance service for which the ALS base hospital:
 - i. Has a newly executed or amended written agreement described in A.R.S. § 36-2201(4), or
 - ii. Is no longer providing administrative medical direction or on-line medical direction under a written agreement described in A.R.S. § 36-2201(4); and
 2. If applicable, a copy of the newly executed or amended written agreement described in A.R.S. § 36-2201(4), including all attachments and exhibits.
- C.** No later than 10 days after the date of a change in an administrative medical director provided according to R9-25-204(A)(1)(f), an ALS base hospital certificate holder shall notify the Department of the change, in a Department-provided format, including:
1. The name of the ALS base hospital,
 2. The ALS base hospital's certificate number,
 3. The name of the new administrative medical director and the effective date of the change,
 4. Attestation that the new administrative medical director meets the requirements in R9-25-201(A)(1),
 5. Attestation that all information submitted to the Department is true and correct, and
 6. The signature or electronic signature of the applicant's chief administrative officer or the chief administrative officer's designated representative and date of signature or electronic signature.
- D.** No later than 30 days after the date of a change in the address listed on an ALS base hospital certificate or a change in ownership, as defined in A.A.C. R9-10-101, an ALS base hospital certificate holder shall submit to the Department an application required in R9-25-204(A).

R9-25-206. ALS Base Hospital Authority and Responsibilities (Authorized by A.R.S. §§ 36-2201, 36-2202(A)(3) and (A)(4), 36-2204(5) and (6), 36-2208(A), and 36-2209(A)(2))

- A.** An ALS base hospital certificate holder shall:
1. Have the capability of providing both administrative medical direction and on-line medical direction;
 2. Provide administrative medical direction and on-line medical direction to an EMCT according to:
 - a. A written agreement described in A.R.S. § 36-2201(4);
 - b. The requirements in R9-25-201 for administrative medical direction; and
 - c. The requirements in R9-25-202 for on-line medical direction;

3. Ensure that personnel are available to provide administrative medical direction and on-line medical direction; and
 4. Establish, document, and implement policies and procedures, consistent with A.R.S. Title 36, Chapter 21.1 and this Chapter, that include a quality assurance process to evaluate the effectiveness of the on-line medical direction provided to EMCTs.
- B.** An ALS base hospital certificate holder shall notify in writing:
1. The Department no later than 24 hours after:
 - a. Ceasing to meet a requirement in R9-25-203(B)(1) or (2); or
 - b. For a special hospital, ceasing to be licensed under 9 A.A.C. 10, Article 2, as a special hospital or to meet the requirement in R9-25-203(B)(2); and
 2. Each emergency medical services provider or ambulance service with which the ALS base hospital has a current written agreement to provide administrative medical direction or on-line medical direction no later than seven days before ceasing to provide administrative medical direction or on-line medical direction or as specified in the written agreement, whichever is earlier.
- C.** An ALS base hospital may act as a training program without training program certification from the Department, if the ALS base hospital:
1. Is eligible for training program certification as provided in R9-25-301(C); and
 2. Complies with the requirements in R9-25-301(D), R9-25-302, R9-25-303(B), (C), and (F), and R9-25-304 through R9-25-306.
- D.** If an ALS base hospital's pharmacy provides all of the agents for an emergency medical services provider or ambulance service, and the ALS base hospital owns the agents provided, the ALS base hospital's certificate holder shall ensure that:
1. Except as stated in subsections (D)(2) and (3), the policies and procedures for agents to which an EMCT has access that are established by the administrative medical director for the emergency medical services provider or ambulance service comply with requirements in R9-25-201(F)(2);
 2. The emergency medical services provider or ambulance service requires an EMCT for the emergency medical services provider or ambulance service to notify the pharmacist in charge of the hospital pharmacy of a missing, visibly adulterated, or depleted controlled substance; and
 3. The pharmacist in charge of the hospital pharmacy notifies the Department, as specified in R9-25-201(F)(3), of a missing, visibly adulterated, or depleted controlled substance.

R9-25-207. ALS Base Hospital Enforcement Actions (Authorized by A.R.S. §§ 36-2201, 36-2202(A)(3) and (A)(4), and 36-2204(7))

- A.** Except as provided in subsection (C), the Department may take an action listed in subsection (B) against an ALS base hospital certificate holder who:
1. Does not meet the certification requirements:
 - a. In R9-25-203(B)(1) or (2); or

- b. For a special hospital, in R9-25-203(B)(2) and being licensed under 9 A.A.C. 10, Article 2, as a special hospital;
 - 2. Violates the requirements in A.R.S. Title 36, Chapter 21.1 or 9 A.A.C. 25;
 - 3. Does not submit a corrective action plan, as provided in R9-25-203(G)(2), that is acceptable to the Department;
 - 4. Does not complete a corrective action plan submitted according to R9-25-203(G)(2); or
 - 5. Knowingly or negligently provides false documentation or information to the Department.
- B.** The Department may take the following action against an ALS base hospital certificate holder:
- 1. After notice is provided according to A.R.S. Title 41, Chapter 6, Article 10, issue a letter of censure,
 - 2. After notice is provided according to A.R.S. Title 41, Chapter 6, Article 10, issue an order of probation,
 - 3. After notice and an opportunity to be heard is provided according to A.R.S. Title 41, Chapter 6, Article 10, suspend the ALS base hospital certificate, or
 - 4. After notice and an opportunity to be heard is provided according to A.R.S. Title 41, Chapter 6, Article 10, decertify the ALS base hospital.
- C.** An ALS base hospital operated as a hospital in this state by the United States federal government or by a sovereign tribal nation is under federal or tribal government jurisdiction.

**ARTICLE 5. MEDICAL DIRECTION PROTOCOLS FOR EMERGENCY MEDICAL CARE
TECHNICIANS**

R9-25-501. Definitions

In addition to the definitions in A.R.S. § 36-2201 and R9-25-101, the following definitions apply in this Article, unless otherwise specified:

1. “ALS skill” means a medical treatment, procedure, or technique or administration of a medication that is indicated by a check mark in Table 5.1 under AEMT, EMT-I(99), or Paramedic, but not under EMT.
2. “Immunizing agent” means an immunobiologic recommended by the Advisory Committee on Immunization Practices of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

R9-25-502. Scope of Practice for EMCTs

A. An EMCT shall perform a medical treatment, procedure, or technique or administer a medication only:

1. If the skill is within the EMCT’s scope of practice skills, as specified in Table 5.1;
2. For an ALS skill:
 - a. If authorized for the EMCT by the EMCT’s administrative medical director, and
 - b. If the EMCT is able to receive on-line medical direction;
3. For a STR skill:
 - a. If the EMCT has documentation of having completed training specific to the skill that is consistent with the knowledge, skills, and competencies established according to A.R.S. § 36-2204 and available through the Department at www.azdhs.gov/ems-regulatory-references;
 - b. If authorized for the EMCT by the EMCT’s administrative medical director; and
 - c. If the EMCT is able to receive on-line medical direction;
4. If the medication is listed as an agent in a table of agents, established according to A.R.S. § 36-2204 and available through the Department at www.azdhs.gov/ems-regulatory-references, that the EMCT’s administrative medical director may authorize the EMCT to administer, monitor, or assist a patient in self-administration based on the classification for which the EMCT is certified;
5. If the EMCT is authorized to administer the medication by the:
 - a. EMCT’s administrative medical director, if applicable; or
 - b. If the EMCT is an EMT with no administrative medical director, emergency medical services provider or ambulance service by which the EMCT is employed or for which the EMCT volunteers; and
6. In a manner consistent with standards described in R9-25-408 and, if applicable, with the training in 9 A.A.C. 25, Article 3.

B. An administrative medical director:

1. Shall:

- a. Ensure that an EMCT has completed training in administration or monitoring of an agent before authorizing the EMCT to administer or monitor the agent;
 - b. Ensure that an EMCT has competency in an ALS skill before authorizing the EMCT to perform the ALS skill;
 - c. Before authorizing an EMCT to perform a STR skill, ensure that the EMCT has:
 - i. Completed training specific to the skill, consistent with the knowledge, skills, and competencies established according to A.R.S. § 36-2204 and available through the Department at www.azdhs.gov/ems-regulatory-references; and
 - ii. Demonstrated competency in the skill;
 - d. Periodically thereafter assess an EMCT's competency in an authorized ALS skill and STR skill, according to policies and procedures required in R9-25-201(E)(3)(b)(ix), to ensure continued competency;
 - e. Document the EMCT's:
 - i. Completion of training in administration or monitoring of an agent required in subsection (B)(1)(a),
 - ii. Competency in performing an ALS skill required in subsection (B)(1)(b),
 - iii. Specific training required in subsection (B)(1)(c)(i) and competency required in subsection (B)(1)(c)(ii); and
 - iv. Periodic reassessment required in subsection (B)(1)(d); and
 - f. Maintain documentation of an EMCT's completion of training in administration or monitoring of an agent and competency in performing an authorized ALS skill or STR skill; and
2. May authorize an EMCT to perform all of the ALS skills in Table 5.1 for the applicable level of EMCT or restrict the EMCT to a subset of the ALS skills in Table 5.1 for the applicable level of EMCT.

Table 5.1. Arizona Scope of Practice Skills

KEY:

- ✓ = Arizona Scope of Practice skill
- STR = STR skill
- * = With training in R9-25-505

A. Airway/Ventilation/Oxygenation		EMT	AEMT	EMT-I(99)	Paramedic
1.	Airway - nasal	✓	✓	✓	✓
2.	Airway – oral	✓	✓	✓	✓
3.	Airway – supraglottic	STR	✓	✓	✓
4.	Airway obstruction - dislodgement by direct laryngoscopy	-	-	✓	✓
5.	Airway obstruction – manual dislodgement techniques	✓	✓	✓	✓
6.	Automated transport ventilator	-	STR	✓	✓
7.	Bag-valve-mask (BVM)	✓	✓	✓	✓
8.	BiPAP	-	-	-	✓
9.	CPAP	STR	✓	✓	✓
10.	Chest decompression - needle	-	-	✓	✓
11.	Chest tube placement - assist only	-	-	-	✓
12.	Chest tube monitoring and management	-	-	-	✓
13.	Cricothyrotomy	-	-	-	✓
14.	End tidal CO2 monitoring and interpretation of waveform capnography	STR	✓	✓	✓
15.	Gastric decompression - NG tube	-	-	✓	✓
16.	Gastric decompression - OG tube	-	-	✓	✓
17.	Head-tilt chin lift	✓	✓	✓	✓
18.	Intubation - endotracheal	-	-	✓	✓
19.	Intubation - nasotracheal	-	-	-	✓
20.	Jaw-thrust	✓	✓	✓	✓
21.	Medication Assisted Intubation (paralytics)	-	-	-	STR
22.	Mouth-to-barrier	✓	✓	✓	✓
23.	Mouth-to-mask	✓	✓	✓	✓
24.	Mouth-to-mouth	✓	✓	✓	✓
25.	Mouth-to-nose	✓	✓	✓	✓
26.	Mouth-to-stoma	✓	✓	✓	✓

27.	Oxygen therapy – high flow nasal cannula	-	-	-	✓
28.	Oxygen therapy - humidifiers	✓	✓	✓	✓
29.	Oxygen therapy - nasal cannula	✓	✓	✓	✓
30.	Oxygen therapy - non-rebreather mask	✓	✓	✓	✓
31.	Oxygen therapy - partial rebreather mask	✓	✓	✓	✓
32.	Oxygen therapy - simple face mask	✓	✓	✓	✓
33.	Oxygen therapy - Venturi mask	✓	✓	✓	✓
34.	Pulse oximetry	✓	✓	✓	✓
35.	Suctioning - upper airway	✓	✓	✓	✓
36.	Suctioning – tracheobronchial of an intubated patient	-	✓	✓	✓
B.	Cardiovascular/Circulation	EMT	AEMT	EMT-I (99)	Paramedic
1.	Cardiac monitoring - 12-lead ECG (interpretive)	-	-	✓	✓
2.	Cardiac monitoring - 12-lead ECG acquisition and transmission	✓	✓	✓	✓
3.	Cardiopulmonary resuscitation	✓	✓	✓	✓
4.	Cardioversion - electrical	-	-	✓	✓
5.	Defibrillation - automated/semi-automated	✓	✓	✓	✓
6.	Defibrillation - manual	-	-	✓	✓
7.	Hemorrhage control - direct pressure	✓	✓	✓	✓
8.	Hemorrhage control - tourniquet	✓	✓	✓	✓
9.	Hemorrhage control – wound packing	✓	✓	✓	✓
10.	Mechanical CPR device	✓	✓	✓	✓
11.	Telemetric monitoring devices and transmission of clinical data, including video data	✓	✓	✓	✓
12.	Transcutaneous pacing	-	-	✓	✓
13.	Transvenous cardiac pacing – monitoring and maintenance	-	-	✓	✓
C.	Splinting/Spinal Motion Restriction/Patient Restraint	EMT	AEMT	EMT-I (99)	Paramedic
1.	Cervical collar	✓	✓	✓	✓
2.	Long spine board	✓	✓	✓	✓
3.	Manual cervical stabilization	✓	✓	✓	✓
4.	Seated spinal motion restriction (KED, etc.)	✓	✓	✓	✓
5.	Extremity stabilization - manual	✓	✓	✓	✓

6.	Extremity splinting	✓	✓	✓	✓
7.	Splint-traction	✓	✓	✓	✓
8.	Mechanical patient restraint	✓	✓	✓	✓
9.	Emergency moves for endangered patients	✓	✓	✓	✓
D.	Medication Administration – routes/agent types	EMT	AEMT	EMT-I (99)	Paramedic
1.	Aerosolized/nebulized	✓	✓	✓	✓
2.	Endotracheal tube	-	-	✓	✓
3.	Inhaled	✓	✓	✓	✓
4.	Intradermal	-	-	-	✓
5.	Intramuscular	STR	✓	✓	✓
6.	Intramuscular - autoinjector	✓	✓	✓	✓
7.	Intranasal	✓	✓	✓	✓
8.	Intraosseous – initiation, pediatric or adult	-	✓	✓	✓
9.	Intravenous	-	✓	✓	✓
10.	Mucosal/Sublingual	✓	✓	✓	✓
11.	Nasogastric	-	-	-	✓
12.	Oral	✓	✓	✓	✓
13.	Rectal	-	-	-	✓
14.	Subcutaneous	-	✓	✓	✓
15.	Topical	-	-	-	✓
16.	Transdermal	-	-	-	✓
17.	Use/monitoring of infusion pump for agent administration during interfacility transports	-	-	STR	STR
18.	Use/monitoring of agents specified in <i>Table 3-Special Agents Eligible for Administration and Monitoring</i> , established according to A.R.S. § 36-2204 and available through the Department at www.azdhs.gov/ems-regulatory-references	-	-	STR	STR
19.	Epinephrine anaphylaxis-prepared kit; only for anaphylaxis when no auto-injector is available	STR	✓	✓	✓
20.	Immunizations	-	-	✓*	✓*
21.	Thrombolytics	-	-	-	STR
E.	IV Initiation/Maintenance Fluids	EMT	AEMT	EMT-I (99)	Paramedic
1.	Access indwelling catheters and implanted central IV ports	-	-	-	✓
2.	Central line - monitoring	-	-	-	✓

3.	Intraosseous – initiation, pediatric or adult	-	✓	✓	✓
4.	Intravenous access	STR	✓	✓	✓
5.	Intravenous initiation - peripheral	STR	✓	✓	✓
6.	Intravenous- maintenance of medicated IV fluids	-	-	✓	✓
7.	Intravenous- maintenance of nonmedicated IV fluids	STR	✓	✓	✓
F.	Miscellaneous	EMT	AEMT	EMT-I (99)	Paramedic
1.	Assisted delivery (childbirth)	✓	✓	✓	✓
2.	Assisted complicated delivery (childbirth)	✓	✓	✓	✓
3.	Blood chemistry analysis	-	-	-	✓
4.	Blood glucose monitoring	✓	✓	✓	✓
5.	Blood pressure- automated	✓	✓	✓	✓
6.	Blood pressure- manual	✓	✓	✓	✓
7.	Eye irrigation	✓	✓	✓	✓
8.	Eye irrigation hands-free irrigation using sterile eye irrigation device	-	-	-	✓
9.	Urinary catheterization	STR	STR	STR	STR
10.	Venous blood sampling	-	✓	✓	✓

R9-25-503. Testing of Medical Treatments, Procedures, Medications, and Techniques that May Be Administered or Performed by an EMCT

- A. Under A.R.S. § 36-2205, the Department may authorize the testing and evaluation of a medical treatment, procedure, technique, practice, medication, or piece of equipment for possible use by an EMCT or an emergency medical services provider.
- B. Before authorizing any test and evaluation according to subsection (A), the Department director shall approve the test and evaluation according to subsections (C), (D), (E).
- C. The Department director shall consider approval of a test and evaluation conducted according to subsection (A), only if a written request for testing and evaluation:
 - 1. Is submitted to the Department director from:
 - a. The Department,
 - b. A state agency other than the Department,
 - c. A political subdivision of this state,
 - d. An EMCT,
 - e. An emergency medical services provider,
 - f. An ambulance service, or
 - g. A member of the public; and
 - 2. Includes:
 - a. A cover letter, signed and dated by the individual making the request;
 - b. An identification of the person conducting the test and evaluation;
 - c. An identification of the medical treatment, procedure, technique, practice, medication, or piece of equipment to be tested and evaluated;
 - d. An explanation of the reasons for and the benefits of the test and evaluation;
 - e. The scope of the test and evaluation, including the:
 - i. Projected number of individuals, EMCTs, emergency medical services providers, or ambulance services involved; and
 - ii. Proposed length of time required to complete the test and evaluation; and
 - f. The methodology to be used to evaluate the test's and evaluation's findings.
- D. The Department director shall approve a test and evaluation if:
 - 1. The test and evaluation does not pose a threat to the public health, safety, or welfare;
 - 2. The test is necessary to evaluate the safest and most current advances in medical treatments, procedures, techniques, practices, medications, or equipment; and
 - 3. The medical treatment, procedure, technique, practice, medication, or piece of equipment being tested and evaluated may:
 - a. Reduce or eliminate the use of outdated or obsolete medical treatments, procedures, techniques, practices, medications, or equipment;
 - b. Improve patient care; or
 - c. Benefit the public's health, safety, or welfare.

- E. Within 180 days after receiving a written request for testing and evaluation that contains all of the information in subsection (C), the Department director shall send written notification of approval or denial of the test and evaluation to the individual making the request.
- F. Upon completion of a test and evaluation authorized by the Department director, the person conducting the test and evaluation shall submit a written report to the Department director that includes:
 - 1. An identification of the test and evaluation;
 - 2. A detailed evaluation of the test; and
 - 3. A recommendation regarding future use of the medical treatment, procedure, technique, practice, medication, or piece of equipment tested and evaluated.

R9-25-504. Protocol for Selection of a Health Care Institution for Transport

- A. Except as provided in subsection (B), an EMCT shall transport a patient accessing emergency medical services through a call to 9-1-1 or a similar public emergency dispatch number to:
 - 1. An emergency receiving facility, or
 - 2. A special hospital that is physically connected to an emergency receiving facility.
- B. Under A.R.S. §§ 36-2205(D) and 36-2232(F), an EMCT who responds to a call made to 9-1-1 or a similar public emergency dispatch number may refer, advise, or transport the patient at the scene to a health care institution other than a health care institution specified in subsection (A), if the EMCT determines that:
 - 1. The patient's condition does not pose an immediate threat to life or limb, based on medical direction; and
 - 2. The health care institution is the most appropriate for the patient, based on the following:
 - a. The patient's:
 - i. Medical condition,
 - ii. Choice of health care institution, and
 - iii. Health care provider;
 - b. The location of the health care institution and the emergency medical resources available at the health care institution; and
 - c. A determination by the administrative medical director that the health care institution is able to accept and capable of treating the patient.
- C. Before initiating transport of a patient accessing emergency medical services through a call to 9-1-1 or a similar public emergency dispatch number, an EMCT, emergency medical services provider, or ambulance service shall:
 - 1. Notify, by radio or telephone communication, a health care institution that is not an emergency receiving facility of the EMCT's intent to transport the patient to the health care institution; and
 - 2. Receive confirmation of the willingness of the health care institution to accept the patient.

- D. An EMCT transporting a patient accessing emergency medical services through a call to 9-1-1 or a similar public emergency dispatch number to a health care institution that is not an emergency receiving facility shall transfer care of the patient to a designee authorized by:
 - 1. A physician,
 - 2. A registered nurse practitioner,
 - 3. A physician assistant, or
 - 4. A registered nurse.
- E. An emergency medical services provider or an ambulance service that implements this rule shall make available for Department review and inspection written records relating to the transport of a patient under subsections (B), (C), and (D).

R9-25-505. Protocol for an EMT-I(99) or a Paramedic to Become Eligible to Administer an Immunizing Agent

- A. An EMT-I(99) or a Paramedic may be authorized by the EMT-I(99)'s or Paramedic's administrative medical director to administer an immunizing agent if the EMT-I(99) or Paramedic completes training that:
 - 1. Includes:
 - a. Basic immunology and the human immune response;
 - b. Mechanics of immunity, adverse effects, dose, and administration schedule of available immunizing agents;
 - c. Response to an emergency situation, such as an allergic reaction, resulting from the administration of an immunization;
 - d. Routes of administration for available immunizing agents;
 - e. A description of the individuals to whom an EMCT may administer an immunizing agent; and
 - f. The requirements in 9 A.A.C. 6, Article 7 related to:
 - i. Obtaining written consent for administration of an immunizing agent,
 - ii. Providing immunization information and written immunization records, and
 - iii. Recordkeeping and reporting;
 - 2. Requires the EMT-I(99) or Paramedic to demonstrate competency in the subject matter listed in subsection (A)(1); and
 - 3. Is approved by the EMT-I(99)'s or Paramedic's administrative medical director based upon a determination that the training meets the requirements in subsections (A)(1) and (A)(2).
- B. An administrative medical director of an EMT-I(99) or a Paramedic who completes the training required in subsection (A) shall maintain for Department review and inspection written evidence that the EMT-I(99) or Paramedic has completed the training required in subsection (A), including at least:
 - 1. The name of the training,
 - 2. The date the training was completed, and

3. A signed and dated attestation from the administrative medical director that the training is approved.
- C. Before administering an immunizing agent to an individual, an EMT-I(99) or a Paramedic shall:
1. Receive written consent consistent with the requirements in 9 A.A.C. 6, Article 7;
 2. Provide immunization information and written immunization records consistent with the requirements in 9 A.A.C. 6, Article 7; and
 3. Provide documentary proof of immunity to the individual consistent with the requirements in 9 A.A.C. 6, Article 7.

Statutory Authority for 9 A.A.C. 25, Article 1, 2, and 5

36-136. Powers and duties of director; compensation of personnel; rules; definitions

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.
3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.
7. Prepare sanitary and public health rules.
8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease

agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. If in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for not longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.
2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.
3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.
4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:
 - (a) Served at a noncommercial social event such as a potluck.
 - (b) Prepared at a cooking school that is conducted in an owner-occupied home.
 - (c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.
 - (d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fundraising or an employee social event.

(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.

(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

(g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

(i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

(j) Spirituous liquor produced on the premises licensed by the department of liquor licenses and control. This exemption includes both of the following:

(i) The area in which production and manufacturing of spirituous liquor occurs, as defined in an active basic permit on file with the United States alcohol and tobacco tax and trade bureau.

(ii) The area licensed by the department of liquor licenses and control as a microbrewery, farm winery or craft distiller that is open to the public and serves spirituous liquor and commercially prepackaged food, crackers or pretzels for consumption on the premises. A producer of spirituous liquor may not provide, allow or expose for common use any cup, glass or other receptacle used for drinking purposes. For the purposes of this item, "common use" means the use of a drinking

receptacle for drinking purposes by or for more than one person without the receptacle being thoroughly cleansed and sanitized between consecutive uses by methods prescribed by or acceptable to the department.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for preserving or storing food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparing food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to

two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the

rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (j) of this section, spirituous liquor and commercially prepackaged food, crackers or pretzels that meet the requirements of subsection I, paragraph 4, subdivision (j) of this section are exempt from the rules prescribed in subsection I of this section.

R. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

36-2201. Definitions

In this chapter, unless the context otherwise requires:

1. "Administrative medical direction" means supervision of emergency medical care technicians by a base hospital medical director, administrative medical director or basic life support medical director. For the purposes of this paragraph, "administrative medical director" means a physician who is licensed pursuant to title 32, chapter 13 or 17 and who provides direction within the emergency medical services and trauma system.

2. "Advanced emergency medical technician" means a person who has been trained in an advanced emergency medical technician program certified by the director or in an equivalent training program and who is certified by the director to render services pursuant to section 36-2205.

3. "Advanced life support" means the level of assessment and care identified in the scope of practice approved by the director for the advanced emergency medical technician, emergency medical technician I-99 and paramedic.

4. "Advanced life support base hospital" means a health care institution that offers general medical and surgical services, that is certified by the director as an advanced life support base hospital and that is affiliated by written agreement with a licensed ambulance service, municipal rescue service, fire department, fire district or health services district for medical direction, evaluation and control of emergency medical care technicians.

5. "Ambulance" means any publicly or privately owned surface, water or air vehicle, including a helicopter, that contains a stretcher and necessary medical equipment and supplies pursuant to section 36-2202 and that is especially designed and constructed or modified and equipped to be used, maintained or operated primarily for the transportation of individuals who are sick, injured or wounded or who require medical monitoring or aid. Ambulance does not include a surface vehicle that is owned and operated by a private sole proprietor, partnership, private corporation or municipal corporation for the emergency transportation and in-transit care of its employees or a vehicle that is operated to accommodate an incapacitated person or person with a disability who does not require medical monitoring, care or treatment during transport and that is not

advertised as having medical equipment and supplies or ambulance attendants.

6. "Ambulance attendant" means any of the following:

(a) An emergency medical technician, an advanced emergency medical technician, an emergency medical technician I-99 or a paramedic whose primary responsibility is the care of patients in an ambulance and who meets the standards and criteria adopted pursuant to section 36-2204.

(b) An emergency medical responder who is employed by an ambulance service operating under section 36-2202 and whose primary responsibility is the driving of an ambulance.

(c) A physician who is licensed pursuant to title 32, chapter 13 or 17.

(d) A professional nurse who is licensed pursuant to title 32, chapter 15 and who meets the state board of nursing criteria to care for patients in the prehospital care system.

(e) A professional nurse who is licensed pursuant to title 32, chapter 15 and whose primary responsibility is the care of patients in an ambulance during an interfacility transport.

7. "Ambulance service" means a person who owns and operates one or more ambulances.

8. "Basic life support" means the level of assessment and care identified in the scope of practice approved by the director for the emergency medical responder and emergency medical technician.

9. "Bureau" means the bureau of emergency medical services and trauma system in the department.

10. "Centralized medical direction communications center" means a facility that is housed within a hospital, medical center or trauma center or a freestanding communication center that meets the following criteria:

(a) Has the ability to communicate with ambulance services and emergency medical services providers rendering patient care outside of the hospital setting via radio and telephone.

(b) Is staffed twenty-four hours a day seven days a week by at least a physician licensed pursuant to title 32, chapter 13 or 17.

11. "Certificate of necessity" means a certificate that is issued to an ambulance service by the department and that describes the following:

(a) Service area.

(b) Level of service.

(c) Type of service.

(d) Hours of operation.

- (e) Effective date.
 - (f) Expiration date.
 - (g) Legal name and address of the ambulance service.
 - (h) Any limiting or special provisions the director prescribes.
12. "Council" means the emergency medical services council.
13. "Department" means the department of health services.
14. "Director" means the director of the department of health services.
15. "Emergency medical care technician" means an individual who has been certified by the department as an emergency medical technician, an advanced emergency medical technician, an emergency medical technician I-99 or a paramedic.
16. "Emergency medical responder" as an ambulance attendant means a person who has been trained in an emergency medical responder program certified by the director or in an equivalent training program and who is certified by the director to render services pursuant to section 36-2205.
17. "Emergency medical services" means those services required following an accident or an emergency medical situation:
- (a) For on-site emergency medical care.
 - (b) For the transportation of the sick or injured by a licensed ground or air ambulance.
 - (c) In the use of emergency communications media.
 - (d) In the use of emergency receiving facilities.
 - (e) In administering initial care and preliminary treatment procedures by emergency medical care technicians.
18. "Emergency medical services provider" means any governmental entity, quasi-governmental entity or corporation whether public or private that renders emergency medical services in this state.
19. "Emergency medical technician" means a person who has been trained in an emergency medical technician program certified by the director or in an equivalent training program and who is certified by the director as qualified to render services pursuant to section 36-2205.
20. "Emergency receiving facility" means a licensed health care institution that offers emergency medical services, is staffed twenty-four hours a day and has a physician on call.
21. "Fit and proper" means that the director determines that an applicant for a certificate of

necessity or a certificate holder has the expertise, integrity, fiscal competence and resources to provide ambulance service in the service area.

22. "Medical record" means any patient record, including clinical records, prehospital care records, medical reports, laboratory reports and statements, any file, film, record or report or oral statements relating to diagnostic findings, treatment or outcome of patients, whether written, electronic or recorded, and any information from which a patient or the patient's family might be identified.

23. "National certification organization" means a national organization that tests and certifies the ability of an emergency medical care technician and whose tests are based on national education standards.

24. "National education standards" means the emergency medical services education standards of the United States department of transportation or other similar emergency medical services education standards developed by that department or its successor agency.

25. "Paramedic" means a person who has been trained in a paramedic program certified by the director or in an equivalent training program and who is certified by the director to render services pursuant to section 36-2205.

26. "Physician" means any person licensed pursuant to title 32, chapter 13 or 17.

27. "Stretcher van" means a vehicle that contains a stretcher and that is operated to accommodate an incapacitated person or person with a disability who does not require medical monitoring, aid, care or treatment during transport.

28. "Suboperation station" means a physical facility or location at which an ambulance service conducts operations for the dispatch of ambulances and personnel and that may be staffed twenty-four hours a day or less as determined by system use.

29. "Trauma center" means any acute care hospital that provides in-house twenty-four hour daily dedicated trauma surgical services that is designated pursuant to section 36-2225.

30. "Trauma registry" means data collected by the department on trauma patients and on the incidence, causes, severity, outcomes and operation of a trauma system and its components.

31. "Trauma system" means an integrated and organized arrangement of health care resources having the specific capability to perform triage, transport and provide care.

32. "Validated testing procedure" means a testing procedure that is inclusive of practical skills, or an attestation of practical skills proficiency on a form developed by the department by the educational training program, identified pursuant to section 36-2204, paragraph 2, that is certified as valid by an organization capable of determining testing procedure and testing content validity and that is recommended by the medical direction commission and the emergency medical services council before the director's approval.

33. "Wheelchair van" means a vehicle that contains or that is designed and constructed or modified to contain a wheelchair and that is operated to accommodate an incapacitated person or person with a disability who does not require medical monitoring, aid, care or treatment during transport.

36-2202. Duties of the director; qualifications of medical director

A. The director shall:

1. Appoint a medical director of the emergency medical services and trauma system.
2. Adopt standards and criteria for the denial or granting of certification and recertification of emergency medical care technicians. These standards shall allow the department to certify qualified emergency medical care technicians who have completed statewide standardized training required under section 36-2204, paragraph 1 and a standardized certification test required under section 36-2204, paragraph 2 or who hold valid certification with a national certification organization. Before the director may consider approving a statewide standardized training or a standardized certification test, or both, each of these must first be recommended by the medical direction commission and the emergency medical services council to ensure that the standardized training content is consistent with national education standards and that the standardized certification tests examines comparable material to that examined in the tests of a national certification organization.
3. Adopt standards and criteria that pertain to the quality of emergency care pursuant to section 36-2204.
4. Adopt rules necessary to carry out this chapter. Each rule shall identify all sections and subsections of this chapter under which the rule was formulated.
5. Adopt reasonable medical equipment, supply, staffing and safety standards, criteria and procedures for issuance of a certificate of registration to operate an ambulance.
6. Maintain a state system for recertifying emergency medical care technicians, except as otherwise provided by section 36-2202.01, that is independent from any national certification organization recertification process. This system shall allow emergency medical care technicians to choose to be recertified under the state or the national certification organization recertification system subject to subsection H of this section.

B. Emergency medical technicians who choose the state recertification process shall recertify in one of the following ways:

1. Successfully completing an emergency medical technician refresher course approved by the department.
2. Successfully completing an emergency medical technician challenge course approved by the department.

3. For emergency medical care technicians who are currently certified at the emergency medical technician level by the department, attesting on a form provided by the department that the applicant holds a valid and current cardiopulmonary resuscitation certification, has and will maintain documented proof of a minimum of twenty-four hours of continuing medical education within the last two years consistent with department rules and has functioned in the capacity of an emergency medical technician for at least two hundred forty hours during the last two years.

C. After consultation with the emergency medical services council the director may authorize pilot programs designed to improve the safety and efficiency of ambulance inspections for governmental or quasi-governmental entities that provide emergency medical services in this state.

D. The rules, standards and criteria adopted by the director pursuant to subsection A, paragraphs 2, 3, 4 and 5 of this section shall be adopted in accordance with title 41, chapter 6, except that the director may adopt on an emergency basis pursuant to section 41-1026 rules relating to the regulation of ambulance services in this state necessary to protect the public peace, health and safety in advance of adopting rules, standards and criteria as otherwise provided by this subsection.

E. The director may waive the requirement for compliance with a protocol adopted pursuant to section 36-2205 if the director determines that the techniques, drug formularies or training makes the protocol inconsistent with contemporary medical practices.

F. The director may suspend a protocol adopted pursuant to section 36-2205 if the director does all of the following:

1. Determines that the rule is not in the public's best interest.
2. Initiates procedures pursuant to title 41, chapter 6 to repeal the rule.
3. Notifies all interested parties in writing of the director's action and the reasons for that action. Parties interested in receiving notification shall submit a written request to the director.

G. To be eligible for appointment as the medical director of the emergency medical services and trauma system, the person shall be qualified in emergency medicine and shall be licensed as a physician in one of the states of the United States.

H. Applicants for certification shall apply to the director for certification. Emergency medical care technicians shall apply for recertification to the director every two years. The director may extend the expiration date of an emergency medical care technician's certificate for thirty days. The department shall establish a fee for this extension by rule. Emergency medical care technicians shall pass an examination administered by the department as a condition for recertification only if required to do so by the advanced life support base hospital's medical director or the emergency medical care technician's medical director.

I. The medical director of the emergency medical services and trauma system is exempt from title

41, chapter 4, articles 5 and 6 and is entitled to receive compensation pursuant to section 38-611, subsection A.

J. The standards, criteria and procedures adopted by the director pursuant to subsection A, paragraph 5 of this section shall require that ambulance services serving a rural or wilderness certificate of necessity area with a population of less than ten thousand persons according to the most recent United States decennial census have at least one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (a) and one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (b) staffing an ambulance while transporting a patient and that ambulance services serving a population of ten thousand persons or more according to the most recent United States decennial census have at least one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (a) and one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (a), (c), (d) or (e) staffing an ambulance while transporting a patient.

K. If the department determines there is not a qualified administrative medical director, the department shall ensure the provision of administrative medical direction for an emergency medical technician if the emergency medical technician meets all of the following criteria:

1. Is employed by a nonprofit or governmental provider employing less than twelve full-time emergency medical technicians.
2. Stipulates to the inability to secure a physician who is willing to provide administrative medical direction.
3. Stipulates that the provider agency does not provide administrative medical direction for its employees.

36-2204. Medical control

The medical director of the statewide emergency medical services and trauma system, the emergency medical services council and the medical direction commission shall recommend to the director the following standards and criteria that pertain to the quality of emergency patient care:

1. Statewide standardized training, certification and recertification standards for all classifications of emergency medical care technicians.
2. A standardized and validated testing procedure for all classifications of emergency medical care technicians.
3. Medical standards for certification and recertification of training programs for all classifications of emergency medical care technicians.
4. Standardized continuing education criteria for all classifications of emergency medical care technicians.

5. Medical standards for certification and recertification of certified emergency receiving facilities and advanced life support base hospitals and approval of physicians providing medical control or medical direction for any classification of emergency medical care technicians who are required to be under medical control or medical direction.

6. Standards and mechanisms for monitoring and ongoing evaluation of performance levels of all classifications of emergency medical care technicians, emergency receiving facilities and advanced life support base hospitals and approval of physicians providing medical control or medical direction for any classification of emergency medical care technicians who are required to be under medical control or medical direction.

7. Objective criteria and mechanisms for decertification of all classifications of emergency medical care technicians, emergency receiving facilities and advanced life support base hospitals and for disapproval of physicians providing medical control or medical direction for any classification of emergency care technicians who are required to be under medical control or medical direction.

8. Medical standards for nonphysician prehospital treatment and prehospital triage of patients requiring emergency medical services.

9. Standards for emergency medical dispatcher training, including prearrival instructions. For the purposes of this paragraph, "emergency medical dispatch" means the receipt of calls requesting emergency medical services and the response of appropriate resources to the appropriate location.

10. Standards for a quality assurance process for components of the statewide emergency medical services and trauma system, including standards for maintaining the confidentiality of the information considered in the course of quality assurance and the records of the quality assurance activities pursuant to section 36-2403.

11. Standards for ambulance service and medical transportation that give consideration to the differences between urban, rural and wilderness areas.

12. Standards to allow an ambulance to transport a patient to a health care institution that is licensed as a special hospital and that is physically connected to an emergency receiving facility.

36-2205. Permitted treatment and medication; certification requirement; protocols

A. The director, in consultation with the medical director of the emergency medical services and trauma system, the emergency medical services council and the medical direction commission, shall establish protocols, which may include training criteria, governing the medical treatments, procedures, medications and techniques that may be administered or performed by each classification of emergency medical care technician. These protocols shall consider the differences in treatments and procedures for regional, urban, rural and wilderness areas and shall require that emergency medical care technicians authorized to perform advanced life support procedures render these treatments, procedures, medications or techniques only under the

direction of a physician.

B. The protocols adopted by the director pursuant to this section are exempt from title 41, chapter 6.

C. Notwithstanding subsection B of this section, a person may petition the director, pursuant to section 41-1033, to amend a protocol adopted by the director.

D. In consultation with the medical director of the emergency medical services and trauma system, the emergency medical services council and the medical direction commission, the director shall establish protocols for emergency medical providers to refer and advise a patient or transport a patient by the most appropriate means to the most appropriate provider of medical services based on the patient's condition. The protocols shall consider the differences in treatments and procedures for regional, urban, rural and wilderness areas and shall require that emergency medical care technicians authorized to perform advanced life support procedures render these treatments, procedures, medications or techniques only under the direction of a physician.

E. The protocols established pursuant to subsection D of this section shall include triage and treatment protocols that allow all classifications of emergency medical care technicians responding to a person who has accessed 911, or a similar public dispatch number, for a condition that does not pose an immediate threat to life or limb to refer and advise a patient or transport a patient to the most appropriate health care institution, as defined in section 36-401, based on the patient's condition, taking into consideration factors including patient choice, the patient's health care provider, specialized health care facilities and local protocols.

36-2209. Powers and duties of the director

A. The director shall:

1. Appoint and define the duties and prescribe the terms of employment of all employees of the bureau.
2. Adopt rules necessary for the operation of the bureau and for carrying out the purposes of this chapter.
3. Cooperate with and assist the personnel of emergency receiving facilities and other health care institutions in preparing a plan to be followed by these facilities and institutions in the event of a major disaster.
4. Cooperate with the state director of emergency management when a state of emergency or a state of war emergency has been declared by the governor.

B. The director may:

1. Request the cooperation of utilities, communications media and public and private agencies to aid and assist in the implementation and maintenance of a statewide emergency medical services

system.

2. Enter into contracts and agreements with any local governmental entity, agency, facility or group that provides a similar program of emergency medical services in a contiguous state.
3. Enter into contracts and agreements for the acquisition and purchase of any equipment, tools, supplies, materials and services necessary in the administration of this chapter.
4. Enter into contracts with emergency receiving facilities, governmental entities, emergency rescue services and ambulance services, and the director may establish emergency medical services, including emergency receiving facilities, if necessary to assure the availability and quality of these services.
5. Accept and expend federal funds and private grants, gifts, contributions and devises to assist in carrying out the purposes of this chapter. These funds do not revert to the state general fund at the close of a fiscal year.
6. Establish an emergency medical services notification system that uses existing telephone communications networks.
7. Contract with private telephone companies for the establishment of a statewide emergency reporting telephone number.
8. Authorize the testing entity to collect fees determined by the director. In determining fees for testing entities the director shall consider the fees required by national certification organizations.

DEPARTMENT OF HEALTH SERVICES

Title 9, Chapter 2, Article 1



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 2, 2022

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: July 1, 2022

SUBJECT: DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 2, Article 1

Summary

This Five-Year-Review Report (5YRR) from the Department of Health Services (Department) relates to rules in Title 9, Chapter 2, Article 1 regarding Smoke-Free Arizona Tobacco-Related Programs.

In the previous 5YRR of these rules, which was approved by the Council in 2017, the Department stated there was no plan to amend the rules.

Proposed Action

The Department proposes to amend three rules to make them more clear by changing the language of the rules and correcting a statutory reference. The Department proposes to amend these rules and submit a Notice of Final Expedited Rulemaking to the Council by February 2023.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes, the Department cites both general and specific statutory authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The rules in 9 A.C.C. 2, Article 1 were made by exempt rulemaking and published in the Arizona Administrative Register (A.A.R.) at 13 A.A.R. 1512, effective May 1, 2007. Although an economic, small business, and consumer impact statement was not prepared as part of the rulemaking package, the W.P. Carey School of Business, Arizona State University conducted a study of the economic effect of the Smoke-Free Arizona Act in December 2006, at the Department's request. The report stated that the smoking ban "did not result in any distinguishable large-scale economic effect on the restaurant or bar industry in the state." The report also points out that some businesses with only indoor seating lost income to businesses with both indoor seating, in which smoking was prohibited, and outdoor patio seating, in which smoking was permitted.

The Department solicited and received more than 2,200 written comments while developing these rules and used these comments in making the rules that were adopted. The Department estimates that the actual costs and benefits experienced by persons affected by the rules are generally consistent with the costs and benefits considered in developing the rules.

The Department identifies stakeholders as state and local government entities, businesses of all types, the owners or proprietors of those businesses, and the public.

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The Department has determined that the rules in 9 A.A.C. 2, Article 1 impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory and health/safety objectives, despite the minor improvements that may be made to the rules. The Smoke-Free Arizona Act rulemaking was a voter initiative and implies that these voters believed the benefits to the health and safety welfare of Arizona outweighed the costs. In addition, the Department believes the Smoke-Free Arizona Act rulemaking has effectively protected public health and safety by providing protection to vulnerable individuals from second-hand smoke. Therefore, the Department believes the benefits of the rule outweigh the costs.

4. Has the agency received any written criticisms of the rules over the last five years?

Yes, the Department indicates it has received three written complaints regarding smoking in communal residences. However, the Department indicates they do not have authority related to smoking in these private residences.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

Yes, the Department indicates that the rules are generally clear, concise, and understandable. However, the Department indicates that two of the rules could be improved by removing redundancies and adding specifications to the rules.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

Yes, the Department indicates that R9-2-101 is the only rule not consistent with other rules and statutes because it references a repealed statute.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

Yes, the Department indicates the rules are effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

Yes, the Department states the rules are enforced as written.

9. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

No, the Department indicates the rules are not more stringent than corresponding federal law.

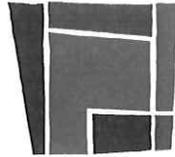
10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable. The Department indicates the rules were adopted before July 29, 2010.

11. Conclusion

This 5YRR relates to rules in Title 9, Chapter 2, Article 1 regarding Smoke-Free Arizona Tobacco-Related Programs. The Department indicates that the rules are generally clear, concise, understandable, consistent, effective, and enforced as written, except for R9-2-101. The Department proposes to amend several rules to be more clear and effective by changing rules' language and correcting references.

Council staff finds the Department submitted a report that meets the requirements of A.R.S. § 41-1056. Council staff recommends approval of this report.



ARIZONA DEPARTMENT OF HEALTH SERVICES

May 24, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsin, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Report for 9 A.A.C. 2, Article 1, Five-Year-Review Report for Smoke-Free Arizona

Dear Ms. Sornsin:

Please find enclosed the Five-Year Review Report from the Arizona Department of Health Services (Department) for 9 A.A.C. 2, Article 1, Smoke-Free Arizona, which is due on May 31, 2022.

The Department reviewed the rules in 9 A.A.C. 2, Article 1 with the intention that the rules do not expire pursuant to A.R.S. § 41-1056(J).

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Lucinda Feeley at (602) 542-1574 or Lucinda.Feeley@azdhs.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'RL' followed by a stylized flourish.

Robert Lane
Director's Designee

RL:tk

Enclosures



Arizona Department of Health Services
Five-Year-Review Report
Title 9. Health Services
Chapter 2. Department of Health Services
Article 1. Smoke-Free Arizona
Tobacco- Related Programs
May 2022

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 36-136(A)(7) and 36-136(G)

Specific Statutory Authority: A.R.S. § 36-601.01

2. The objective of each rule:

Rule	Objective
R9-2-101	To define terms and phrases used in the Article to enable the reader to clearly understand the requirements of the Article and allow for consistent interpretation.
R9-2-102	To provide the specific distance from an entrance, window, or ventilation system where smoking is not permitted and into which a proprietor shall not allow smoke to drift.
R9-2-103	To establish an individual’s responsibility not to smoke in an area where smoking is not permitted under A.R.S. § 36-601.01 or R9-2-102 and to stop smoking immediately when requested to do so by a proprietor.
R9-2-104	To establish a proprietor’s responsibilities under A.R.S. § 36-601.01 and this Article, including how responsibility is allocated when a building or facility is under the control of multiple proprietors, and to specify that a proprietor may declare that smoking is prohibited in an entire establishment, facility, or outdoor area.
R9-2-105	To specify the size, content, and posting requirements for signs to comply with A.R.S. § 36-601.01(E).
R9-2-106	To specify that, although A.R.S. § 36-601.01 does not apply to the private residence of an individual receiving services from a health care professional in the individual’s private residence, smoking is not permitted in: a. A health care professional’s private residence, in an area where the health care professional provides services to an individual, while the health care professional is providing services; or

	b. A private residence or parts thereof licensed or certified by the Department as an adult day care, a child care facility, or a child care group home.
R9-2-107	To establish the responsibilities of a proprietor of a retail tobacco store under A.R.S. § 36-601.01 and this Article, including preparing an affidavit stating the proprietor’s contention that the business is a retail tobacco store, maintaining the affidavit on the premises, and providing to the Department or the Department’s designee upon request documents supporting the proprietor’s contention that the business is a retail tobacco store.
R9-2-108	To establish the conditions under which a proprietor may designate an area as an outdoor patio where smoking is permitted.
R9-2-109	To specify: a. The information a complaint must contain, b. The circumstances under which a complaint is required to be filed, and c. The actions the Department or the Department’s designee is required to take in response to a complaint.
R9-2-110	To specify the factors the Department or the Department’s designee is required to consider in determining whether a violation of A.R.S. § 36-601.01 has occurred.
R9-2-111	To specify: a. That the Department or the Department’s designee may issue a notice of violation to a proprietor after determining that a violation of A.R.S. § 36-601.01 has occurred; b. The information a notice of violation must contain, including a notice of assessment if a civil penalty is being assessed; and c. How the person to whom the notice of violation or notice of assessment has been issued may appeal the determination that a violation occurred or the assessment.
R9-2-112	To specify the factors the Department or the Department’s designee is required to consider in determining whether to issue a notice of violation, whether to issue a notice of assessment, or the amount of a civil penalty to be assessed.

3. **Are the rules effective in achieving their objectives?** Yes X No

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation
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R9-2-110	The rule is effective in achieving its objective but could be improved by amending subsection (3) to be consistent with the language in subsections (1) and (4), specifying there has been a violation if there is the presence of smoking in an area where smoking is prohibited.
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4. **Are the rules consistent with other rules and statutes?** Yes ___ No X

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation
R9-2-101	In subsection (16)(f), the definition of a “Health care professional” makes reference to “the Nurse Licensure Compact, A.R.S. § 32-1668”. This statute has been repealed and should be revised to A.R.S. § 32-1660.

5. **Are the rules enforced as written?** Yes X No ___

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency’s proposal for resolving the issue.

Rule	Explanation

6. **Are the rules clear, concise, and understandable?** Yes X No ___

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation
R9-2-101	The rule is clear, concise, and understandable, but could be improved by removing a redundancy in subsection (7)(b) stating, “of the public place or non-vehicle place of employment”. This same description provided in the definition “contiguous area” is already described in subsection (7)(a).
R9-2-107	The rule is clear, concise, and understandable, but could be improved by specifying in subsection (C)(5) what type of documentation is sufficient for retail tobacco stores to provide, demonstrating that they have derived at least 51% of their gross income sales on tobacco products and accessories during the previous calendar year. The rule is very broad in terms of what documentation a retail tobacco store can provide to show proof of their tobacco related sales, currently any documentation can be submitted. The Department plans to revise the rules to clarify the type of documentation a retail tobacco store can submit to prove their sales.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes X No

If yes, please fill out the table below:

Rule	Explanation
R9-2-106	The program has received three written complaints regarding smoking in communal type residences (townhouses, apartments, etc.). Per the previous five-year-review reports in 2012 and 2017, smoking in communal type residences has not been a concern. Due to the increased number of individuals moving to Arizona and the housing shortage Arizona is currently facing, there are more individuals residing in communal type residences, resulting in smoking becoming an issue in such settings. A.R.S. § 36-601.01(A)(9) specifies “common areas of apartment buildings, condominiums or other multifamily housing facilities” are considered a “public place” where smoking is prohibited; however, private residences where an individual lives and sleeps, except when used as licensed child care, adult day care, or health care facility, are exempt from the smoking prohibition. See A.R.S. § 36-601.01(B)(1) and A.A.C. R9-2-101(21). Accordingly, the Department does not have authority related to smoking that take place inside a private residence and does not plan to revise the rules at this time unless there is a statutory change.

8. **Economic, small business, and consumer impact comparison:**

The rules in 9 A.A.C. 2, Article 1 were made by exempt rulemaking and published in the *Arizona Administrative Register* (A.A.R.) at 13 A.A.R. 1512, effective May 1, 2007. Although an economic, small business, and consumer impact statement was not prepared as part of the rulemaking package, the W. P. Carey School of Business, Arizona State University conducted a study of the economic effect of the Smoke-Free Arizona Act in December 2006, at the Department’s request. This report¹ was submitted to the Department in August 2008 and compared the economic effect of the smoking ban on the restaurant and bar industry in Arizona. The report stated that the smoking ban “did not result in any distinguishable large-scale economic effect on the restaurant or bar industry in the state.” This conclusion was based on an analysis of aggregate sales data from the beginning of 1986 through the second quarter of 2008. Two surveys of businesses in Arizona at which food or drinks are served (restaurants, bars, microbreweries, veterans and fraternal clubs, and government facilities) were also conducted, the first just prior to the implementation of the Smoke-Free Arizona Act (in February through April 2007) and a second in July and early August 2008. On the basis of these surveys, the report stated that “the ban appears to have had a negative effect on some businesses and a positive effect on others.” In communities that had a comprehensive smoking ban before the implementation of the Smoke-Free Arizona Act, A.R.S. § 36-601.01 had little to no effect. According to the

¹ W. P. Carey School of Business, Arizona State University study of the economic effect of the Smoke-Free Arizona Act, published in December 2006 <https://azdhs.gov/documents/preparedness/epidemiology-disease-control/smoke-free-arizona/reports/Smoke-Free-Economic-Impact-Study-2008.pdf>

report, some businesses with only indoor seating lost income to businesses with both indoor seating, in which smoking was prohibited, and outdoor patio seating, in which smoking was permitted.

Since A.R.S. § 36-601.01 became effective in May 2007, the Department has prepared and published fourteen annual reports describing the implementation of the program. The 2021 Smoke-Free Arizona Annual Report is available at <https://azdhs.gov/preparedness/epidemiology-disease-control/smoke-free-arizona/index.php#reports-newsletters>.

Each report shows greater acceptance of the smoking ban and more compliance. In the 2021 Annual Report, the Department reported that a total of 22,306 educational visits, consultations, and on-site visits were conducted between May 1, 2020 and April 30, 2021. Since implementation, the number of complaints received has significantly decreased. The decrease in complaints may also be contributed to the COVID-19 pandemic since less people have been out in public places. A total of 405 complaints were received during that period, mostly related to people smoking or having ashtrays located within 20 feet of an entrance. Whereas, the 2018 Annual Report stated there were 1425 complaints between May 1, 2015 and April 30, 2016. In that same time frame, two Notices of Violation were issued, which is level with the number of Notices of Violation issued statewide between May 1, 2020 and April 30, 2021. These notices of violation were issued to proprietors who allowed employees, customers, or visitors to smoke inside public places or places of employment. According to the 2021 Annual Report, the proprietors that were issued these notices of violation corrected violations observed and did not face any civil money penalties.

Persons affected by the rules in 9 A.A.C. 2, Article 1, include state and local government entities, businesses of all types, the owners or proprietors of those businesses, and the public. ADHS and the county health departments work diligently to protect all Arizonans from secondhand smoke exposure and to ensure uniform compliance with the Law throughout the State. Delegation agreements have been signed with all fifteen counties, to assist ADHS with education and compliance. According to the Preamble of the Notice of Exempt Rulemaking, the cost and benefits associated with the rulemaking resulted from the Smoke-Free Arizona Act, which was approved by the majority of those voting in November 2006, implying that these voters believed that the benefits to the health and safety welfare of Arizonans resulting from Smoke-Free Arizona Act outweighed the costs. The Department solicited and received more than 2,200 written comments while developing these rules and used these comments in making the rules that were adopted. On the basis of the studies described above, the Department estimates that the actual costs and benefits experienced by persons affected by the rules are generally consistent with the costs and benefits considered in developing the rules.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No X

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

In the 2017 Five-Year-Review Report, the Department stated that there was no plan to amend the rules in 9 A.A.C. 2, Article 1 until substantive issues arise. No substantive issues have arisen, so the Department has adhered to the plan.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department has determined that the rules in 9 A.A.C. 2, Article 1 impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory and health/safety objectives, despite the minor improvements that may be made to the rules. The Smoke-Free Arizona Act rulemaking was voter initiative and implies that these voters believed the benefits to the health and safety welfare of Arizonans outweighed the costs. In addition, the Department believes the Smoke-Free Arizona Act rulemaking has effectively protected public health and safety by providing protection to vulnerable individuals from second-hand smoke. Therefore, the Department believes the benefits of the rule outweigh the costs.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?

The rules in 9 A.A.C. 2, Article 1 are based on A.R.S. § 36-601.01. Federal laws related to smoke free are not specific to the state and do not have requirements to prohibit smoking in most enclosed public places and places of employment, as required by the Smoke-Free Arizona Act. According to the Code of Federal Regulations, there are numerous smoke-free regulations directed to federal government buildings and aircrafts. For example, see 28 CFR 551.162, 14 CFR 252.8, and 41 CFR 102-74.315. Federal regulations govern federally regulated buildings and transportation while the Arizona (smoke-free) laws govern most public establishments. The Department does not believe the rules are more stringent than federal regulations.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The rules were adopted before July 29, 2010 and do not require the issuance of a regulatory permit, license, or agency authorization.

14. **Proposed course of action**

If possible, please identify a month and year by which the agency plans to complete the course of action.

Although the items described in paragraphs three and six are minor, not substantive, and do not inhibit those regulated by the rules from understanding and complying with the rules, a change as described in paragraphs three

and six could improve the effectiveness of the rules and possibly the health and safety of residents. Additionally, a change as described in paragraph four will correct a statutory reference and provide clarity to readers. The Department plans to make changes to the rules to address these items and to submit a Notice of Final Expedited Rulemaking to the Council by February 2023.

**TITLE 9. HEALTH SERVICES
CHAPTER 2. DEPARTMENT OF HEALTH SERVICES
TOBACCO-RELATED PROGRAMS**

ARTICLE 1. SMOKE-FREE ARIZONA

Section

- R9-2-101. Definitions
- R9-2-102. Reasonable Distance
- R9-2-103. Individual Responsibilities
- R9-2-104. Proprietor Responsibilities
- R9-2-105. Sign Requirements
- R9-2-106. Private Residence
- R9-2-107. Retail Tobacco Store
- R9-2-108. Outdoor Patio
- R9-2-109. Complaint; Observation; Notification; Inspection
- R9-2-110. Determination of Violation
- R9-2-111. Notice of Violation; Notice of Assessment
- R9-2-112. Criteria for Issuing a Notice of Violation or Notice of Assessment

ARTICLE 1. SMOKE-FREE ARIZONA

R9-2-101. Definitions

In addition to the definitions in A.R.S. § 36-601.01(A), the following definitions apply in this Article unless otherwise specified:

1. “Adult day care” means “adult day health care facility” as defined in A.R.S. § 36-401.
2. “Ashtray” means any receptacle that is designed for disposing of the debris from smoking materials such as ash, cigarette butts or filters, or cigar stubs.
3. “Calendar quarter” means a period from:
 - a. January 1 through March 31,
 - b. April 1 through June 30,
 - c. July 1 through September 30, or
 - d. October 1 through December 31.
4. “Child care facility” has the meaning in A.R.S. § 36-881.
5. “Child care group home” has the meaning in A.R.S. § 36-897.
6. “Complaint” means a written or oral statement of a possible violation of A.R.S. § 36-601.01.
7. “Contiguous area” means a place that:
 - a. Is physically attached to a public place or non-vehicle place of employment; or
 - b. Is separated from the public place or non-vehicle place of employment only by other places controlled by the proprietor of the public place or non-vehicle place of employment.
8. “Controlled” means under the authority and responsibility of a proprietor.
9. “Department” means the Arizona Department of Health Services.
10. “Department’s designee” means a state agency or political subdivision to which the Department delegates any functions, powers, or duties under A.R.S. § 36-601.01.

11. "Drift" means the physical movement of tobacco smoke, regardless of cause, into any area where smoking is prohibited by A.R.S. § 36-601.01.
12. "Emergency exit" means a doorway in a building or facility used for egress to the outdoors only when there is an immediate threat to the health or safety of an individual.
13. "Entering" means an individual going into or leaving a building or facility.
14. "Entrance" means a doorway in a building or facility that:
 - a. Is used by an individual for ingress from the outdoors or egress to the outdoors, and
 - b. Excludes:
 - i. An emergency exit, and
 - ii. A doorway for outdoor patio patrons.
15. "Health care institution" means a building or facility regulated under A.R.S. Title 36, Chapter 4.
16. "Health care professional" means one of the following individuals regulated under A.R.S. Title 32 or A.R.S. Title 36, Chapter 6, Article 7 or Chapter 17, including:
 - a. A podiatrist;
 - b. A doctor of chiropractic or chiropractic assistant;
 - c. A dentist, dental consultant, dental hygienist, or denturist;
 - d. A doctor of medicine;
 - e. A doctor of naturopathic medicine or naturopathic medical assistant;
 - f. A registered nurse practitioner, registered nurse, practical nurse, registered or practical nurse licensed by a state other than Arizona and practicing in Arizona according to the Nurse Licensure Compact, A.R.S. § 32-1668, or nursing assistant;
 - g. A dispensing optician;
 - h. An optometrist;
 - i. A doctor of osteopathic medicine;
 - j. A pharmacist, pharmacy intern, pharmacy technician, or pharmacy technician trainee;
 - k. A physical therapist or physical therapist assistant;
 - l. A psychologist;
 - m. A veterinarian or veterinary technician;
 - n. A physician assistant;
 - o. A radiologic technologist, including a practical radiologic technologist in podiatry, unlimited practical radiologic technologist, nuclear medicine technologist, or practical technologist in bone densitometry;
 - p. A homeopathic physician or a medical assistant employed by a homeopathic physician;
 - q. A behavioral health professional, including a baccalaureate social worker, master social worker, clinical social worker, professional counselor, associate counselor, marriage and family therapist, associate marriage and family therapist, associate substance abuse counselor, independent substance abuse counselor, or substance abuse technician;
 - r. An occupational therapist or occupational therapy assistant;
 - s. A respiratory therapist or respiratory therapy technician;
 - t. An acupuncturist;
 - u. An athletic trainer;
 - v. A massage therapist;
 - w. A midwife;
 - x. A hearing aid dispenser;

- y. An audiologist; or
 - z. A speech-language pathologist or speech-language pathology assistant.
17. "Open to the general public" means when the proprietor of a veterans or fraternal club permits an individual who is not a member, an employee, or a bona fide guest as defined in A.R.S. § 4-101 to be present in the veterans or fraternal club.
 18. "Outdoor patio" means an area designated by a proprietor according to R9-2-108(A).
 19. "Outdoor patio patron" means an individual who is occupying an outdoor patio.
 20. "Permeable" means permitting tobacco smoke to pass through.
 21. "Private residence" means a structure, other than a health care institution, where an individual lives and sleeps.
 22. "Proprietor" means an owner, operator, manager or other person in control of a public place or a place of employment.
 23. "Reasonable distance" means the distance that meets the requirements in R9-2-102(A).
 24. "Tobacco products and accessories" means:
 - a. Smoking materials such as cigars, cigarettes, or pipe tobacco; and
 - b. Smoking-related materials such as lighters, humidors, pipes, or cigarette cases.
 25. "Vehicle" means motor vehicle as defined in A.R.S. § 28-101.
 26. "Ventilation system" means the natural or mechanical means of supplying air to, or removing air from a space.

R9-2-102. Reasonable Distance

- A. Except as permitted in R9-2-108(D) or R9-2-108(E), a public place or non-vehicle place of employment shall have a distance where outside smoking is prohibited of at least 20 feet in all directions measured from each outer edge of an entrance, an open window, or a ventilation system.
- B. A proprietor of a public place or non-vehicle place of employment shall not permit tobacco smoke to drift into the area where smoking is prohibited as described in subsection (A).

R9-2-103. Individual Responsibilities

- A. An individual shall not smoke tobacco in an area of a public place or place of employment where smoking is prohibited by A.R.S. § 36-601.01 or R9-2-102(A).
- B. An individual in an area of a public place or place of employment where smoking is prohibited by A.R.S. § 36-601.01 or R9-2-102(A) shall stop smoking immediately when requested to stop smoking by the proprietor of the public place or a place of employment.

R9-2-104. Proprietor Responsibilities

- A. A proprietor shall:
 1. Not permit smoking in a public place, a place of employment, or within the distance required in R9-2-102(A) except according to this Article and the exceptions listed in A.R.S. § 36-601.01(B);
 2. Not permit tobacco smoke to drift into a building or facility through an entrance, a window, a ventilation system, or other means;
 3. Post signs according to A.R.S. § 36-601.01(E)(1) and R9-2-105;
 4. Remove all ashtrays from all areas where smoking is prohibited; and
 5. Communicate that smoking is prohibited in places of employment to:
 - a. All existing employees by the effective date of this Article, and

- b. An applicant for employment at the time of the application for employment.
- B.** If a building or facility that is controlled by a proprietor contains several places of employment or public places that are controlled by other proprietors:
 - 1. The proprietor of the entire building or facility shall comply with the requirements in subsection (A) for the area controlled by the proprietor of the entire building or facility, and
 - 2. The proprietor of each place of employment or public place shall comply with the requirements in subsection (A) for the area controlled by the proprietor of the place of employment or public place.
- C.** If an individual in an area controlled by a proprietor is smoking in violation of A.R.S. § 36-601.01, the proprietor shall:
 - 1. Inform the individual that the individual is in violation of A.R.S. § 36-601.01, and
 - 2. Request that the individual stop smoking immediately.
- D.** A proprietor of a veterans or fraternal club shall not permit smoking in an area of the veterans or fraternal club that is open to the general public.
- E.** A proprietor of a retail tobacco store where smoking is permitted shall comply with R9-2-107.
- F.** A proprietor of an outdoor patio where smoking is permitted shall comply with R9-2-108.
- G.** A proprietor may declare that smoking is prohibited in an entire establishment, facility, or outdoor area.
- H.** In a vehicle owned and operated by a proprietor during working hours, the proprietor shall:
 - 1. Not permit smoking in the vehicle when:
 - a. More than one individual occupies the vehicle, and
 - b. The vehicle is used for business purposes; and
 - 2. Post signs according to A.R.S. § 36-601.01(E)(1), A.R.S. § 36-601.01(E)(2), and R9-2-105(C).

R9-2-105. Sign Requirements

- A.** To meet the requirements of A.R.S. §§ 36-601.01(E)(1) and 36-601.01(E)(2), a proprietor of a public place or non-vehicle place of employment shall post signs that:
 - 1. Are no smaller than four inches by six inches; and
 - 2. Contain:
 - a. The international no smoking symbol or the words “No Smoking”;
 - b. The telephone number designated by the Department for making complaints;
 - c. The web site address designated by the Department for making complaints; and
 - d. Letters, numbers, and symbols of sufficient size to be clearly legible to an individual of normal vision from a distance of five feet; and
 - 3. Include a citation to A.R.S. § 36-601.01.
- B.** A proprietor of a public place or non-vehicle place of employment shall post a sign that meets the requirements in subsection (A):
 - 1. At every entrance,
 - 2. At a height and location easily seen by an individual entering the public place or non-vehicle place of employment, and
 - 3. So that the sign is not obscured in any way.
- C.** A proprietor of a vehicle described in A.R.S. § 36-601.01(A)(7) shall:
 - 1. Post at least one sign that:
 - a. Is no smaller than two inches by three inches;

- b. Meets the requirements in subsections (A)(2)(a) through (A)(2)(c); and
- c. Contains letters, numbers, and symbols of sufficient size to be clearly legible to an individual of normal vision from a distance of three feet;
- 2. Include a citation to A.R.S. § 36-601.01 on the sign; and
- 3. Firmly affix the sign to:
 - a. A vehicle door window,
 - b. The vehicle dashboard, or
 - c. Another area in the vehicle that is visible to each occupant in the vehicle.

R9-2-106. Private Residence

- A. Smoking is prohibited in a private residence licensed or certified by the Department or in areas of a private residence licensed or certified by the Department as:
 - 1. An adult day care,
 - 2. A child care facility,
 - 3. A child care group home, or
 - 4. A health care institution other than an adult day care.
- B. Smoking is prohibited in a health care professional's private residence:
 - 1. In an area where the health care professional provides services to an individual, and
 - 2. When the health care professional is providing services to an individual.
- C. A.R.S. § 36-601.01 does not apply to the private residence of an individual who is receiving services from a health care professional in the individual's private residence.

R9-2-107. Retail Tobacco Store

- A. A proprietor may permit smoking in a retail tobacco store only if the retail tobacco store meets the definition in A.R.S. § 36-601.01(A)(10) and the requirements in A.R.S. § 36-601.01(B)(3) and this Section.
- B. The proprietor of a retail tobacco store where smoking is permitted and that begins operating after January 1 of a calendar year shall complete, by the retail tobacco store's first day of operation, an affidavit that contains:
 - 1. The name of the proprietor of the retail tobacco store,
 - 2. The name and address of the retail tobacco store,
 - 3. A statement that the proprietor of the retail tobacco store has personal knowledge of the facts supporting the affidavit,
 - 4. A statement that the retail tobacco store expects to derive at least 51 percent of its gross income during each calendar year from the sale of tobacco products and accessories as required by A.R.S. § 36-601.01,
 - 5. A statement describing the documents that contain the facts supporting the statement in subsection (B)(4),
 - 6. The signature of the proprietor of the retail tobacco store,
 - 7. An Arizona notary's signature certifying that the proprietor swore to or affirmed the truthfulness of the statements in the affidavit, and
 - 8. The date of the Arizona notary's signature.
- C. The proprietor of a retail tobacco store where smoking is permitted and that has been in operation for at least an entire calendar year shall complete, by January 31 of each year, an affidavit that contains:
 - 1. The name of the proprietor of the retail tobacco store,

2. The name and address of the retail tobacco store,
 3. A statement that the proprietor of the retail tobacco store has personal knowledge of the facts supporting the affidavit,
 4. A statement that the retail tobacco store derived at least 51 percent of its gross income during the previous calendar year from the sale of tobacco products and accessories,
 5. A statement describing the documents that contain the facts supporting the statement in subsection (C)(4),
 6. The signature of the proprietor of the retail tobacco store,
 7. An Arizona notary's signature certifying that the proprietor swore to or affirmed the truthfulness of the statements in the affidavit, and
 8. The date of the Arizona notary's signature.
- D.** If the Department or the Department's designee receives a complaint under R9-2-109(A) about a retail tobacco store where smoking is permitted, the proprietor of the retail tobacco store shall provide to the Department or the Department's designee:
1. The affidavit under subsection (B) or the most current affidavit under subsection (C), whichever is appropriate; and
 2. Documents that enable the Department or the Department's designee to determine the percent of gross income derived from the sale of tobacco products and accessories:
 - a. For the calendar quarter immediately preceding the date of the complaint; or
 - b. If the retail tobacco store was not in operation for the entire calendar quarter immediately preceding the date of the complaint, for the period beginning on the date the retail tobacco store opened and ending on the date of the complaint.
- E.** The proprietor of a retail tobacco store where smoking is permitted shall retain on the premises of the retail tobacco store and make available to the Department or the Department's designee upon request:
1. The affidavit under subsection (B) or the most current affidavit under subsection (C), whichever is appropriate; and
 2. The documents:
 - a. Identified under subsection (B)(5) or subsection (C)(5), whichever is appropriate; and
 - b. Required under subsection (D)(2).

R9-2-108. Outdoor Patio

- A.** A proprietor may designate an area as an outdoor patio where smoking is permitted only if the area:
1. Is a contiguous area of a place of employment or public place;
 2. Is controlled by the proprietor of the place of employment or public place; and
 3. Has:
 - a. At least one side that consists of:
 - i. Open space;
 - ii. Permeable material;
 - iii. A combination of open space and permeable material; or
 - iv. A combination of open space, permeable material, and a non-permeable wall that is not higher than three and one-half feet or the minimum height required by an applicable local ordinance or building code, whichever is greater; or
 - b. No overhead covering or an overhead covering that consists of:
 - i. Permeable material, or

- ii. A combination of open space and permeable material.
- B. If an outdoor patio where smoking is permitted has a doorway for outdoor patio patrons and does not have a wall that prevents individuals from entering the outdoor patio, the proprietor shall:
 - 1. Inform individuals that the doorway:
 - a. Is not an entrance, and
 - b. Is a doorway for outdoor patio patrons; and
 - 2. Direct individuals who are not outdoor patio patrons to an entrance.
- C. If a proprietor designates an area as an outdoor patio where smoking is permitted, the proprietor shall not permit tobacco smoke to drift into areas where smoking is prohibited through entrances, windows, ventilation systems, or other means.
- D. The reasonable distance required in R9-2-102(A) does not apply to a doorway for outdoor patio patrons, a window, or a ventilation system located in an area designated as an outdoor patio where smoking is permitted.
- E. If an outdoor patio is located less than 20 feet from any entrance of a public place or non-vehicle place of employment, a proprietor may permit smoking on the outdoor patio only if the proprietor uses a method that:
 - 1. Permits an individual to avoid breathing tobacco smoke when using the entrance at the public place or non-vehicle place of employment, and
 - 2. Does not permit tobacco smoke to drift into the public place or non-vehicle place of employment through entrances, open windows, ventilation systems, or other means.
- F. A proprietor may designate an outdoor patio as an area where smoking is prohibited.

R9-2-109. Complaint; Observation; Notification; Inspection

- A. When a person makes a complaint to the Department or the Department's designee under A.R.S. § 36-601.01, the complaint shall include:
 - 1. The name and address of the public place or place of employment that is the subject of the complaint;
 - 2. The date and approximate time of the occurrence that gave rise to the complaint;
 - 3. A description of the occurrence that gave rise to the complaint; and
 - 4. Any other information relevant to the occurrence that gave rise to the complaint.
- B. An individual shall make a complaint according to subsection (A) if the individual:
 - 1. Conducted an inspection pursuant to:
 - a. A.R.S. Title 36, Chapter 4 or Chapter 7.1; or
 - b. A.R.S. § 36-136(D) and 9 A.A.C. 8; and
 - 2. During the inspection, observed a possible violation of A.R.S. § 36-601.01.
- C. Within 15 days after receipt of a complaint made according to subsection (A), the Department or the Department's designee shall:
 - 1. Notify the proprietor at the public place or place of employment about the complaint; or
 - 2. Conduct an inspection, for compliance with A.R.S. § 36-601.01, of the public place or place of employment.
- D. If a complaint made according to subsection (A) is not resolved under subsection (C)(1), the Department or the Department's designee shall conduct an inspection, for compliance with A.R.S. § 36-601.01, of the public place or place of employment that is the subject of the complaint.

R9-2-110. Determination of Violation

In determining whether a violation of A.R.S. § 36-601.01 has occurred, the Department or the Department's designee shall consider the following:

1. The presence of an ashtray in an area where smoking is prohibited;
2. The lack of a sign that is required under A.R.S. § 36-601.01(E) or the presence of a sign that does not meet the requirements of R9-2-105;
3. The presence of smoking;
4. The presence of tobacco ashes, cigarette butts or filters, or cigar stubs in an area where smoking is prohibited;
5. The presence of tobacco smoke that drifts into a place of employment or public place through entrances, windows, ventilation systems, or other means; and
6. Except as provided in R9-2-108(D) and R9-2-108(E), the presence of tobacco smoke within a reasonable distance from entrances, open windows, or ventilation systems.

R9-2-111. Notice of Violation; Notice of Assessment

A. After the Department or the Department's designee determines that a violation of A.R.S. § 36-601.01 has occurred, and based on the criteria in R9-2-112, the Department or the Department's designee may send to the proprietor at the place of employment or public place a written notice of violation that includes:

1. The nature of the violation;
2. The date and time that the violation occurred;
3. The name, telephone number, and e-mail address of the Department contact person or the contact person of the Department's designee; and
4. If a civil penalty is being assessed, a notice of assessment.

B. If the Department or the Department's designee issues a notice of violation or a notice of assessment, a person to whom the notice is issued may appeal the determination that a violation has occurred or assessment of a civil penalty:

1. According to A.R.S. Title 41, Chapter 6, Article 10, if the Department made the determination or assessment; or
2. According to procedures of the Department's designee that are consistent with A.R.S. Title 41, Chapter 6, Article 10, if the Department's designee made the determination or assessment.

R9-2-112. Criteria for Issuing a Notice of Violation or Notice of Assessment

In determining whether to issue a notice of violation under A.R.S. § 36-601.01(G)(5), whether to issue a notice of assessment under A.R.S. § 36-601.01(G)(6), or the amount of a civil penalty that is being assessed, the Department or the Department's designee shall consider:

1. The seriousness of the violation;
2. Any economic benefit that results from the violation;
3. The duration of the violation;
4. The previous violations of A.R.S. § 36-601.01 at the place of employment or public place, including:
 - a. The type and severity of any previous violation,
 - b. The number of individuals affected by the previous violations,

- c. The total number of previous violations, and
 - d. The length of time from the first violation to the current violation;
5. Any good faith efforts to comply with the requirements of A.R.S. § 36-601.01, including:
- a. Reporting violations to the Department or the Department's designee; and
 - b. Meeting the requirements of A.R.S. § 36-601.01(I) by:
 - i. Informing an individual who is smoking that smoking is illegal, and
 - ii. Requesting that the individual immediately stop the illegal smoking; and
6. Other factors affecting the public health and safety the Department or the Department's designee deems relevant.

36-136. Powers and duties of director; compensation of personnel; rules; definitions

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.
3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.
7. Prepare sanitary and public health rules.
8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease

agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. If in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for not longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

(a) Served at a noncommercial social event such as a potluck.

(b) Prepared at a cooking school that is conducted in an owner-occupied home.

(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.

(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fundraising or an employee social event.

(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.

(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

(g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen

that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

(i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

(j) Spirituous liquor produced on the premises licensed by the department of liquor licenses and control. This exemption includes both of the following:

(i) The area in which production and manufacturing of spirituous liquor occurs, as defined in an active basic permit on file with the United States alcohol and tobacco tax and trade bureau.

(ii) The area licensed by the department of liquor licenses and control as a microbrewery, farm winery or craft distiller that is open to the public and serves spirituous liquor and commercially prepackaged food, crackers or pretzels for consumption on the premises. A producer of spirituous liquor may not provide, allow or expose for common use any cup, glass or other receptacle used for drinking purposes. For the purposes of this item, "common use" means the use of a drinking receptacle for drinking purposes by or for more than one person without the receptacle being thoroughly cleansed and sanitized between consecutive uses by methods prescribed by or acceptable to the department.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply

with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for preserving or storing food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparing food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of

communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut

on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (j) of this section, spirituous liquor and commercially prepackaged food, crackers or pretzels that meet the requirements of subsection I, paragraph 4, subdivision (j) of this section are exempt from the rules prescribed in subsection I of this section.

R. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

36-601.01. Smoke-free Arizona act

A. Definitions. The following words and phrases, whenever used in this section, shall be construed as defined in this section:

1. "Employee" means any person who performs any service on a full-time, part-time or contracted basis whether or not the person is denominated an employee, independent contractor or otherwise and whether or not the person is compensated or is a volunteer.

2. "Employer" means a person, business, partnership, association, the state of Arizona and its political subdivisions, corporations, including a municipal corporations, trust, or non-profit entity that employs the services of one or more individual persons.

3. "Enclosed area" means all space between a floor and ceiling that is enclosed on all sides by permanent or temporary walls or windows (exclusive of doorways), which extend from the floor to the ceiling. Enclosed area includes a reasonable distance from any entrances, windows and ventilation systems so that persons entering or leaving the building or facility shall not be subjected to breathing tobacco smoke and so that tobacco smoke does not enter the building or facility through entrances, windows, ventilation systems or any other means.

4. "Health care facility" means any enclosed area utilized by any health care institution licensed according to title 36 chapter 4, chapter 6 article 7, or chapter 17, or any health care professional licensed according

to title 32 chapters 7, 8, 11, 13, 14, 15, 15.1, 16, 17, 18, 19, 19.1, 21, 25, 28, 29, 33, 34, 35, 39, 41, or 42.

5. "Person" means an individual, partnership, corporation, limited liability company, entity, association, governmental subdivision or unit of a governmental subdivision, or a public or private organization of any character.
 6. "Physically separated" means all space between a floor and ceiling which is enclosed on all sides by solid walls or windows (exclusive of door or passageway) and independently ventilated from smoke-free areas, so that air within permitted smoking areas does not drift or get vented into smoke-free areas.
 7. "Places of employment" means an enclosed area under the control of a public or private employer that employees normally frequent during the course of employment, including office buildings, work areas, auditoriums, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, cafeterias, hallways, stairs, elevators, health care facilities, private offices and vehicles owned and operated by the employer during working hours when the vehicle is occupied by more than one person. A private residence is not a "place of employment" unless it is used as a child care, adult day care, or health care facility.
 8. "Veteran and fraternal clubs" means a club as defined in A.R.S. 4-101(7)(a)(b) or (c).
 9. "Public place" means any enclosed area to which the public is invited or in which the public is permitted, including airports, banks, bars, common areas of apartment buildings, condominiums or other multifamily housing facilities, educational facilities, entertainment facilities or venues, health care facilities, hotel and motel common areas, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports facilities, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a child care, adult day care, or health care facility.
 10. "Retail tobacco store" means a retail store that derives the majority of its sales from tobacco products and accessories.
 11. "Smoking" means inhaling, exhaling, burning, or carrying or possessing any lighted tobacco product, including cigars, cigarettes, pipe tobacco and any other lighted tobacco product.
 12. "Sports facilities" means enclosed areas of sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, billiard halls, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sporting events.
- B. Smoking is prohibited in all public places and places of employment within the state of Arizona, except the following:
1. Private residences, except when used as a licensed child care, adult day care, or health care facility.
 2. Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided, however, that not more than fifty percent of rooms rented to guests in a hotel or motel are so designated.
 3. Retail tobacco stores that are physically separated so that smoke from retail tobacco stores does not

infiltrate into areas where smoking is prohibited under the provisions of this section.

4. Veterans and fraternal clubs when they are not open to the general public.

5. Smoking when associated with a religious ceremony practiced pursuant to the American Indian religious freedom act of 1978.

6. Outdoor patios so long as tobacco smoke does not enter areas where smoking is prohibited through entrances, windows, ventilation systems, or other means.

7. A theatrical performance upon a stage or in the course of a film or television production if the smoking is part of the performance or production.

C. The prohibition on smoking in places of employment shall be communicated to all existing employees by the effective date of this section and to all prospective employees upon their application for employment.

D. Notwithstanding any other provision of this section, an owner, operator, manager, or other person or entity in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place.

E. Posting of signs and ashtray removal.

1. "No smoking" signs or the international "no smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly and conspicuously posted by the owner, operator, manager, or other person in control of that place identifying where smoking is prohibited by this section and where complaints regarding violations may be registered.

2. Every public place and place of employment where smoking is prohibited by this section shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.

3. All ashtrays shall be removed from any area where smoking is prohibited by this section by the owner, operator, manager, or other person having control of the area.

F. No employer may discharge or retaliate against an employee because that employee exercises any rights afforded by this section or reports or attempts to prosecute a violation of this section.

G. The law shall be implemented and enforced by the department of health services as follows:

1. The department shall design and implement a program, including the establishment of an internet website, to educate the public regarding the provisions of this law.

2. The department shall inform persons who own, manage, operate or otherwise control a public place or place of employment of the requirements of this law and how to comply with its provisions including making information available and providing a toll-free telephone number and e-mail address to be used exclusively for this purpose.

3. Any member of the public may report a violation of this law to the department. The department shall accept oral and written reports of violation and establish an e-mail address(es) and toll-free telephone

number(s) to be used exclusively for the purpose of reporting violations. A person shall not be required to disclose the person's identity when reporting a violation.

4. If the department has reason to believe a violation of this law exists, the department may enter upon and into any public place or place of employment for purposes of determining compliance with this law. However, the department may inspect public places where food or alcohol is served at any time to determine compliance with this law.

5. If the department determines that a violation of this law exists at a public place or place of employment, the department shall issue a notice of violation to the person who owns, manages, operates or otherwise controls the public place or place of employment. The notice shall include the nature of each violation, date and time each violation occurred, and department contact person.

6. The department shall impose a civil penalty on the person in an amount of not less than \$100, but not more than \$500 for each violation. In considering whether to impose a fine and the amount of the fine, the department may consider whether the person has been cited previously and what efforts the person has taken to prevent or cure the violation including reporting the violation or taking action under subsection J. Each day that a violation occurs constitutes a separate violation. The director may issue a notice that includes the proposed amount of the civil penalty assessment. A person may appeal the assessment of a civil penalty by requesting a hearing. If a person requests a hearing to appeal an assessment, the director shall not take further action to enforce and collect the assessment until the hearing process is complete. The director shall impose a civil penalty only for those days on which the violation has been documented by the department.

7. If a civil penalty imposed by this section is not paid, the attorney general or a county attorney shall file an action to collect the civil penalty in a justice court or the superior court in the county in which the violation occurred.

8. The department may apply for injunctive relief to enforce these provisions in the superior court in the county in which the violation occurred. The court may impose appropriate injunctive relief and impose a penalty of not less than \$100 but not more than \$500 for each violation. Each day that a violation occurs constitutes a separate violation. If the superior court finds the violations are willful or evidence a pattern of noncompliance, the court may impose a fine up to \$5000 per violation.

9. The department may contract with a third party to determine compliance with this law.

10. The department may delegate to a state agency or political subdivision of this state any functions, powers or duties under this law.

11. The director of the department may promulgate rules for the implementation and enforcement of this law. The department is exempt from the rulemaking procedures in A.R.S. § title 41, chapter 6 except the department shall publish draft rules and thereafter take public input including hold at least two public hearings prior to implementing the rules. This exemption expires May 1, 2007.

H. Beginning on June 1, 2008 and every other June 1 thereafter, the director of the Arizona department of health services shall issue a report analyzing its activities to enforce this law, including the activities of all of the state agencies or political subdivisions to whom the department has delegated responsibility under

this law.

I. An owner, manager, operator or employee of place regulated by this law shall inform any person who is smoking in violation of this law that smoking is illegal and request that the illegal smoking stop immediately.

J. This law does not create any new private right of action nor does it extinguish any existing common law causes of action.

K. A person who smokes where smoking is prohibited is guilty of a petty offense with a fine of not less than fifty dollars and not more than three hundred dollars.

L. Smoke-free Arizona fund

1. The smoke-free Arizona fund is established consisting of all revenues deposited in the fund pursuant to §42-3251.02 and interest earned on those monies. The Arizona department of health services shall administer the fund. On notice from the department, the state treasurer shall invest and divest monies in the fund as provided by §35-313 and monies earned from investment shall be credited to the fund.

2. All money in the smoke-free Arizona fund shall be used to enforce the provisions of this section provided however that if there is money remaining after the department has met its enforcement obligations, that remaining money shall be deposited in the tobacco products tax fund and used for education programs to reduce and eliminate tobacco use and for no other purpose.

3. Monies in this fund are continuously appropriated, are not subject to further approval, do not revert to the general fund and are exempt from the provisions of §36-190 relating to the lapsing of appropriations.

M. This section does not prevent a political subdivision of the state from adopting ordinances or regulations that are more restrictive than this section nor does this section repeal any existing ordinance or regulation that is more restrictive than this section.

N. Tribal sovereignty —this section has no application on Indian reservations as defined in ARS 42-3301(2).

DEPARTMENT OF HEALTH SERVICES

Title 9, Chapter 25, Article 6



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 2, 2022

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: June 30, 2022

SUBJECT: DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 25, Article 6

Summary

This Five-Year- Review Report (5YRR) from the Department of Health Services (Department) relates to two rules in Title 9, Chapter 25, Article 6, regarding Stroke Care. These rules establish emergency stroke care protocols.

This is the first 5YRR for these rules since they were adopted and effective July 1, 2017.

Proposed Action

The Department is not proposing any changes to the rules.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes, the Department cites both general and specific statutory authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department believes that the actual costs and benefits experienced by persons affected by the rules are generally consistent with the costs and benefits considered in developing the rules.

The Department identifies stakeholders as the Department, emergency medical services providers, ambulance services, and emergency medical care technicians; hospitals; individuals on the emergency medical services council; health insurance companies and health plans, including AHCCCS and those providing Medicare coverage; and the general public.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The rules in 9 A.A.C. 25, Article 6 provide mechanisms for improvements in stroke care protocols, and reduce the number of stroke-related deaths. The Department believes that these benefits outweigh the probable costs of the rules and that the rules impose the least burden and costs on regulated persons by the rule, including paperwork and other compliance costs.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Department has not received any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Department indicates the rules are clear, concise, and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes, the Department indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Department indicates the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Department states the rules are enforced as written.

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

Not applicable. The Department indicates there is no corresponding federal law.

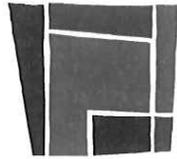
10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

No, the rules do not require the issuance of a permit or license.

11. Conclusion

This Five-Year-review Report (5YRR) from the Department relates to rules in Title 9, Chapter 25, Article 6, regarding Stroke Care. The Department indicates the rules are generally clear, concise, understandable, consistent, effective and enforced as written. The Department does not intend to take any action regarding these rules.

Council staff finds the Department submitted a report that meets the requirements of A.R.S. § 41-1056. Council staff recommends approval of this report.



ARIZONA DEPARTMENT
OF HEALTH SERVICES

June 1, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsins, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Department of Health Services, A.A.C. Title 9, Chapter 25, Article 6, Five Year Review Report

Dear Ms. Sornsins:

Please find enclosed the Five-Year Review Report (Report) from the Department of Health Services (Department) for A.A.C. Title 9, Chapter 25, Article 6 which is due on June 30, 2022.

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Emily Carey at 602-542-5121 or emily.carey@azdhs.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'RL' with a flourish.

Robert Lane
Director's Designee

RL: tk

Enclosures

Douglas A. Ducey | Governor Don Herrington | Interim Director



Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 25. Department of Health Services – Emergency Medical Services

Article 6. Stroke Care

June 2022

1. **Authorization of the rule by existing statutes**

Authorizing statutes: A.R.S. §§ 36-132(A)(1), 36-136(G)

Implementing statutes: A.R.S. §§ 36-2202 and 36-2204

2. **The objective of each rule:**

Rule	Objective
R9-25-601	To define terms used in the Article so the reader can consistently interpret the requirements.
R9-25-602	To establish the protocols that need to be implemented.

3. **Are the rules effective in achieving their objectives?**

Yes No

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation

4. **Are the rules consistent with other rules and statutes?**

Yes No

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation

5. **Are the rules enforced as written?**

Yes No

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

Rule	Explanation

6. **Are the rules clear, concise, and understandable?** Yes No

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

If yes, please fill out the table below:

Commenter	Comment	Agency's Response

8. **Economic, small business, and consumer impact comparison (summary):**

Pursuant to Arizona Revised Statute (A.R.S.) Title 36, Chapter 21.1, the Department has authority to govern emergency services. The Department uses the authority granted by these statutes to establish the rules in Arizona Administrative Code (A.A.C.) Title 9, Chapter 25. The rules in 9 A.A.C. 25, Article 6, were originally adopted in 2013 and subsequently amended, effective July 1, 2017, based on Laws 2015, Ch. 130, which required the Department to “adopt or amend rules relating to the coordination of stroke care services between emergency medical services providers and hospitals.” An EIS is available from this rulemaking.

The 2017 rulemaking included changes to R9-25-601 to add and amend definitions to comply with Laws 2015, Ch. 130. In R9-25-602, the Department clarified that emergency stroke care protocols may include education about identifying stroke patients who may have an emergent large vessel occlusion; added acute stroke-ready hospitals and comprehensive stroke centers as emergency receiving facilities to comply with Laws 2015, Ch. 130 (A); and specified stakeholders from which the emergency medical services council shall seek input to comply with Laws 2015, Ch. 130 (B). According to the EIS, these changes in the rule affected the Department; emergency medical services (EMS) providers, ambulance services, and emergency medical care technicians (EMCTs); hospitals; individuals on the emergency medical services council (according to A.R.S. § 36-2203); health insurance companies and health plans, including AHCCCS and those providing Medicare coverage; and the general public. Annual costs/revenues were designated as minimal when more than \$0 and \$1,000 or less, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or greater in additional costs or revenues. The EIS stated that EMS providers, ambulance services, and their EMCT’s might incur as much as moderate costs if they decided to make changes based on revised stroke care protocols, and might receive a significant benefit for being able to effectively triage and transport a stroke patient to an appropriate facility. The Department estimated that EMS council might incur minimal costs from revising stroke care protocols. Hospitals were believed to receive a substantial benefit from the revised stroke protocols. Health insurance

companies/health plans were anticipated to receive substantial cost increases from having covered individuals recover after being treated for stroke rather than die, but receive a substantial benefit from better patient outcomes and shorter hospital stays with less disability. The general public was believed to receive a significant benefit due to improvement in stroke care and reduction in death. The Department believes that the actual costs and benefits experienced by persons affected by the rules are generally consistent with the costs and benefits considered in developing the rules.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

This is the first five-year-review-report since the rules were adopted effective July 1, 2017.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The rules in 9 A.A.C. 25, Article 6 provide mechanisms for improvements in stroke care protocols, and reduce the number of stroke-related deaths. The Department believes that these benefits outweigh the probable costs of the rules and that the rules impose the least burden and costs on regulated persons by the rule, including paperwork and other compliance costs.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?

The rules are not related to any federal laws.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The rules do not require the issuance of a regulatory permit, license, or agency authorization.

14. **Proposed course of action:**

If possible, please identify a month and year by which the agency plans to complete the course of action.

Because the Department has identified no substantive matters that prevent the rules from being effective, clear, and enforceable, the Department does not intend to conduct any rulemaking activities related to the rules unless a substantive issue arises.

ARTICLE 6. STROKE CARE

R9-25-601. Definitions (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

In addition to the definitions in A.R.S. § 36-2201 and R9-25-101, the following definitions apply in this Article, unless otherwise specified:

1. “Acute stroke-ready hospital” means a hospital that is certified by a national stroke center certification organization as meeting national stroke care standards for the initial assessment, diagnosis, stabilization, and either:
 - a. Transfer of a stroke patient to a primary stroke center or comprehensive stroke center, or
 - b. Care of a stroke patient with input from the staff of a primary stroke center or comprehensive stroke center.
2. “Comprehensive stroke center” means a hospital that is certified by a national stroke center certification organization as meeting national stroke care standards for the assessment, diagnosis using advanced imaging devices, and treatment of stroke patients with complex cases of ischemic stroke, caused by the loss of the blood supply to a part of the brain, or hemorrhagic stroke, caused by bleeding into a part of the brain.
3. “Council” means the emergency medical services council established under A.R.S. § 36-2203.
4. “Health care provider” means an individual licensed according to A.R.S. Title 32, Chapter 13, 15, 17, 19, 25, or 34.
5. “Local EMS coordinating system” means the same as in A.R.S. § 36-2210.
6. “National stroke care standards” means criteria for the assessment and treatment of stroke that are consistent with guidelines established by the American Heart Association/American Stroke Association, an organization that focuses on reducing the impact of stroke.
7. “National stroke center certification organization” means an entity:
 - a. Such as:
 - i. The Joint Commission;
 - ii. The Healthcare Facilities Accreditation Program;
 - iii. Det Norske Veritas Healthcare, Inc.; or
 - iv. The American Heart Association/American Stroke Association;
 - b. That assesses the compliance of a hospital with national stroke care standards; and
 - c. That documents hospitals that meet national stroke care standards.
8. “Primary stroke center” means a hospital that is certified by a national stroke center certification organization as meeting national stroke care standards for the assessment, diagnosis, and treatment of stroke patients.
9. “Stroke patient” means an individual who has signs or symptoms of a stroke and is receiving assessment or treatment for a stroke.
10. “Transport” means the same as in A.A.C. R9-10-101.

R9-25-602. Emergency Stroke Care Protocols (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

- A. The council shall:
 1. Establish emergency stroke care protocols, and

2. Support the adoption of emergency stroke care protocols by emergency medical services providers through local EMS coordinating systems.
- B.** The council shall ensure that emergency stroke care protocols:
1. Are developed and implemented in coordination with:
 - a. Local EMS coordinating systems,
 - b. National organizations that focus on heart disease and stroke,
 - c. Emergency medical services providers, and
 - d. Health care providers;
 2. Include procedures for the pre-hospital assessment and treatment of stroke patients, which may include education about identifying stroke patients who may have an emergent large vessel occlusion, the blockage of a large blood vessel that causes an individual to have an ischemic stroke;
 3. Provide for transport of stroke patients to the most appropriate emergency receiving facility, consistent with A.R.S. § 36-2205(E), taking into account the:
 - a. Needs of a stroke patient;
 - b. Availability of resources in urban areas, suburban areas, rural areas, and wilderness areas;
 - c. Capability of an emergency receiving facility to practice telemedicine, as defined in A.R.S. § 36-3601, with specialists in stroke care;
 - d. Location of emergency receiving facilities that:
 - i. Are:
 - (1) Acute stroke-ready hospitals,
 - (2) Primary stroke centers, or
 - (3) Comprehensive stroke centers; and
 - ii. Participate in quality improvement activities, including the submission of data on stroke care provided by the emergency receiving facility that may be compiled on a statewide basis;
 - e. Capability of an emergency receiving facility that is not a primary stroke center or comprehensive stroke center to stabilize a stroke patient before initiating a transfer to a primary stroke center or comprehensive stroke center;
 - f. Capability of an emergency receiving facility that is not a primary stroke center or comprehensive stroke center to stabilize and admit a stroke patient; and
 - g. Distance and duration of transport;
 4. Are consistent with national stroke care standards; and
 5. Are based on data on stroke care from:
 - a. National organizations that focus on heart disease and stroke;
 - b. U.S. Department of Transportation, National Highway Traffic Safety Administration; and
 - c. Statewide data on stroke care, as available.
- C.** The council shall review and update, as necessary, the emergency stroke care protocols in subsection (A) after seeking input from:
1. Local EMS coordinating systems,
 2. National organizations that focus on heart disease and stroke,
 3. Nonprofit organizations that focus on the development of stroke systems of care,
 4. Emergency medical services providers, and
 5. Health care providers.

Statutory Authority for 9 A.A.C. 25, Article 6

36-132. Department of health services; functions; contracts

A. The department, in addition to other powers and duties vested in it by law, shall:

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.
6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.
7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.
8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.
9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.
10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may

bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

(a) Screening in early pregnancy for detecting high-risk conditions.

(b) Comprehensive prenatal health care.

(c) Maternity, delivery and postpartum care.

(d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.

(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

36-136. Powers and duties of director; compensation of personnel; rules; definitions

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.

2. Perform all duties necessary to carry out the functions and responsibilities of the department.

3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.

4. Administer and enforce the laws relating to health and sanitation and the rules of the department.

5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.

6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of

water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the

department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. If in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for not longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules

shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

- (a) Served at a noncommercial social event such as a potluck.
- (b) Prepared at a cooking school that is conducted in an owner-occupied home.
- (c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.
- (d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fundraising or an employee social event.
- (e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.
- (f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.
- (g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.
- (h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.
- (i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

(j) Spirituous liquor produced on the premises licensed by the department of liquor licenses and control. This exemption includes both of the following:

(i) The area in which production and manufacturing of spirituous liquor occurs, as defined in an active basic permit on file with the United States alcohol and tobacco tax and trade bureau.

(ii) The area licensed by the department of liquor licenses and control as a microbrewery, farm winery or craft distiller that is open to the public and serves spirituous liquor and commercially prepackaged food, crackers or pretzels for consumption on the premises. A producer of spirituous liquor may not provide, allow or expose for common use any cup, glass or other receptacle used for drinking purposes. For the purposes of this item, "common use" means the use of a drinking receptacle for drinking purposes by or for more than one person without the receptacle being thoroughly cleansed and sanitized between consecutive uses by methods prescribed by or acceptable to the department.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for preserving or storing food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparing food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds,

motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and

rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (j) of this section, spirituous liquor and commercially prepackaged food, crackers or pretzels that meet the requirements of subsection I, paragraph 4, subdivision (j) of this section are exempt from the rules prescribed in subsection I of this section.

R. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

36-2202. Duties of the director; qualifications of medical director

A. The director shall:

1. Appoint a medical director of the emergency medical services and trauma system.
2. Adopt standards and criteria for the denial or granting of certification and recertification of emergency medical care technicians. These standards shall allow the department to certify qualified emergency medical care technicians who have completed statewide standardized training required under section 36-2204, paragraph 1 and a standardized certification test required under section 36-2204, paragraph 2 or who hold valid certification with a national certification organization. Before the director may consider approving a statewide standardized training or a standardized certification test, or both, each of these must first be recommended by the medical direction commission and the emergency medical services council to ensure that the standardized training content is consistent with national education standards and that the standardized certification tests examines comparable material to that examined in the tests of a national certification organization.
3. Adopt standards and criteria that pertain to the quality of emergency care pursuant to section 36-2204.
4. Adopt rules necessary to carry out this chapter. Each rule shall identify all sections and subsections of this chapter under which the rule was formulated.
5. Adopt reasonable medical equipment, supply, staffing and safety standards, criteria and procedures for issuance of a certificate of registration to operate an ambulance.
6. Maintain a state system for recertifying emergency medical care technicians, except as otherwise provided by section 36-2202.01, that is independent from any national certification organization recertification process. This system shall allow emergency medical care technicians to choose to be recertified under the state or the national certification organization recertification system subject to subsection H of this section.

B. Emergency medical technicians who choose the state recertification process shall recertify in one of the following ways:

1. Successfully completing an emergency medical technician refresher course approved by the department.
2. Successfully completing an emergency medical technician challenge course approved by the department.
3. For emergency medical care technicians who are currently certified at the emergency medical

technician level by the department, attesting on a form provided by the department that the applicant holds a valid and current cardiopulmonary resuscitation certification, has and will maintain documented proof of a minimum of twenty-four hours of continuing medical education within the last two years consistent with department rules and has functioned in the capacity of an emergency medical technician for at least two hundred forty hours during the last two years.

C. After consultation with the emergency medical services council the director may authorize pilot programs designed to improve the safety and efficiency of ambulance inspections for governmental or quasi-governmental entities that provide emergency medical services in this state.

D. The rules, standards and criteria adopted by the director pursuant to subsection A, paragraphs 2, 3, 4 and 5 of this section shall be adopted in accordance with title 41, chapter 6, except that the director may adopt on an emergency basis pursuant to section 41-1026 rules relating to the regulation of ambulance services in this state necessary to protect the public peace, health and safety in advance of adopting rules, standards and criteria as otherwise provided by this subsection.

E. The director may waive the requirement for compliance with a protocol adopted pursuant to section 36-2205 if the director determines that the techniques, drug formularies or training makes the protocol inconsistent with contemporary medical practices.

F. The director may suspend a protocol adopted pursuant to section 36-2205 if the director does all of the following:

1. Determines that the rule is not in the public's best interest.
2. Initiates procedures pursuant to title 41, chapter 6 to repeal the rule.
3. Notifies all interested parties in writing of the director's action and the reasons for that action. Parties interested in receiving notification shall submit a written request to the director.

G. To be eligible for appointment as the medical director of the emergency medical services and trauma system, the person shall be qualified in emergency medicine and shall be licensed as a physician in one of the states of the United States.

H. Applicants for certification shall apply to the director for certification. Emergency medical care technicians shall apply for recertification to the director every two years. The director may extend the expiration date of an emergency medical care technician's certificate for thirty days. The department shall establish a fee for this extension by rule. Emergency medical care technicians shall pass an examination administered by the department as a condition for recertification only if required to do so by the advanced life support base hospital's medical director or the emergency medical care technician's medical director.

I. The medical director of the emergency medical services and trauma system is exempt from title 41, chapter 4, articles 5 and 6 and is entitled to receive compensation pursuant to section 38-611, subsection A.

J. The standards, criteria and procedures adopted by the director pursuant to subsection A, paragraph 5 of this section shall require that ambulance services serving a rural or wilderness certificate of necessity area

with a population of less than ten thousand persons according to the most recent United States decennial census have at least one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (a) and one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (b) staffing an ambulance while transporting a patient and that ambulance services serving a population of ten thousand persons or more according to the most recent United States decennial census have at least one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (a) and one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (a), (c), (d) or (e) staffing an ambulance while transporting a patient.

K. If the department determines there is not a qualified administrative medical director, the department shall ensure the provision of administrative medical direction for an emergency medical technician if the emergency medical technician meets all of the following criteria:

1. Is employed by a nonprofit or governmental provider employing less than twelve full-time emergency medical technicians.
2. Stipulates to the inability to secure a physician who is willing to provide administrative medical direction.
3. Stipulates that the provider agency does not provide administrative medical direction for its employees.

36-2204. Medical control

The medical director of the statewide emergency medical services and trauma system, the emergency medical services council and the medical direction commission shall recommend to the director the following standards and criteria that pertain to the quality of emergency patient care:

1. Statewide standardized training, certification and recertification standards for all classifications of emergency medical care technicians.
2. A standardized and validated testing procedure for all classifications of emergency medical care technicians.
3. Medical standards for certification and recertification of training programs for all classifications of emergency medical care technicians.
4. Standardized continuing education criteria for all classifications of emergency medical care technicians.
5. Medical standards for certification and recertification of certified emergency receiving facilities and advanced life support base hospitals and approval of physicians providing medical control or medical direction for any classification of emergency medical care technicians who are required to be under medical control or medical direction.
6. Standards and mechanisms for monitoring and ongoing evaluation of performance levels of all classifications of emergency medical care technicians, emergency receiving facilities and advanced life support base hospitals and approval of physicians providing medical control or medical direction for any classification of emergency medical care technicians who are required to be under medical control or

medical direction.

7. Objective criteria and mechanisms for decertification of all classifications of emergency medical care technicians, emergency receiving facilities and advanced life support base hospitals and for disapproval of physicians providing medical control or medical direction for any classification of emergency care technicians who are required to be under medical control or medical direction.

8. Medical standards for nonphysician prehospital treatment and prehospital triage of patients requiring emergency medical services.

9. Standards for emergency medical dispatcher training, including prearrival instructions. For the purposes of this paragraph, "emergency medical dispatch" means the receipt of calls requesting emergency medical services and the response of appropriate resources to the appropriate location.

10. Standards for a quality assurance process for components of the statewide emergency medical services and trauma system, including standards for maintaining the confidentiality of the information considered in the course of quality assurance and the records of the quality assurance activities pursuant to section 36-2403.

11. Standards for ambulance service and medical transportation that give consideration to the differences between urban, rural and wilderness areas.

12. Standards to allow an ambulance to transport a patient to a health care institution that is licensed as a special hospital and that is physically connected to an emergency receiving facility.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 16, Articles 2-5



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 2, 2022

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: June 30, 2022

SUBJECT: DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 16, Articles 2-5

Summary

This Five-Year-Review Report (5YRR) from the Department of Environmental Quality (Department) relates to rules in Title 18, Chapter 16, Articles 2-5 regarding Preliminary Investigation procedures and site scoring, requirements for public information, Remedy Selection and Interim Remedial Actions.

In the previous 5YRR for these rules, which the Council approved in 2017, the Department did not propose to take any action on these rules.

Proposed Action

The Department is proposing to amend several of its rules to improve their overall clarity, consciousness, understandability, and consistency with other provisions by correcting citations, grammar and language of the rules. The Department has received approval from the policy advisor to proceed with an expedited rulemaking to address these changes on March 18, 2022, and the Department filed a Notice of Docket Opening with the Secretary of State's office on March 18, 2022. The Department intends to submit the rulemaking to GRRC by October 2022.

1. **Has the agency analyzed whether the rules are authorized by statute?**

Yes, the Department cites both general and specific statutory authority for the rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department states that the rulemaking for the rules under review was exempt from the provisions of Title 41, Chapter 6, Article 3 under session law at Laws 1997, Chapter 287, Section 56(B), and did not include an Economic, Small Business, and Consumer Impact Statement. The Department presented an economic impact discussion when it submitted a Five-Year Review Report on this Chapter in 2017. The Department states that the impact of these rules remains the same.

Stakeholders are identified as the Department, property owners, and the public.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department analyzed the costs and benefits of the rulemaking and determined that the benefits of the rules outweigh the costs. Further, the Department states the rules employ the least costly and burdensome methods available under the Department's statutory obligation to fulfill the rules' objectives.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Department indicates it has not received any written criticism of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Department indicates the rules are generally clear, concise and understandable with the exception of the following rules:

- **R18-16-201(I):** The passive voice creates confusion as to who should prepare the preliminary investigation report.
- **R18-16-202:** The incorrect agency address creates confusion for those who wish to see the site scoring model.
- **R18-16-401:** The definition of "vadose zone" refers to the wrong citation which may cause confusion.
- **R18-16-402:** The language creates confusion and needs to be amended to clarify when Article 4 rules apply.
- **R18-16-408(B)(2):** Rule references wrong subsection which may cause confusion.

- **R18-16-408(C)(1):** Rule references wrong subsection which may cause confusion.
- **R18-16-408(C)(1)(a):** Rule references wrong subsection.
- **R18-16-408(D):** Rule references wrong subsection which may cause confusion.
- **R18-16-415(A)(3):** Rule references wrong subsection which may cause confusion.
- **R18-16-501:** The definition of “public water system” references the wrong subsection which may cause confusion.
- **R18-16-503(A)(7):** Rule references wrong subsection which may cause confusion.

6. Has the agency analyzed the rules’ consistency with other rules and statutes?

Yes, the Department indicates the rules are consistent with other rules and statutes.

7. Has the agency analyzed the rules’ effectiveness in achieving its objectives?

Yes, the Department indicates the rules are effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

Yes, the Department indicates the rules are enforced as written.

9. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

Not applicable. The Department indicates there is no corresponding federal law.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable. The Department indicates the rules were adopted before July 29, 2010.

11. Conclusion

This 5YRR from the Department of Environmental Quality relates to rules in Title 18, Chapter 16, Articles 2-5 regarding Preliminary Investigation procedures and site scoring, requirements for public information, Remedy Selection and Interim Remedial Actions. The Department indicates the rules are generally clear, concise, understandable, consistent, effective and enforced as written. However, the Department proposes to amend ten (10) rules to improve their clarity, conciseness and understandability. The Department indicates that an expedited rulemaking is currently underway to address their proposed course of action and the Department anticipates submitting the rulemaking to GRRC by October 2022.

Council staff finds the Department submitted a report that meets the requirements of A.R.S. § 41-1056. Council staff recommends approval of this report.



Douglas A. Ducey
Governor

ARIZONA DEPARTMENT
OF
ENVIRONMENTAL QUALITY



Misael Cabrera
Director

March 29, 2022

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue #305
Phoenix, AZ 85007

Re: Submittal of Five-Year Rule Review Report for A.A.C. Title 18, Chapter 16, Articles 2-5

Dear Chair Sornsin:

I am pleased to submit to you, pursuant to A.R.S. § 41-1056 and A.A.C. R1-6-301, our agency's 5-Year Review Report for Title 18, Chapter 16, Article 2 [Preliminary Investigations and Site Scoring], Article 3 [Public Information], Article 4 [Remedy Selection], and Article 5 [Interim Remedial Actions].

Pursuant to A.R.S. § 41-1056(A), I certify that ADEQ is in compliance with A.R.S. § 41-1091 requirements for filing of notices of substantive policy statements and annual publication of a substantive policy statement directory.

Please contact Dena Kalamchi in the Waste Programs Division at 602-771-5215, or kalamchi.dena@azdeq.gov, if you have any questions.

Sincerely,

Misael Cabrera, P.E.
Director

Enclosure

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Arizona Department of Environmental Quality
Five-Year Review Report
Title 18. Environmental Quality
Chapter 16. Water Quality Assurance Revolving Fund Program
Article 2. Preliminary Investigations and Site Scoring
Article 3. Public Information
Article 4. Remedy Selection
Article 5. Interim Remedial Actions
3/31/2021

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 41-1003 and A.R.S. § 49-104(B)(4).

Specific Statutory Authority: A.R.S. § 49-282.03(D), A.R.S. § 49-282.06(B), and Laws 1997, Ch. 287, § 56(B).

2. The objective of each rule:

Rule	Objective
R18-16-201	The purpose of the rule is to outline required steps and procedures for preliminary investigations at sites with reported releases or threatened releases of hazardous substances.
R18-16-202	The purpose of the rule is to establish a site scoring procedure for ADEQ to rank sites by risk to public health, welfare and the environment as part of the preliminary investigation.
R18-16-301	The rule provides minimum requirements for notification by newspaper publication, direct mail, and timeframes for public comments when not specified in statute.
R18-16-302	The rule provides direction on what places can be used as repositories for Water Quality Assurance Revolving Fund Program (WQARF) program public information.
R18-16-401	The rule provides definitions necessary for the administration of 18 A.A.C. 16, Article 4.
R18-16-402	The rule answers various general questions related to when the rules in the Article apply, especially as to remedial work that occurred before the rules took effect in 2002. Article 4 does not apply to corrective action for underground storage tank releases.
R18-16-403	The rule lists required steps after contamination is found and a preliminary investigation is done. It also addresses community involvement and notice requirements that take effect before the Department initiates work at a site unless the remedial action can be completed in less than 180 days.
R18-16-404	The rule provides details for meeting the community involvement requirements generally outlined in A.R.S. § 49-289.03.
R18-16-405	The rule states conditions for the implementation of certain remedial actions prior to selection of a remedy for the site under R18-16-410.
R18-16-406	The rule establishes a framework for conducting a remedial investigation and establishing remedial objectives for a site.
R18-16-407	The rule outlines the feasibility study which identifies a remedy and alternatives capable of achieving remedial objectives and evaluates them with comparison criterion.
R18-16-408	The rule explains how the public and potentially responsible parties will be informed of the proposed remedy for the site. A cost estimate and how completion of remedial objectives will be measured is also included.
R18-16-409	The rule provides the sole process for parties to obtain credit against their share of potential liability at the site for remedial work completed and to object to costs submitted by other parties. The rule also provides a process for the Department to approve remedial action costs.

R18-16-410	The rule provides a process for preparing a record of decision (ROD) that selects and documents the cleanup chosen for the site. It specifies that it must include an estimated cost, time-frames for the start and finish of the remediation, and a demonstration that the remedy will meet the remedial objectives.
R18-16-411	The rule provides a process for the design and implementation of the engineered design of the selected remedy and the implementation of the remedy through construction. Certain requirements apply as well to early response actions, which are implemented before a remedy is selected.
R18-16-412	The rule provides a process for reviewing and approving innovative technologies used to characterize and cleanup a site that would otherwise not be considered eligible under the standard “technically feasible.” In addition, the rule allows the Department to provide incentives and to use WQARF funds for the use of innovative technologies.
R18-16-413	The rule provides a process for a person who performs work at a site or a portion of a site to obtain the Department's approval of the work for purposes of cost recovery. The rule does not provide for approval of the costs of doing the work, which is contained in R18-16-409.
R18-16-414	The rule describes what is required for the Department to determine that no further action is necessary at a site or portion of a site. The general standard, “no significant risk to the public health, welfare, or the environment,” is clarified for the separate cases of soil, groundwater, or surface water contamination.
R18-16-415	The rule provides requirements for soil remediation whether conducted before or after the selection of a remedy under R18-16-410. The party conducting the soil remediation under this rule must meet the requirements of the Soil Remediation Standards (18 A.A.C. 7, Article 2) and must conduct community involvement activities in accordance with R18-16-404.
R18-16-416	The rule requires certain project completion criteria in settlement agreements under WQARF or Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). It also establishes processes to obtain a determination from the Department that the work required by a settlement agreement has been completed and that the remedial objectives for the site have been satisfied and will continue to be satisfied.
Appendix A	The rule lists standardized units of measurement that may be used when comparing alternative remedies under R18-16-407(E).
R18-16-501	The rule provides definitions necessary for the administration of 18 A.A.C. 16, Article 5.
R18-16-502	The rule defines conditions that make a well eligible for consideration for funding or performance of interim remedial action if a remedy has not been selected.
R18-16-503	The rule states when a person can request that the Department perform or provide a grant for an interim remedial action.
R18-16-504	The rule provides criteria for the Department to approve or deny requests for interim remedial actions or request modifications to the proposal.
R18-16-505	The rule provides for the Department to seek reimbursement of grant funds from a person if the remedial action was later determined not to be necessary based on criteria established in A.R.S. § 49-282.06 or the person was determined to be a responsible party contributing to the contamination of the affected well.

3. **Are the rules effective in achieving their objectives?** Yes X No __
4. **Are the rules consistent with other rules and statutes?** Yes X No __
5. **Are the rules enforced as written?** Yes X No __
6. **Are the rules clear, concise, and understandable?** Yes __ No X

Rule	Explanation
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R18-16-201(I)	The passive voice in this rule creates confusion as to who should prepare the preliminary investigation report. The Department plans to improve the clarity of this rule in an expedited rulemaking.
R18-16-202	The address cited in this rule is not the current agency address. This would create confusion for those who wish to see the site scoring model. This rule could also be improved by removing the duplicative sentence. The Department plans to update the address in an expedited rulemaking.
R18-16-401	The definition of “vadose zone” refers to the wrong citation. The rule should cite to A.R.S. § 49-201 instead of 49-201(39) to prevent confusion. Also, the rule states that “hazardous substances” has the same meaning as defined in A.R.S. § 49-281(8). That statutory reference defines the singular term “hazardous substance.” The Department plans to correct this citation in an expedited rulemaking.
R18-16-402	The language in this rule is confusing and should be amended to clarify when Article 4 rules apply. The Department plans to improve the clarity of this rule in an expedited rulemaking.
R18-16-408(B)(2)	This rule references A.R.S. § 49-287.04(a) instead of A.R.S. § 49-287.04(A) which may cause confusion. The Department plans to correct this citation in an expedited rulemaking.
R18-16-408(C)(1)	This rule references A.R.S. § 49-287.04(b) instead of A.R.S. § 49-287.04(B) which may cause confusion. The Department plans to correct this citation in an expedited rulemaking.
R18-16-408(C)(1)(a)	This rule references A.R.S. § 49-287.04(c) instead of A.R.S. § 49-287.04(C) which may cause confusion. The Department plans to correct this citation in an expedited rulemaking.
R18-16-408(D)	This rule references A.R.S. § 49-287.03(c) instead of A.R.S. § 49-287.03(C) which may cause confusion. The Department plans to correct this citation in an expedited rulemaking.
R18-16-415(A)(3)	This rule references R18-7-209 instead of R18-7-210 which may cause confusion. The Department plans to correct this citation in an expedited rulemaking.
R18-16-501	The definition of “public water system” references 42 U.S.C. § 300(f) instead of 42 U.S.C. § 300f which may cause confusion. The Department plans to correct this citation in an expedited rulemaking.
R18-16-503(A)(7)	This rule references 12 A.A.C. 7, Article 15 instead of 12 A.A.C. 15, Article 7 which may cause confusion. The Department plans to correct this citation in an expedited rulemaking.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes ___ No X

8. **Economic, small business, and consumer impact comparison:**

The rulemaking for these rules was exempt from the provisions of Title 41, Chapter 6, Article 3 under session law at Laws 1997, Chapter 287, Section 56(B), and did not include an Economic, Small Business, and Consumer Impact Statement. The Department presented an economic impact discussion when it submitted a Five-Year Review Report on this Chapter in 2017. The impact of these rules remains the same; however, the Department has updated some of the information.

Article 2. Preliminary Investigations and Site Scoring

ADEQ believes that this Article does not have a substantial economic impact on the state’s economy, small businesses or consumers. The primary economic impact of these rules is the State’s cost to investigate potential releases and determine whether soil contamination or water quality exceeds

standards. This cost the Department on average \$425,000 per year in the past five years. Any expenditures on the preliminary investigation by site owners is voluntary. There are currently 38 sites on the WQARF registry. Placement on the WQARF registry has positive and negative impacts to property owners as remediation is a long-term benefit to the property and its value but placement on the registry can have a temporary negative impact on property value. Another benefit of this article is the mitigation of threats to public health and the environment due to hazardous contamination in soil and water by identifying sites that should be placed on the registry and remediated.

Article 3. Public Information

ADEQ believes that this Article does not have a substantial economic impact on the state's economy, small businesses or consumers. The primary economic impact of these rules is on the state to comply with statutory community involvement requirements. The Department spends approximately \$20,000 per year on carrying out the newspaper publication requirements. The requirements have a mixed effect on property values as it educates the public on WQARF process and reduces stigma. Another benefit of this article is the mitigation of threats to public health and the environment by informing residents of hazardous contamination in soil and water.

Article 4. Remedy Selection

ADEQ believes that this Article does not have a substantial economic impact on small businesses or consumers. The primary economic impact of these rules is the remedy cost. However, this cost is managed by this article which restricts which remedial actions will be conducted at a site. Remedial actions have a positive economic impact on site owners by increasing property value and returning land to beneficial use. This article also does not require property owners to provide reimbursement for coincidental benefits that result from a remedial action.

Remedial investigations (RI) have both a negative and positive impact on the state due to the upfront costs to pay for the RI, but it has a positive economic impact by providing information on PRPs to build a stronger case for cost recovery and defining the contamination for more cost-effective remedial action. Remedial objectives are cost effective by determining the uses for land and water within the WQARF site and remediating according to the surrounding use and by developing the most technically and cost-effective option for remediating a site to achieve objectives. This article also allows parties to receive credit against potential liability for the costs of remedial actions undertaken at the site. This article has a positive economic impact to the state by allowing the state to recover remedial action costs.

Encouraging parties to implement an early response action (ERA) or remedy has a positive economic impact to the state since the working party is paying for the cost of the remedial action and ERAs are normally performed in order to save time and money later on. This article also encourages innovative technology that may be economically beneficial in the long run.

This article has a positive economic impact to property values within a WQARF site when determining that no further remedial action is needed for the site. It also has a benefit of mitigating threats to public health and the environment by establishing how hazardous contamination in soil and water will be remediated.

Article 5. Interim Remedial Actions

ADEQ believes that this Article does not have a substantial economic impact on the state's economy, small businesses or consumers. The primary economic impact of these rules is restricting which interim remedial actions (IRA) are eligible for funding from a WQARF grant. This is a positive impact on the state as it encourages more cost-effective options for the IRA and establishes conditions for which the state can be reimbursed for the IRA costs. It can also have a positive economic impact on the site owner as implementing an IRA could reduce the one-term remedial action costs despite the upfront costs which could be anywhere from hundreds of thousands to millions of dollars to implement. Another benefit of this article is mitigating hazardous threats to Arizona's public health and environment by encouraging

remediation through cost effective alternatives.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No X

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

Rule	Explanation
R18-16-201(I)	<p><u>2017 Proposed Course of Action:</u> The department does not plan to amend this rule in the near future; however, if any material changes are made to 18 A.A.C. 16, the department will change subsection (I) to active voice.</p> <p><u>Completed:</u> No</p> <p><u>Explanation:</u> The Department indicated if any material changes were made to 18 A.A.C. 16, this subsection would be amended. The Department did not have any necessary substantive changes and, thus, did not undertake a rulemaking for this chapter. However, ADEQ received approval from the policy advisor to proceed with an expedited rulemaking to address these changes on March 18, 2022 and the Department filed a Notice of Docket Opening on March 18, 2022.</p>
R18-16-202	<p><u>2017 Proposed Course of Action:</u> Due to other rulemaking priorities, the department does not plan to amend this rule in the near future; however, if any material changes are made to 18 A.A.C. 16, the department will address the following minor clarity issues:</p> <p style="padding-left: 40px;">The address of ADEQ needs to be updated. The last sentence is repetitive.</p> <p><u>Completed:</u> No</p> <p><u>Explanation:</u> The Department indicated if any material changes were made to 18 A.A.C. 16, this subsection would be amended. The Department did not have any necessary substantive changes and, thus, did not undertake a rulemaking for this chapter. However, ADEQ received approval from the policy advisor to proceed with an expedited rulemaking to address these changes on March 18, 2022 and the Department filed a Notice of Docket Opening on March 18, 2022.</p>
R18-16-401	<p><u>2017 Proposed Course of Action:</u> The department does not plan to amend this rule in the near future; however, if any material changes are made to 18 A.A.C. 16, the department will update this rule by correcting the two following items:</p> <p style="padding-left: 40px;">The rule states that "hazardous substances" has the same meaning as defined in A.R.S. § 49-281(8). That statutory reference defines the singular term "hazardous substance."</p> <p style="padding-left: 40px;">The definition of "vadose zone" in this rule contains an incorrect citation. The definition references A.R.S. § 49-201(39). A better reference would be A.R.S. § 49-201.</p> <p><u>Completed:</u> No</p> <p><u>Explanation:</u> The Department indicated if any material changes were made to 18 A.A.C. 16, this subsection would be amended. The Department did not have any necessary substantive changes and, thus, did not undertake a rulemaking for this chapter. However, ADEQ received approval from the policy advisor to proceed with an expedited rulemaking to address these changes on March 18, 2022 and the Department filed a Notice of Docket Opening on March 18, 2022.</p>

R18-16-408	<p><u>2017 Proposed Course of Action:</u> Due to other rulemaking priorities, the department does not plan to amend this rule in the near future; however, if any material changes are made to 18 A.AC. 16, the department will update this rule by correcting the following:</p> <p>There is an incorrect citation at R18-16-408(B)(2). This rule references A.R.S. § 49-287.04(a); the reference should read A.R.S. § 49-287.04(A).</p> <p>There is an incorrect citation at R18-16-408(C)(1). This rule references A.R.S. § 49-287.04(b); the reference should read A.R.S. § 49-287.04(B).</p> <p>There is an incorrect citation at R18-16-408(C)(1)(a). This rule references A.R.S. § 49-287.04(c); the reference should read A.R.S. § 49-287.04(C).</p> <p>There is an incorrect citation at R18-16-408(D). This rule references A.R.S. § 49-287.03(c); the reference should read A.R.S. § 49-287.03(C).</p> <p><u>Completed:</u> No</p> <p><u>Explanation:</u> The Department indicated if any material changes were made to 18 A.A.C. 16, this subsection would be amended. The Department did not have any necessary substantive changes and, thus, did not undertake a rulemaking for this chapter. However, ADEQ received approval from the policy advisor to proceed with an expedited rulemaking to address these changes on March 18, 2022 and the Department filed a Notice of Docket Opening on March 18, 2022.</p>
R18-16-415	<p><u>2017 Proposed Course of Action:</u> Due to other rulemaking priorities, the department does not plan to amend this rule in the near future; however, if any material changes are made to 18 A.A.C. 16, the department will update this rule by correcting the following citation:</p> <p>The rule includes a cross reference to A.A.C. R18-7-209. A.A.C. Title 18, Chapter 7 was amended in May of 2007. During that rulemaking, R18-7-209 was renumbered to R18-7-210.</p> <p><u>Completed:</u> No</p> <p><u>Explanation:</u> The Department indicated if any material changes were made to 18 A.A.C. 16, this subsection would be amended. The Department did not have any necessary substantive changes and, thus, did not undertake a rulemaking for this chapter. However, ADEQ received approval from the policy advisor to proceed with an expedited rulemaking to address these changes on March 18, 2022 and the Department filed a Notice of Docket Opening on March 18, 2022.</p>
R18-16-501	<p><u>2017 Proposed Course of Action:</u> Due to other rulemaking priorities, the department does not plan to amend this rule in the near future; however, if any material changes are made to 18 A.A.C. 16, the department will update this rule by correcting the following citation:</p> <p>The definition of "public water system" in this rule contains an incorrect citation. The definition references 42 U.S.C. § 300(f). The correct reference is 42 U.S.C. § 300f.</p> <p><u>Completed:</u> No</p> <p><u>Explanation:</u> The Department indicated if any material changes were made to 18 A.A.C. 16, this subsection would be amended. The Department did not have any necessary</p>

	substantive changes and, thus, did not undertake a rulemaking for this chapter. However, ADEQ received approval from the policy advisor to proceed with an expedited rulemaking to address these changes on March 18, 2022 and the Department filed a Notice of Docket Opening on March 18, 2022.
R18-16-503	<p><u>2017 Proposed Course of Action:</u> Due to other rulemaking priorities, the department does not plan to amend this rule in the near future; however, if any material changes are made to 18 A.A.C. 16, the department will update this rule by correcting the following cross reference:</p> <p style="padding-left: 40px;">The reference to 12 A.A.C. 7, Article 15 in A.A.C. R18-16-503(A)(7) is an incorrect citation that should read “12 A.A.C. 15, Article 7.”</p> <p><u>Completed:</u> No</p> <p><u>Explanation:</u> The Department indicated if any material changes were made to 18 A.A.C. 16, this subsection would be amended. The Department did not have any necessary substantive changes and, thus, did not undertake a rulemaking for this chapter. However, ADEQ received approval from the policy advisor to proceed with an expedited rulemaking to address these changes on March 18, 2022 and the Department filed a Notice of Docket Opening on March 18, 2022.</p>

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

Article	Analysis
Article 2	<p>The costs of Article 2 include a requirement that the Department investigate potential releases to determine whether soil contamination or water quality exceeds standards. This article does not impose costs on the regulated community as it is just a request for readily available information. Any cost associated with this article falls on the Department and not the regulated community. The time cost associated with a preliminary investigation varies from less than 6 months to up to 6-7 years. The listing of property on the state’s WQARF list is generally viewed as a negative impact on property value, but this is temporary.</p> <p>The benefits are that 70-75% of preliminary investigations result in a determination that no further investigation or action was necessary and saves site owners from further investigation. If a potential risk to human health and the environment exists, the site is scored and is placed on the WQARF registry where the Department prioritizes it according to the site scoring model and funds are apportioned accordingly.</p> <p>The benefits exceed the costs for these rules in fulfilling the objective to conduct preliminary investigation reports and site scoring. They are the least burdensome and ways to identify, prioritize, assess, and resolve the threat of contaminated soil and groundwater sites in the state. Cautious data collection and testing before entry into the program allows the Department to exclude sites as soon as no standard is violated. The scoring of those that get onto the WQARF registry allows the Department to prioritize resources among the sites and to mitigate threats to public health and the environment due to hazardous substances in both soil and water. ADEQ believes that any cost associated with preliminary investigations are necessary and save future costs.</p>

<p>Article 3</p>	<p>The Department provides public notice as cost-effectively as possible by engaging the community through website, direct mail, and newspaper. The newspaper publication can cost anywhere from \$60 to \$400 per day with \$120 being an average cost. The Department’s online information repository provides necessary information for various stages of community involvement and is the most economical and effective way to engage with the public. Community involvement requirements may affect property value as it broadcasts contamination matters, however, property value effects are typically temporary.</p> <p>The benefit of this rule provides affected community members notice of contaminated sites and supplies the public and affected parties access to information. Informing the public on the WQARF process, site status, and the associated risks to the public reduces stigma by compelling involved parties to deal with facts. Providing notice to the community of hazardous substance contamination is a benefit that outweighs the cost of newspaper publication and any temporary effects on property value.</p> <p>The Department employs the least costly and most effective methods available under its statutory obligation to fulfill the article objective to outline public notification and comment requirements such as time and location. The Department’s innovative use of web and email delivery lists is a cost saving and effective tool in gaining stakeholder input. The public notice and long-term environmental benefits of this Article outweigh the costs to the Department and possible temporary effects on property value.</p>
<p>Article 4</p>	<p>The WQARF fund pays out an average of \$6 million per year for remediation related costs. The remedy selection rules determine whether a sufficient amount is spent to achieve the remedial objectives. For properties where soil and/or groundwater contamination is present and ADEQ implements a remedy in accordance with the rules, the initial economic impact to a property owner could be negative. Remedial systems may disrupt business activities and/or utilize space on the property. However, these impacts are temporary and minimized.</p> <p>Once the site is remediated, the property value increases to at least pre WQARF registry value based on the reduction in risk associated with the property and (in some cases) returning the property to beneficial use. This Article allows affected parties multiple opportunities to weigh in on the remedy selection. These funds are essential to remediate contamination of soil and water that have an effect on public health and the environment.</p> <p>The Department believes these rules represent the least burden and cost to stakeholders and Arizona citizens to fulfill the objective of outlining the remedy selection process and other steps involved in the remediation process. ADEQ believes that the benefits of returning property to beneficial use exceed the costs, as the rules are necessary to achieve cleanup in an efficient, organized, and economical way.</p>
<p>Article 5</p>	<p>If the Department determines that cost recovery is appropriate at a site, the Department initiates a responsible party search that proceeds concurrently with the remedy selection process. The average return on Department resources expended for a responsible party search is 9.5%. Sites that are added to the Registry that are orphaned or have a limited number of financially viable parties from which to cost recover can cost the state millions of dollars to remediate. Interim Remedial Actions allow the Department to quickly remediate sites and recoup lost funds through responsible party searches. This article ensures that parties responsible for pollution are the ones who bear the financial burden. The rules ameliorate financial losses to the Department through reimbursement and by conducting potentially responsible party searches. Identification of PRPs enables the</p>

	<p>Department to allocate proportional shares of liability among the identified responsible parties in order to finance the remedy.</p> <p>The benefit of implementing this article outweighs the possible costs. It allows the state to address contamination before it spreads and costs more to clean up. It also provides resources for the state to be reimbursed for costs. The Department satisfies the rule objective of quickly cleaning up polluted sites and finding responsible parties with the least impact on stakeholders and ADEQ. IRAs must be the minimum necessary to address the loss or reduction of available water from the well and therefore meets the rule objective without additional costs. The Department works to increase return on costs expended through responsible party searches through determining factors when conducting a responsible party search. These factors include an evaluation on what the cost of the PRP search will be compared what the state can recover from PRPs. The PRP search determining factors guarantees that Department costs do not outweigh the amount the state can recover from a PRP. The benefit of conducting PRP searches outweighs the costs as it allows the Department to hold those responsible for pollution financially responsible instead of ADEQ.</p>
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12. **Are the rules more stringent than corresponding federal laws?** Yes No

These rules relate to the state WQARF program and therefore there are no corresponding federal laws.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

These rules were adopted before July 29, 2010.

14. **Proposed course of action**

An expedited rulemaking is currently underway to address the proposed course of action outlined in the table below. The Department anticipates submitting the rulemaking to GRRC by October 2022.

Rule	Explanation
R18-16-201. Preliminary Investigations	The department plans to update the language in 201(I) from passive voice to active voice to provide consistency with other provisions. The passive voice in this rule creates confusion as to who should prepare the preliminary investigation report.
R18-16-202. Site Scoring	The address cited in this rule is not the current agency address. This would create confusion for those who wish to see the site scoring model. The redundant sentences of the section could be consolidated to increase clarity.
R18-16-401. Definitions	The term “hazardous substances” could be made singular to reflect the language in the cited A.R.S. § 49-281(8). The citation in the definition of “vadose zone” could be updated to clarify a citation change from A.R.S. § 49-201(39) to § 49-201.
R18-16-402. Applicability	The language in this rule is confusing and should be amended to clarify rule applicability for remedial objectives.

R18-16-404. Community Involvement Requirements	The sentence in 404(C)(1)(c) could include the words “remedial investigation” so that the phrase is “final remedial investigation report”. This update would conform with the citation to R18-16-406(J).
R18-16-408. Proposed Remedial Action Plan	Minor capitalization/lowercase issues could be resolved, such as: (B)(2) cites to 49-287.04(a), where the “a” should be “A”; (C)(1) cites to 49-287.04(b), where the “b” should be “B”; (C)(1)(a) cites to 49-287.04(c), where the “c” should be “C”; and (D) cites to 49-287.03(c), where the “c” should be “C”. These updates would accurately refer to the correct provisions of the statute and improve clarity.
R18-16-413. Approval of Remedial Actions Under A.R.S. § 49-285(B)	The reference to the Board of Technical “Registrations” in 413(A)(9) could be updated to accurately reflect the name, which is the “Board of Technical Registration”. This update would ameliorate any confusion to the appropriate authority referenced in the rule.
R18-16-415. Soil Remediation	This rule references R18-7-209 instead of R18-7-210 which may cause confusion.
R-18-16-501. Definitions	The definition of “public water system” references 42 U.S.C. § 300(f) instead of 42 U.S.C. § 300f which may cause confusion.
R18-16-503. Request for Interim Remedial Action	This rule references 12 A.A.C. 7, Article 15 instead of 12 A.A.C. 15, Article 7 which may cause confusion.

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 16. DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER QUALITY ASSURANCE REVOLVING FUND PROGRAM

Editor's Note: 18 A.A.C. 16 made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

ARTICLE 1. RESERVED

ARTICLE 2. PRELIMINARY INVESTIGATIONS AND SITE SCORING

Article 2, consisting of Sections R18-16-201 and R18-16-202, made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

Section

- R18-16-201. Preliminary Investigations
R18-16-202. Site Scoring

ARTICLE 3. PUBLIC INFORMATION

Article 3, consisting of Sections R18-16-301 and R18-16-302, made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

Section

- R18-16-301. Public Notification and Opportunities for Public Comment
R18-16-302. Location of Information Repositories

ARTICLE 4. REMEDY SELECTION

Article 4, consisting of Sections R18-16-401 through R18-16-416 and Appendix A, made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

Section

- R18-16-401. Definitions
R18-16-402. Applicability
R18-16-403. Scope of Work, Fact sheet, Outline of Community Involvement Plan, and Notification of Availability
R18-16-404. Community Involvement Requirements
R18-16-405. Early Response Actions
R18-16-406. Remedial Investigations
R18-16-407. Feasibility Study
R18-16-408. Proposed Remedial Action Plan
R18-16-409. Remedial Action Costs Credit
R18-16-410. Record of Decision
R18-16-411. Design, Implementation, Operation and Maintenance of the Early Response Action or Remedy
R18-16-412. Innovative Technologies
R18-16-413. Approval of Remedial Actions Under A.R.S. § 49-285(B)
R18-16-414. Determination of No Further Action
R18-16-415. Soil Remediation
R18-16-416. Satisfaction of Settlement Agreement and Achievement of Remedial Objectives
Appendix A. Standard Measurements for Comparison of Remedial Alternatives

ARTICLE 5. INTERIM REMEDIAL ACTIONS

Article 5, consisting of Sections R18-16-501 through R18-16-505, made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

Section

- R18-16-501. Definitions
R18-16-502. Eligibility
R18-16-503. Request for Interim Remedial Action
R18-16-504. Review and Approval of Requests for Interim Remedial Action
R18-16-505. Reimbursement

ARTICLE 1. RESERVED

ARTICLE 2. PRELIMINARY INVESTIGATIONS AND SITE SCORING

R18-16-201. Preliminary Investigations

- A. Based on information of a possible release or threatened release of a hazardous substance, the Department may conduct a preliminary investigation to obtain additional information necessary to determine the potential risk to public health, welfare, and the environment in order to score the site and include it on the registry established under A.R.S. § 49-287.01(D).
- B. Before conducting a preliminary investigation, the Department shall consider whether the possible release or threatened release of a hazardous substance:
1. Is being addressed by or should be referred to another applicable program administered by the Department or another federal, state or local governmental agency with jurisdiction over the matter; or
 2. Is being adequately addressed through voluntary action.
- C. At any time before or during a preliminary investigation, if the Department determines that a possible release or threatened release of a hazardous substance is being adequately addressed by another program or agency or voluntarily, the Department may suspend or terminate a preliminary investigation under this Section.
- D. A preliminary investigation is a screening level investigation based primarily upon existing information. The Department may collect existing information regarding a release or threatened release of a hazardous substance from any appropriate source, including Department programs, governmental agencies, water providers, complainants, and owners and operators of facilities where the release may have occurred. When existing information, such as soil or water sampling data, cannot be validated, or when sufficient data does not exist, additional data may be collected as necessary.
- E. The Department shall terminate the preliminary investigation prior to completion if:
1. The Department determines that the release of a hazardous substance has not occurred and is not likely to occur; or
 2. The Department determines:
 - a. Based on valid sampling data, that soil contaminated by a release of a hazardous substance meets the requirements of A.R.S. § 49-152 and 18 A.A.C. 7, Article 2; and
 - b. Based on valid sampling data, that the release or a threatened release of a hazardous substance does not and will not result in an exceedance of water quality standards, or if there is no water quality standard, a risk level approved by the Department to protect public health, welfare, and the environment.
- F. The Department shall notify affected water providers of the termination of a preliminary investigation under R18-16-201(E).
- G. If the Department does not terminate or suspend a preliminary investigation under subsections (C) or (E), the Department shall proceed with the preliminary investigation by collecting any additional information necessary to score a potential site using the eligibility and evaluation site scoring model under R18-16-202. The Department shall notify affected water providers and affected local governments of the initiation of the

preliminary investigation. A work plan shall be developed and implemented to collect additional information and shall include the following information:

1. The location and description of the potential site, including a map.
 2. A list of hazardous substances known or suspected to have been released.
 3. A proposal to search available records to determine:
 - a. The historic and current uses of facilities within the potential site.
 - b. The physical and environmental conditions within the potential site.
 - c. Any previous environmental investigations or regulatory involvement by federal, state, or local authorities.
 4. A proposal to obtain information from any affected water providers.
- H.** If the Department determines that additional information is necessary to score a potential site using the eligibility and evaluation site scoring model under R18-16-202, the work plan shall be supplemented with the following information:
1. A conceptual site model to determine:
 - a. Potential sources of contamination.
 - b. Potential exposure pathways.
 - c. Potential human, aquatic, and terrestrial receptors.
 2. If sampling is necessary, the work plan shall contain the following information:
 - a. The objectives of the sampling.
 - b. A quality assurance project plan.
 - c. A sampling and analysis plan to verify whether a suspected release has occurred, and if the release has occurred, to adequately characterize the release to score the site using the eligibility and evaluation site scoring model.
 - d. A health and safety plan consistent with 29 CFR. 1910.120.
- I.** Following completion of the preliminary investigation, a preliminary investigation report shall be prepared. The report shall contain the following information:
1. Information gathered and reviewed under subsection (G), including a summary of the information with references to relevant reports.
 2. If applicable, the conceptual site model developed under subsection (H).
 3. If sampling was conducted under subsection (H):
 - a. A description of the sampling activities.
 - b. Analytical results including a summary of the results with references to relevant reports.
 - c. A map of sample locations.
 - d. Data quality information including a summary with references to relevant reports.
- J.** The Department shall approve the preliminary investigation report prepared under subsection (I) if it contains sufficient valid information to score the site using the eligibility and evaluation site scoring model under R18-16-202 or to make a determination that no further investigation or action is needed under subsection (K).
- K.** Based on a review of the preliminary investigation report prepared under subsection (I), the Department shall:
1. Determine that no further investigation or action is needed using the criteria in subsection (E); or
 2. Prepare a draft site registry report under A.R.S. § 49-287.01(B).
- L.** The Department may allow any person to conduct any part of the preliminary investigation by written agreement. A person requesting to conduct all or any part of a preliminary investi-

gation shall submit a written request to the Department that includes the following information:

1. The name and address of the person making the request and the nature of the relationship of the person to the site.
2. The portion of the preliminary investigation the person wants to conduct.
3. A work plan to conduct the preliminary investigation in accordance with subsection (G).
4. A schedule for completion of the activities specified in the work plan.
5. If requested by the Department, information regarding the financial capability of the person to conduct the work plan.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-202. Site Scoring

In order to score a site or portion of a site, the Department shall use the eligibility and evaluation site scoring model established by the Department on October 3, 1996. The eligibility and evaluation site scoring model as established on October 3, 1996, is incorporated by reference. This incorporation by reference does not include any later amendments or editions. A copy of the incorporated material is available for inspection and reproduction at the Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, Arizona 85012-2809 and the Office of the Secretary of State. A copy of the incorporated material can be obtained from the Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, Arizona 85012-2809.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

ARTICLE 3. PUBLIC INFORMATION

R18-16-301. Public Notification and Opportunities for Public Comment

- A.** If notification by publication in a newspaper is required by A.R.S. Title 49, Chapter 2, Article 5 or by any community involvement plan created under A.R.S. § 49-287.03 and A.R.S. Title 49, Chapter 2, Article 5 does not specify the frequency of the notification, the Department or person publishing notice shall publish notice according to the following minimum requirements:
1. One day in a daily newspaper of general circulation in the county where the site is located; or
 2. If other than a daily newspaper, two days in a newspaper of general circulation in the county where the site is located.
- B.** If notification by direct mail is required by A.R.S. Title 49, Chapter 2, Article 5 or by any community involvement plan created under A.R.S. § 49-287.03 and A.R.S. Title 49, Chapter 2, Article 5 does not specify the form of the mailing, the Department or person providing the notification shall provide the notification according to the following requirements:
1. By bulk or first-class mailing; or
 2. If the bulk or first-class mailing would cause unreasonable delay in receiving time-sensitive materials, the Department or person shall provide the notification in a manner sufficient to timely reach those who may be impacted.
- C.** If an opportunity for public comment is required by A.R.S. Title 49, Chapter 2, Article 5 or by any community involvement plan under § A.R.S. 49-287.03 and A.R.S. Title 49, Chapter 2, Article 5 does not specify the duration during which the public may comment, the Department or person pro-

viding the opportunity for public comment shall provide at least 30 calendar days for public comment.

- D. The requirements of this Section shall not prevent or delay a timely remedial action that the Director has determined is necessary to address the release or threat of release of a hazardous substance that may present an immediate danger to public health, welfare, or the environment.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-302. Location of Information Repositories

Public information repositories required or authorized under A.R.S. Title 49, Chapter 2, Article 5 shall be located in at least one of the following areas:

1. An office of the Department.
2. A public or semi-public facility to which the public has reasonable access that is substantially equivalent to the access to the public information repository that is provided by the Department.
3. A private facility to which the public has reasonable access that is substantially equivalent to the access to the public information repository that is provided by the Department.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

ARTICLE 4. REMEDY SELECTION

R18-16-401. Definitions

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

“Alternative remedy” means a combination of remedial strategies and remedial measures different from the reference remedy that is capable of achieving remedial objectives. The alternative remedies are compared with the reference remedy for purposes of selecting a proposed remedy at the conclusion of the feasibility study.

“Comparison criteria” means risk, cost, benefit, and practicality, as those terms are described in R18-16-407(H)(3).

“Community involvement area” has the same meaning as defined in A.R.S. § 49-281(3).

“Contaminant of concern” means a hazardous substance that results from a release and that has been identified by the Department as the subject of remedial action at a site.

“Hazardous substances” has the same meaning as in A.R.S. § 49-281(8).

“Nonrecoverable costs” has the same meaning as in A.R.S. § 49-281(9).

“Proposed remedy” means a combination of remedial strategies and remedial measures which, as a whole, is capable of achieving remedial objectives that is identified at the conclusion of a feasibility study and is incorporated in the proposed remedial action plan.

“Reference remedy” means a combination of remedial strategies and remedial measures which, as a whole, is capable of achieving remedial objectives. The reference remedy is compared with the alternative remedies for purposes of selecting a proposed remedy at the conclusion of the feasibility study.

“Remedial measure” means a specific action taken in conjunction with remedial strategies as part of the remedy to achieve one or more of the remedial objectives. For example, remedial

measures may include well replacement, well modification, water treatment, provision of replacement water supplies, and engineering controls.

“Remedial objective” means the goal, as established through the process in R18-16-406, to be achieved by a remedy selected under this Article. Remedial objectives include the following elements:

Protecting against the loss or impairment of identified uses of land and waters of the state;

Restoring, replacing, or otherwise providing for identified uses of land and waters of the state;

Time-frames when action is needed to protect against or provide for the impairment or loss of the use; and

The projected duration of the action needed to protect or provide for the use.

“Remedial strategy” means one or a combination of the six general approaches described in R18-16-407(F) which may be employed in conjunction with remedial measures as part of the remedy to achieve the remedial objectives.

“Remedy” has the same meaning as in A.R.S. § 49-281(13).

“Site-specific human health risk assessment” means a scientific evaluation of the probability of an adverse effect to human health from exposure to specific types and concentrations of contaminants at or from a site. A site-specific human health risk assessment contains four components: identification of potential contaminants; an exposure assessment; a toxicity assessment; and a risk characterization.

“Site registry” or “registry” means the registry of scored sites maintained by the Department under A.R.S. § 49-287.01(D).

“Vadose zone” has the same meaning as in A.R.S. § 49-201(39).

“Water provider” means the owner or operator of a public water system, an agricultural improvement district, or an irrigation and water conservation district.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-402. Applicability

- A. This Article applies to sites on the site registry and as otherwise made applicable by law.
- B. This Article applies only to remedial actions as defined in A.R.S. § 49-281. Nothing in this Article is intended to require a remedial action, including a remedy or early response action, to provide for or cover any costs that a property owner, a well owner, or water provider would incur if the release of hazardous substances that is the subject of the remedial action had not affected the property or water supply of the property owner, well owner or water provider. A property owner, well owner or water provider shall not be required to provide reimbursement for coincidental benefits resulting from a remedial action otherwise necessary and appropriate to address a release or threatened release of a hazardous substance. Nothing in this Article shall be interpreted to require remedial action to address a land use that is impaired by properties of materials located on or under that land other than the current or potential exposure to hazardous substances contained in that material.
- C. For purposes of this Section, “transition site” means a site that is on the site registry where some remedial action has occurred prior to the effective date of this Article.

- D.** Any person who has performed any remedial action prior to the effective date of this Article at a transition site may submit a written request for the Department's approval of the remedial action under R18-16-413 if the remedial action has not been approved by the Department prior to the effective date of this Article. The request shall include a description of the remedial action, a demonstration that the work is reasonable and necessary and meets the applicable purposes of this Article, and copies of all documentation of the remedial action for which approval is requested. The Department shall approve:
1. Remedial investigation work performed prior to the effective date of this Article if the work meets the applicable purposes stated in R18-16-406(A),
 2. Feasibility study work performed prior to the effective date of this Article if the work meets the purposes stated in R18-16-407(A), and
 3. Early response action work performed prior to the effective date of this Article if the work meets the purposes stated in R18-16-405(A).
- E.** Remedial action work approved by the Department prior to the effective date of this Article shall be deemed approved for purposes of this Article. Remedial action work conducted under a work plan approved by the Department prior to the effective date of this Article shall be evaluated for approval by the Department under the terms of the approved work plan.
- F.** Notwithstanding subsections (D) and (E), neither a remedial investigation nor a feasibility study shall be considered complete under this Article until the information described in R18-16-406(D) is collected, a draft remedial investigation report is prepared and distributed under R18-16-406(F), and remedial objectives are selected under R18-16-406(I) and reported under R18-16-406(J). Thereafter, the procedures set forth in R18-16-407 through R18-16-412 shall apply to the selection of a remedy based upon the remedial investigation or feasibility study. To the extent that any of the alternative remedies discussed in a feasibility study that is substantially complete before the effective date of this Article will not achieve the remedial objectives, the feasibility study shall be modified so that the alternative remedies achieve remedial objectives. Additional evaluation of alternative remedies, if necessary, shall be conducted in accordance with R18-16-407 and reported in a supplemental report before preparation of a final feasibility study report under R18-16-407(I).
- G.** Notwithstanding anything to the contrary in this Article, this Article shall not apply to certain remedial action plans, written agreements, and court decrees or judgements approved, made or entered prior to the effective date of this Article as follows:
1. If prior to the effective date of this Article, the Department has approved a remedial action plan or entered into a written agreement for work under Title 49, Chapter 2, Article 5, Arizona Revised Statutes, that includes the implementation of a remedy or the substantial equivalent of a remedy for a site or a portion of a site, the terms and conditions of the Department's approval or agreement, and not this Article, shall govern work within the scope of the approved remedial action plan or agreement and any modification thereto.
 2. The terms and conditions of any court decree or judgement entered prior to the effective date of this Article, and not this Article, shall govern the work that is within the scope of the court decree and any modification thereto. If the work required by the court decree or judgement does not include the implementation of a remedy or the substantial equivalent of a remedy at a site or a portion of a site, then the selection of a remedy for the site or portion of the site shall be under this Article, and this Article may

require additional remedial actions before a remedy can be selected, but a party to the consent decree shall not be required to conduct or pay for the additional remedial actions if the liability of the party is resolved by the court decree.

3. If an approval, agreement, court decree or judgement subject to subsection (G)(1) or (2) addresses only a portion of a site on the site registry and includes the implementation of a remedy or the substantial equivalent of a remedy for that portion of the site, then the work covered by the approval, agreement or decree shall be included as part of the remedial action plan and the record of decision selecting a remedy under this Article for the remainder of the site if agreed to by the parties to the approval, agreement, court decree or judgement.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-403. Scope of Work, Fact Sheet, Outline of the Community Involvement Plan, and Notification of Availability

- A.** Unless the Department determines that the necessary remedy at a site can be completed within 180 calendar days, the Department shall prepare a scope of work for the remedial investigation and feasibility study, a fact sheet, and an outline of a community involvement plan for the site before the Department conducts a remedial investigation and feasibility study under A.R.S. § 49-287.03.
- B.** The scope of work for a remedial investigation shall generally describe the extent of the remedial investigation based upon site-specific conditions and information obtained from the preliminary investigation. The scope of work for a remedial investigation shall provide for the preparation of the following, as applicable:
1. Characterization of soil and vadose zone contamination, including identification of sources;
 2. Characterization of groundwater contamination, including identification of sources;
 3. Characterization of surface water contamination, including identification of sources;
 4. Identification of actual and potential human and ecological receptors;
 5. Identification of current and reasonably foreseeable uses of waters of the state that have been or are threatened to be impaired;
 6. Identification of current and reasonably foreseeable land uses that have been or are threatened to be impaired;
 7. Assessment of current risk to public health;
 8. Assessment of ecological risk;
- C.** The scope of work for a feasibility study shall generally describe the process for conducting the feasibility study as prescribed in R18-16-407, and may specify additional work to be performed taking into account the information gathered in the remedial investigation.
- D.** The fact sheet shall include, at a minimum, all of the following:
1. A brief history of the site;
 2. A general description of the results of the preliminary investigation, including the known extent of contamination;
 3. The site's score determined under R18-16-202;
 4. General information regarding the potential risk of and routes of exposure to the contaminants at the site; and
 5. The Department personnel to be contacted for further information regarding the site.

- E. The outline of a community involvement plan shall generally describe the activities which will be included in the community involvement plan as required by A.R.S. § 49-289.03 and R18-16-404(C).
- F. The Department shall provide written notice of the availability of the scope of work, the fact sheet, and the outline of the community involvement plan as required under A.R.S. § 49-287.03(C) to each person who, according to information available to the Department, may be liable for remedial actions. The notice shall state that any person, by written agreement with the Department may develop and implement a remedial investigation work plan or a feasibility study work plan for a site or a portion of a site under R18-16-406 or R18-16-407. The notice shall be provided in accordance with R18-16-301.
- G. The Department shall publish the newspaper notice required by A.R.S. § 49-287.03(C) and shall provide written notice by mail or other delivery to residents, owners or operators of facilities being investigated, commercial occupants, affected water providers and owners of known wells within the community involvement area of the availability of the scope of work, the fact sheet, and the outline of the community involvement plan. These notices shall comply with R18-16-301. These notices shall also provide an opportunity for a public meeting. If the remedial investigation is being performed within one year of the scoring of the site under A.R.S. § 49-287.01, the notices required by this Section may be combined with the notice required by A.R.S. § 49-289.02.
- H. Before implementing a work plan for a remedial investigation or feasibility study, the Department shall prepare a responsiveness summary addressing any public comments on the scope of work as required under A.R.S. § 49-287.03(D).
- I. Community involvement under this Article shall comply with Article 3 of this Chapter, except that the community involvement plan may provide for additional requirements.
- Historical Note**
- New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).
- R18-16-404. Community Involvement Requirements**
- A. The Department or any person who conducts remedial action work at a site on the registry shall conduct community involvement activities in accordance with the requirements of this Section.
- B. If the Department has prepared a community involvement plan under subsection (C) or adopted a plan under subsection (D)(1), the Department or any person conducting remedial action work at a site on the registry shall conduct community involvement activities at the site according to the community involvement plan. If the Department has issued a notice under A.R.S. § 49-287.03 for a site, a person may conduct community involvement activities only under a written agreement with the Department. However, a person who submits a notice of remediation under R18-16-415(A) may conduct community involvement activities for the soil remediation described in the notice according to the community involvement plan prepared or adopted by the Department for the site without a written agreement.
- C. Unless the Department determines that the necessary remedy at a site can be completed within 180 calendar days, the Department shall prepare and implement a community involvement plan prior to initiating or approving a work plan to implement the remedial investigation or a feasibility study under A.R.S. § 49-287.03. The community involvement plan shall:
1. Be updated annually and shall provide information, if applicable, regarding the establishment of a selection committee and community advisory board. The plan also shall provide for the following required activities:
 - a. Notification to interested persons of the availability of the work plan developed under R18-16-406(B) to implement the remedial investigation and the solicitation of information from interested persons under R18-16-406(D) regarding the current and reasonably foreseeable uses of the land and waters of the state.
 - b. Notice to the public of the opportunity to comment on the draft remedial investigation report developed under R18-16-406(F) and public meetings to establish remedial objectives under R18-16-406(I).
 - c. Notice to the public of the opportunity to comment on remedial objectives proposed under R18-16-406(I)(5) and the availability of the final report prepared by the Department under R18-16-406(J).
 - d. Notification to interested persons of the availability of the work plan developed under R18-16-407(B) to implement the feasibility study.
 - e. Notice to the public and notification to interested persons of the availability of the proposed remedial action plan prepared under R18-16-408(A) and of the opportunity to comment on the proposed remedial action plan.
 - f. Notice to the public of the availability of the record of decision and responsiveness summary prepared by the Department under R18-16-410.
 - g. Notice to the public and notification to interested persons of availability of and opportunity to comment on the operation and maintenance plan prepared under R18-16-411(E).
 - h. Notice to the public and notification to interested persons of a request for approval of work under R18-16-413.
 - i. Newsletters to be distributed to residents and interested persons regarding the status of the remedial action and other pertinent information.
 - j. Notice within the community involvement area regarding public meetings to provide and discuss information regarding sites on the registry.
 - k. The location of and types of information contained in a public document repository.
 - l. Notice to the public and notification to interested persons of a request for a waiver under A.R.S. § 49-290.
 - m. Notice to the public of field work that is conducted to remove contaminants of concern or that may result in noise, light, odor, dust or other adverse impacts off of the site.
 - n. Notice to the public of a determination under R18-16-416(B).
 - o. Notice to the public of community advisory board meetings.
 2. Describe the following procedures for conducting each of the required activities listed in subsection (C)(1).
 - a. Methods of notice and notification.
 - b. Identification of a spokesperson to inform the public and act as a liaison.
 - c. The means to identify interested persons to receive notices.
 - d. Coordination of community involvement activities with the Department for community involvement conducted by persons other than the Department.
 3. In determining how the community involvement activities are to be implemented, the Department shall consider the following:

- a. A community profile.
 - b. Assessment of community concerns and issues through community interviews, public comment, and other means.
 - c. Public health and environmental impacts.
- D.** If the Department has not provided notice under A.R.S. § 49-287.03(C) and has not prepared a community involvement plan under subsection (C) or adopted a plan under subsection (D)(1), a person who proposes to conduct remedial action work at a site on the registry shall either:
1. Prepare a community involvement plan for the site according to the requirements set forth in subsection (C) and submit a request under R18-16-413 for the Department to approve the plan and adopt it as the community involvement plan for the site. The Department may approve and adopt a community involvement plan if the plan complies with the requirements of subsection (C).
 2. Conduct community involvement activities appropriate to the scope and schedule of the work performed including, as applicable, all of the following:
 - a. For field work conducted to remove contaminants of concern or that may result in noise, light, odor, dust and other adverse impacts off of the site, provide general public notice prior to conducting the work. The general public notice may be in the form of signage, direct mailing, door hangings, news articles, or any other form of notice that is distributed in a manner sufficient to reach those who may be impacted. The general public notice shall provide a general description of the field work and anticipated adverse impacts, and the name and telephone number of a person who may be contacted for information regarding the field work.
 - b. Prior to conducting a remedial action that will take more than 180 calendar days to complete, provide general notice regarding the nature of the action and establish a document repository accessible to the public where information regarding the site and the remedial action is available for review. The general notice may be in the form of fact sheets, newsletters, or news articles distributed by direct mailings, door hangings or any other method of distribution sufficient to reach or be accessible to local government agencies, persons within the community involvement area for the site and other persons who have requested information regarding the site. Notice to affected water providers shall be by direct mail. The general notice shall describe the nature and progress of the remedial action, the location of the repository, and provide the name and telephone number of a person who may be contacted for information regarding the remedial action. The document repository shall be accessible during normal business hours and shall contain all documents and information required to be prepared or maintained by this Article and any other documents and information deemed appropriate by the person conducting the work. An updated general notice shall be provided at least once per year while the remedial action is being conducted.
 - c. Comply with the process for establishing remedial objectives under R18-16-406(F) through R18-16-406(J).
 - d. Provide notice of the availability of the proposed remedial action plan prepared under R18-16-408 and convene a public meeting prior to the close of the public comment period to provide information concerning the proposed remedial action plan.
- E.** Copies of notices and notifications required under this Section shall be provided to the Department five days before publication, mailing, posting, or other distribution.
- F.** Community involvement under this Article shall comply with Article 3 of this Chapter, except that the community involvement plan may provide for additional requirements.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-405. Early Response Actions

- A.** The Department or any person may perform an early response action if the action is initiated prior to selection of a remedy at a site under R18-16-410 and is necessary to:
1. Address current risk to public health, welfare, and the environment;
 2. Protect or provide a supply of water;
 3. Address sources of contamination; or
 4. Control or contain contamination where such actions are expected to reduce the scope or cost of the remedy needed at the site.
- B.** The method or technology used to implement the early response action shall be selected based upon best engineering, geological, or hydrogeological judgment following engineering, geological, or hydrogeological standards of practice, considering the following information:
1. Best available information characterizing the site;
 2. Best available scientific information concerning available remedial methods and technologies; and
 3. Best available information regarding whether the technology or method could increase the scope or costs of possible remedies for the site or result in increased risk to public health or welfare or the environment.
- C.** A written rationale shall be prepared for each early response action explaining how the early response action will achieve the applicable goals in subsection (A) and how the early response action is consistent with A.R.S. § 49-282.06(A). The written rationale shall identify the information used to select the early response action as provided in subsection (B), how that information was considered, and how the selected method or technology was selected. Performance of a remedial investigation or feasibility study shall not be required to select or conduct an early response action.
- D.** A work plan shall be prepared for each early response action. Each work plan shall include:
1. A description of work to be done, a description of known site conditions, and a plan for conducting the work;
 2. A description of community involvement activities for the early response action under R18-16-404; and
 3. A schedule.
- E.** If immediate action is necessary to address a current risk to public health or the environment, to protect a source of water, or to provide a supply of water, the work plan and written rationale may be prepared and the community involvement activities may be conducted after commencement of the early response action.
- F.** Approval of an early response action under this Section does not constitute approval of the remedy for the site. The remedy for a site where an early response action is conducted shall be selected in accordance with R18-16-406 through R18-16-410. An early response action may be addressed, incorporated and modified as needed in the remedy selected under R18-16-410.
- G.** After the Department has issued notice under A.R.S. § 49-287.03 for a site or a portion of a site, a person conducting an

early response action at a site or portion of a site shall notify the Department, in writing, of the early response action. The notice shall contain a brief description of the early response action and shall be given at least 15 calendar days before the early response action is commenced, or as soon thereafter as practicable depending upon the exigencies of the circumstances. If the early response action has commenced before the Department issues notice under A.R.S. § 49-287.03, written notice of the early response action shall be given within 15 calendar days after the Department's notice is given. After notice of a proposed remedial action plan has been given under R18-16-408(C), an early response action may be initiated only after the Department has approved the early response action.

H. Any person may submit a request to the Department under R18-16-413 to approve an early response action or a work plan for an early response action. The request shall include the work plan and the written rationale for the early response action. The Department shall approve the work plan or early response action if it complies with the following:

1. The requirements of this Section and A.R.S. § 49-282.06(A);
2. Community involvement activities under R18-16-404;
3. The work plan provides for modifications to address unknown or changed conditions; and
4. Any applicable requirements of R18-16-411 and R18-16-412.

I. In considering whether an early response action is necessary to protect or provide a supply of water because a well is threatened by contamination, a well located in the area within 1/4 mile upgradient, 1/2 mile cross-gradient and 1 mile downgradient of the areal extent of contamination at the site shall be presumed to be threatened by the contamination. This presumption may be rebutted by evidence of local hydrology, geology, or geochemistry or by available information regarding the capture zone or rate of flow. In considering whether wells a greater distance from the areal extent of contamination are threatened, any evidence regarding local hydrology, geology, geochemistry, zone of capture, or rate of flow may be considered.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-406. Remedial Investigations

A. The remedial investigation for a site or portion of a site shall:

1. Establish the nature and extent of the contamination and the sources thereof;
2. Identify current and potential impacts to public health, welfare, and the environment;
3. Identify current and reasonably foreseeable uses of land and waters of the state; and
4. Obtain and evaluate any other information necessary for identification and comparison of alternative remedial actions.

B. The Department or any person may perform all or any portion of a remedial investigation, except that once the Department has issued a notice under A.R.S. § 49-287.03 for a site, a person may perform such work only under a written agreement with the Department. A work plan shall be developed and implemented for all or any portion of a remedial investigation for a site or a portion of the site, as follows:

1. The work plan shall demonstrate that the work performed will meet the requirements of subsections (C) and (D) and that the work will be performed in accordance with guidance documents issued by the Department or standards or other guidance documents that are commonly accepted in

the scientific community. Standards or guidance documents are considered to be commonly accepted in the scientific community if they are published in peer-reviewed literature such as a professional journal or publication of standards of general circulation, and if there is general consensus within the scientific community about the guidance document or standard.

2. Each work plan shall include the following elements:

- a. A description of the work, including any community involvement activities to satisfy any applicable requirements of R18-16-403 or R18-16-404, a statement of justification for the work, and a plan for conducting the work;
- b. A quality assurance project plan;
- c. A site location map;
- d. A schedule;
- e. A health and safety plan consistent with 29 CFR 1910.120; and
- f. A sampling and analysis plan.

3. A work plan may be modified as work proceeds to address unknown or changed conditions or access problems.

4. Any person proposing to implement a work plan for all or a portion of a remedial investigation shall, before implementing the work plan, notify the Department in writing of the name and address of the working party and a general description of the work being performed. This notice is for the Department's information only and receipt of the notice shall not constitute approval of the work plan. A person seeking approval of a work plan by the Department shall submit a written request under R18-16-413.

C. The remedial investigation, which may be conducted in one or more phases to focus sampling efforts and increase the efficiency of the investigation, shall include field investigations to assess the following factors:

1. Physical characteristics of the site, including important surface features, soils, geology, hydrogeology, meteorology, and ecology;
2. The extent and general characteristics of the hazardous substances released, including physical state, concentration, toxicity, propensity to bioaccumulate, persistence, and mobility;
3. The extent, general characteristics, and degree of the source of the release;
4. Current and reasonably foreseeable exposure routes for the hazardous substances released, such as inhalation, ingestion and dermal;
5. Other factors, such as sensitive populations, that pertain to the characterization of the site or support the analysis of potential remedies; and
6. Current and reasonably foreseeable impacts to aquatic and terrestrial biota.

D. The remedial investigation shall include the collection of information regarding current and reasonably foreseeable uses of land or of waters of the state that have been or are threatened to be impacted by the release, and projected time-frames for future changes in those uses. Reasonably foreseeable uses of land are those uses of land likely to occur at the site. Reasonably foreseeable uses of water are those likely to occur within 100 years unless a longer time period is shown to be reasonable based on site-specific circumstances. Information may be solicited from any interested person including any known well owner. Information collected shall include:

1. Information regarding current and reasonably foreseeable uses of water for each aquifer that is impacted or threatened to be impacted by the release, considering any

hydraulic connection between aquifers. The information shall include the locations and uses of existing wells, including all wells already impaired due to contamination, the locations and uses, if known, of any planned wells, and any written water management plans used by water providers whose water supplies may be impacted by the release. This information shall be collected in consultation with affected water providers.

2. Information regarding current and reasonably foreseeable uses of water for each segment of surface water impacted or threatened to be impacted by the release. This information shall be collected in consultation with affected water providers.
 3. Information regarding current and reasonably foreseeable uses of land impacted or threatened to be impacted by the release within the community involvement area. General land use information shall include the current type of use, density, character, and governmental jurisdictions. Future land use changes shall be considered using population projections, growth, plans for future development and local land use plans. This information shall be collected in consultation with local governments with land use jurisdiction. The information collected shall also include specific land uses and property ownership for properties where the land use is impacted or threatened to be impacted by the release.
- E.** Using the data developed during the field investigation and information collected concerning uses of land and of waters of the state, a site-specific risk evaluation may be conducted to characterize the current risks to public health and the environment from contaminants of concern.
- F.** Following the collection of data necessary to adequately characterize the site or portion of the site and the collection of information necessary to determine the uses of land and of waters of the state, a draft remedial investigation report shall be prepared, and if prepared by a person other than the Department, submitted to the Department. The draft remedial investigation report shall include the results of any risk evaluation conducted under subsection (E). The draft remedial investigation report may consist of a summary of the data and information collected with references to the supporting documentation and the location of the public repository where those documents may be reviewed. Copies of the draft remedial investigation report prepared by or approved for release by the Department shall be provided to the community advisory board, interested local government agencies, affected water providers, and the Department of Water Resources. Copies of the draft remedial investigation report also shall be made available to the community under the community involvement plan. Public notice shall be given of the opportunity to comment on the draft remedial investigation report. This notice may be combined with the notice given under subsection (I)(1).
- G.** For remedial objectives used to select a soil remediation remedy, the landowner has the right to identify the type of land use in accordance with A.R.S. § 49-152 and 18 A.A.C. 7, Article 2. If the remedy for the site or portion of a site will address landfill or other non-soil materials other than waters of the state, the landowner may establish the current and reasonably foreseeable uses of its land provided that the remedial objectives for the site are not required to address land uses impaired by properties of materials located on or under the land other than the current or potential exposure to the hazardous substances contained in that material.
- H.** If the remedy for the site or a portion of the site will not address waters of the state, a final remedial investigation report may be prepared containing the results of the site characterization and a listing of remedial objectives. The remedial objectives shall be based on the current and reasonably foreseeable uses of the property in accordance with subsection (G) and stated in accordance with subsection (I)(4). The report shall be accompanied by responsiveness summaries regarding comments, issues, and concerns regarding the draft remedial investigation report under subsection (F), and if the report is prepared by a person other than the Department, copies of the comments received. The report may be submitted to the Department for review under R18-16-413. If the Department approves the report, the procedures in subsections (I) and (J) do not apply, and the approved report may be used to select a remedy under R18-16-407(C) or R18-16-407(D). Notice of the availability of the final remedial investigation report shall be provided with the notice under R18-16-408(C).
- I.** Except as provided in subsection (H), remedial objectives shall be developed as follows:
1. After the draft remedial investigation report is made available, the Department shall hold 1 or more public meetings to obtain information for purposes of establishing remedial objectives for the site. The Department shall provide notice of the public meeting. If a community advisory board has been formed for the site, public meeting arrangements shall be coordinated with the community advisory board. The initial public meeting shall be held not less than 45 calendar days and not more than 90 calendar days after release of the draft remedial investigation report, unless the Department sets a different date for good cause.
 2. At the public meeting, the Department shall solicit and consider proposed remedial objectives for the site. The Department also may receive and consider written information regarding proposed remedial objectives.
 3. Remedial objectives shall be generally consistent with the water management plans of all water providers whose water supplies are or may be impaired by the contamination and with the general land use plan established by the local land use jurisdiction.
 4. The Department shall prepare a report of the proposed remedial objectives for the site that shall list the current and reasonably foreseeable uses of land and the current and reasonably foreseeable beneficial uses of waters of the state. These uses shall be identified based upon information provided during the public meeting and any other information received. The report shall state the remedial objectives for each listed use in the following terms:
 - a. Protecting against the loss or impairment of each listed use that is threatened to be lost or impaired as a result of a release of a hazardous substance;
 - b. Restoring, replacing or otherwise providing for each listed use to the extent that it has been or will be lost or impaired as a result of a release of a hazardous substance;
 - c. Time-frames when action is needed to protect against or provide for the impairment or loss of the use; and
 - d. The projected duration of the action needed to protect or provide for the use.
 5. The Department shall provide notice and accept and consider public comment on the proposed remedial objectives in the remedial objectives report and shall hold at least 1 additional public meeting if significant public interest exists or if significant issues or information have been brought to the attention of the Department which have not been considered previously.

6. The Department shall prepare a final remedial objectives report.
- J.** Following the community involvement activities regarding the draft remedial investigation report and the remedial objectives report, a final remedial investigation report shall be prepared containing the results of the site characterization and the final remedial objectives report. The final remedial investigation report shall be accompanied by responsiveness summaries regarding comments, issues and concerns raised in the community involvement process and, if the report is prepared by a person other than the Department, copies of the comments received. After completion of the final remedial investigation report, changes to the remedial objectives are subject to the requirements of subsection (I). The Department shall provide notice of the availability of the final remedial investigation report.
- K.** Any person, other than a person proposing to perform work under an agreement under A.R.S. § 49-287.03(C), may submit a request under R18-16-413 for the Department to approve a work plan or a report for all or any portion of a remedial investigation. The Department shall approve a work plan for a remedial investigation if the request shows that the work will comply with this Section, community involvement activities will comply with R18-16-404, and the work plan provides for modifications to address unknown or changed conditions or access problems. The Department shall approve a draft remedial investigation report if the work is in compliance with an approved work plan or, if no work plan was approved, the remedial investigation complies with this Section and the community involvement activities have been conducted under this Article.
- Historical Note**
- New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).
- R18-16-407. Feasibility Study**
- A.** The feasibility study is a process to identify a reference remedy and alternative remedies that appear to be capable of achieving remedial objectives and to evaluate them based on the comparison criteria to select a remedy that complies with A.R.S. § 49-282.06.
- B.** The Department or any person may perform all or any portion of a feasibility study, except that once the Department has issued a notice under A.R.S. § 49-287.03 for a site, a person may perform such work only under a written agreement with the Department. The feasibility study process shall include community involvement procedures in compliance with R18-16-404 and may be reported concurrently with the remedial investigation. A work plan shall be developed and implemented for all or any portion of a feasibility study for a site or a portion of a site, as follows:
1. The work plan shall demonstrate that the work performed will meet the requirements of this Section.
 2. A work plan may be modified as appropriate.
 3. Any person proposing to implement a work plan for all or a portion of a feasibility study shall, before implementing the work plan, notify the Department in writing of the name and address of the working party and a general description of the work being performed. This notice is for the Department's information only and receipt of the notice shall not constitute approval of the work plan. A person seeking approval of a work plan by the Department shall proceed under R18-16-413.
- C.** For remedies addressing only soils, an analysis of alternative remedies is not required. A feasibility study report shall be prepared that demonstrates:
1. That the proposed remedy addresses the contaminated soil in a manner that achieves compliance with A.R.S. § 49-152 and 18 A.A.C. 7, Article 2 and will achieve the remedial objectives for the use of the property.
 2. That the proposed remedy was selected based upon best engineering, geological, or hydrogeological judgment following engineering, geological, or hydrogeological standards of practice, considering the following information:
 - a. The remedial investigation;
 - b. Best available scientific information concerning available remedial methods and technologies;
 - c. A written analysis explaining how the remedy is consistent with A.R.S. § 49-282.06, including a brief explanation of the comparison criteria as applied to the remedy.
- D.** For remedies addressing only landfills that have not and will not impact groundwater or similar sites or portions of sites that have not and will not impact groundwater, and that contain material not subject to A.R.S. § 49-152 and 18 A.A.C. 7, Article 2, an analysis of alternative remedies is not required. A feasibility study report shall be prepared that demonstrates:
1. That the proposed remedy is designed to prevent human exposure to hazardous substances through the achievement of:
 - a. Soil remediation levels established under 18 A.A.C. 7, Article 2, or
 - b. Site-specific remediation levels based on a site-specific human health risk assessment, meeting a cumulative excess lifetime cancer risk between 1×10^{-4} and 1×10^{-6} and a hazard index no greater than 1. The excess lifetime cancer risk shall be selected by the Department based upon site specific factors including the presence of multiple contaminants, the existence of multiple pathways of exposure, the uncertainty of exposure, and the sensitivity of the exposed population. With prior approval of the Department, a person may achieve a site specific remediation level based on the use of institutional and engineering controls. The approval shall be based in part on the demonstration that the institutional and engineering controls will be maintained.
 2. That the proposed remedy was selected based upon best engineering, geological, or hydrogeological judgment following engineering, geological, or hydrogeological standards of practice, considering the following information:
 - a. The remedial investigation;
 - b. Best available scientific information concerning available remedial methods and technologies;
 - c. A written analysis explaining how the remedy is consistent with A.R.S. § 49-282.06, including a brief explanation of the comparison criteria as applied to the remedy.
 3. That the proposed remedy will achieve all of the remedial objectives.
- E.** For remedies other than provided in subsections (C) and (D), the feasibility study shall provide for the development of a reference remedy and at least two alternative remedies as follows:
1. The reference remedy and alternative remedies shall be capable of achieving all of the remedial objectives. The reference remedy and each alternative remedy shall consist of a remedial strategy under subsection (F) and all remedial measures to be employed. The combination of the remedial strategy and the remedial measures for each

- alternative remedy shall achieve the remedial objectives. The reference remedy and any alternative remedy also may include contingent remedial strategies or remedial measures to address reasonable uncertainties regarding the achievement of remedial objectives or uncertain timeframes in which remedial objectives will be achieved. The reference remedy and other alternative remedies shall be developed and described in the feasibility study report in sufficient detail to allow evaluation using the comparison criteria, but plans at construction level detail are not required. The units of measure set forth in Appendix A may be used, as applicable, for comparison of the relevant factors. Where appropriate, the reference remedy and an alternative remedy may incorporate different strategies for different aquifers or portions of aquifers.
2. The reference remedy shall be developed based upon best engineering, geological, or hydrogeological judgment following engineering, geological, or hydrogeological standards of practice, considering the following:
 - a. The information in the remedial investigation;
 - b. The best available scientific information concerning available remedial technologies; and
 - c. Preliminary analysis of the comparison criteria and the ability of the reference remedy to comply with A.R.S. § 49-282.06.
 3. At a minimum, at least two alternative remedies shall be developed for comparison with the reference remedy. At least one of the alternative remedies must employ a remedial strategy or combination of strategies that is more aggressive than the reference remedy, and at least one of the alternative remedies must employ a remedial strategy or combination of strategies that is less aggressive than the reference remedy. For the purposes of this Section, a more aggressive strategy is a strategy that requires fewer remedial measures to achieve remedial objectives, a strategy that achieves remedial objectives in a shorter period of time, or a strategy that is more certain in the long term and requires fewer contingencies. With the Department's approval, one of the minimum required alternative remedies may use the same strategy as the reference remedy but use different viable technologies or a more intensive use of the same technology utilized in the reference remedy.
- F.** The remedial strategies to be developed under subsection (E) are listed below. Source control shall be considered as an element of the reference remedy and all alternative remedies, if applicable, except for the monitoring and no action alternatives. A strategy may incorporate more than one remediation technology or methodology, such as a plume remediation strategy that consists of a combination of pumping and treating in portions of an aquifer and monitored natural attenuation for other portions of the aquifer. The remedial strategies are:
1. Plume remediation is a strategy to achieve water quality standards for contaminants of concern in waters of the state throughout the site.
 2. Physical containment is a strategy to contain contaminants within definite boundaries.
 3. Controlled migration is a strategy to control the direction or rate of migration but not necessarily to contain migration of contaminants.
 4. Source control is a strategy to eliminate or mitigate a continuing source of contamination.
 5. Monitoring is a strategy to observe and evaluate the contamination at the site through the collection of data.
 6. No action is a strategy that consists of no action at a site.
- G.** Remedial measures necessary for each alternative remedy developed under subsection (E) to achieve remedial objectives or to satisfy the requirements of A.R.S. § 49-282.06(B)(4)(b) shall be identified in consultation with water providers or known well owners whose water supplies are affected by the release or threatened release of a hazardous substance. In identifying the remedial measures, the needs of the well owners and the water providers and their customers, including the quantity and quality of water, water rights and other legal constraints on water supplies, reliability of water supplies and any operational implications shall be considered. Such remedial measures may include, but are not limited to, well replacement, well modification, water treatment, provision of replacement water supplies, and engineering controls. Where remedial measures are relied upon to achieve remedial objectives, such remedial measures shall remain in effect as long as required to ensure the continued achievement of those objectives. The Department may require financial mechanisms to provide for the cost of implementation of the remedial measures.
- H.** The Department or any person who conducts a feasibility study by agreement with the Department shall conduct a comparative evaluation of the reference remedy and the alternative remedies developed under subsection (E). For each alternative, the evaluation shall be reported in a feasibility study report and shall include:
1. A demonstration that the remedial alternative will achieve the remedial objectives.
 2. An evaluation of consistency with the water management plans of affected water providers and the general land use plans of local governments with land use jurisdiction.
 3. An evaluation of the comparison criteria, including:
 - a. An evaluation of the practicability of the alternative, including its feasibility, short and long-term effectiveness, and reliability, considering site-specific conditions, characteristics of the contamination resulting from the release, performance capabilities of available technologies, and institutional considerations.
 - b. An evaluation of risk, including the overall protectiveness of public health and aquatic and terrestrial biota under reasonably foreseeable use scenarios and end uses of water. This evaluation shall address:
 - i. Fate and transport of contaminants and concentrations and toxicity over the life of the remediation;
 - ii. Current and future land and resource use;
 - iii. Exposure pathways, duration of exposure, and changes in risk over the life of the remediation;
 - iv. Protection of public health and aquatic and terrestrial biota while implementing the remedial action and after the remedial action; and
 - v. Residual risk in the aquifer at the end of remediation.
 - c. An evaluation of the cost of the remedial alternative, including the expenses and losses including capital, operating, maintenance, and life cycle costs. The cost analysis may include the analysis of uncertainties that may impact the cost of a remedial alternative, analysis of projected water uses and costs associated with use-based treatment, other use impairment costs of water not remediated to water quality standards, and the cost of measures such as alternative water supply or treatment. Transactional costs necessary to implement the remedial alternative, including the transactional costs of establishing

- long-term financial mechanisms, such as trust funds, for funding of an alternative remedy, shall be included in the cost estimate.
- d. An evaluation of the benefit, or value, of the remediation. This analysis includes factors such as:
 - i. Lowered risk to human and aquatic and terrestrial biota;
 - ii. Reduced concentration and reduced volume of contaminated water;
 - iii. Decreased liability; acceptance by the public;
 - iv. Aesthetics; preservation of existing uses;
 - v. Enhancement of future uses; and
 - vi. Improvements to local economies.
 - e. A discussion of the comparison criteria, as evaluated in relation to each other.
- I.** Based upon the evaluation and comparison of the reference remedy and the other alternative remedies developed under subsection (E), a proposed remedy shall be developed and described in the feasibility study report. The proposed remedy may be the reference remedy, any of the other alternative remedies evaluated in the feasibility study, or a different combination of remedial strategies and remedial measures that were included in the alternative remedies evaluated in the feasibility study. The feasibility study report shall describe the reasons for selection of the proposed remedy, including all of the following:
1. How the proposed remedy will achieve the remedial objectives;
 2. How the comparison criteria were considered; and
 3. How the proposed remedy meets the requirements of A.R.S. § 49-282.06.
- J.** Any person, other than a person proposing to perform work under an agreement under A.R.S. § 49-287.03(C), may submit a request in compliance with R18-16-413 for the Department to approve a work plan or a report for all or any portion of a feasibility study. The Department shall approve a work plan for a feasibility study if the request shows that the work will comply with this Section, community involvement activities will be performed in compliance with R18-16-404, and the work plan provides for modifications to comply with this Section. The Department shall approve a feasibility study report if the feasibility study complies with this Section and community involvement activities have been conducted under this Article.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-408. Proposed Remedial Action Plan

- A.** Following the completion of the feasibility study report under R18-16-407(I), the Department or any person shall prepare a proposed remedial action plan, except once the Department has issued a notice under A.R.S. § 49-287.03, a person may prepare a proposed remedial action plan only under a written agreement with the Department.
- B.** The proposed remedial action plan shall include the following:
 1. A description of the proposed remedy.
 2. The information required in A.R.S. § 49-287.04(a).
 3. A description of how the proposed remedy will achieve each of the remedial objectives identified in the final remedial investigation report under R18-16-406(J) and how accomplishment of the remedial objectives is to be measured.
 4. A description of all recharge, reinjection, discharge, transportation and use of remediated water as defined in A.R.S. § 49-283.01.

- C.** Notice of the proposed remedial action plan shall be provided as follows:
 1. At a site where the A.R.S. § 49-287.03 notice has been provided, notice shall be provided by the Department in accordance with A.R.S. § 49-287.04(b) and the community involvement plan prepared under R18-16-404. If the Department intends to seek recovery of costs and conduct a cost allocation proceeding for the site, the notice shall also include the following:
 - a. The information required by A.R.S. § 49-287.04(c).
 - b. A statement of costs incurred at the site by the Department prior to the date of the notice and projected future costs for the site.
 - c. All necessary information regarding the opportunities to submit costs, object to costs, or respond to objections to costs under R18-16-409, including a schedule for such submittal, review, objection and response to objection. The time period for submittal of costs shall not be less than 90 calendar days.
 - d. If on the basis of new information or investigation notice is required to newly-identified parties, the notice sent under A.R.S. § 49-287.04 shall also include the information required by this Section.
 2. At a site where the A.R.S. § 49-287.03 notice has not been provided, the person who prepared the plan shall provide notice under R18-16-404. The notice shall include the information contained in A.R.S. § 49-287.04(C).
- D.** Any person, other than a person proposing to perform work under an agreement under A.R.S. § 49-287.03(c), may submit a proposed remedial action plan to the Department for approval under R18-16-413. The plan may be accompanied by a request for a determination of whether cost recovery by the Department may be appropriate under A.R.S. § 49-287.02. If the Department determines that cost recovery by the Department is not appropriate, notice shall be provided under subsection (C)(2).

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-409. Remedial Action Costs Credit

- A.** Any person seeking credit against potential liability at a site may submit to the Department, within the time period established in the notice given under R18-16-408(D), evidence of costs it has incurred or will incur for remedial actions undertaken at the site. The evidence of costs submitted shall include:
 1. Two copies of an itemized statement of costs, including a certification by the person submitting the statement that the statement is true, accurate and complete;
 2. Sufficient supporting documentation to establish that the costs are consistent with A.R.S. § 49-282.06 and this Article; and
 3. An agreement in which the person submitting the evidence of costs agrees to reimburse the Department for the Department's costs under subsection (F).
- B.** Any itemized statements of costs submitted shall be available for review at both the repository for the site and the Department on or after the expiration of the time period established in subsection (A).
- C.** Within a reasonable period of time set by the Department but not less than 30 calendar days, any person may object in writing to costs submitted by the Department or any other person under this Section. Written objections shall identify the specific costs to which the party objects and shall state specific reasons for the objection. Two copies of the objections shall be

submitted to the Department and one copy of the objections shall be submitted to the person whose costs are the subject of objection.

- D. The Department and each person who submits an itemized statement of costs shall have an opportunity to respond to any objections within the time period specified in the notice given under R18-16-408 subsection (C) or (D). Two copies of the response shall be submitted to the Department and one copy of the response shall be submitted to the person objecting to the costs.
- E. The Department shall evaluate the statements of costs submitted, any objections to such statements, or other information available to the Department and shall approve those costs determined by the Department to be recoverable and in substantial compliance with A.R.S. § 49-282.06. The Department shall prepare a list of these approved costs for inclusion as part of the total estimated costs of the remedy in the record of decision under R18-16-410.
- F. Any person who requests the Department's approval of costs under this Section shall reimburse the Department for the total reasonable cost to the Department for the review unless the Department waives all or a part of the reimbursement. The total reasonable costs include direct and indirect costs to the Department in conducting these activities. Costs that are reimbursed to the Department by a person that obtains the Department's approval of costs under this Section constitute remedial action costs that may be recovered from responsible parties.
- G. The Department shall give credit not exceeding the amount of a person's liability for the costs approved under this Section. Nothing in this Article shall create a right of reimbursement from the fund for any costs incurred or to be incurred at a site.
- H. If the remedial action for which approval of costs is sought under this Section has not been previously approved by the Department, the submittal under subsection (A) shall be accompanied by a request for approval of the remedial action under R18-16-413.
- I. This Section is the exclusive process for the Department to approve the costs of a remedial action, and no other Department approval of a remedial action shall be considered as an approval of the costs of that remedial action.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-410. Record of Decision

- A. After the conclusion of all required public comment periods prescribed by A.R.S. § 49-287.04, the Department shall prepare a record of decision regarding the proposed remedial action plan. However, any person may prepare a proposed record of decision for consideration by the Department under R18-16-413 by submitting copies of the final remedial investigation report, the final feasibility study report, the proposed remedial action plan, all public comments and a proposed record of decision.
- B. The record of decision shall contain the following:
 - 1. A description of the remedy, including a description of any differences from the proposed remedial action plan.
 - 2. A comprehensive responsiveness summary regarding all comments received on the proposed remedial action plan.
 - 3. A description of how the process for selecting the remedy complied with A.R.S. Title 49, Chapter 2, Article 5 and this Article, including all public comment and community involvement requirements.
 - 4. A demonstration that the remedy selected will achieve the remedial objectives selected in R18-16-406 and will remain in place as long as necessary to ensure continued achievement of those objectives.
- 5. A demonstration that the remedy selected meets the requirements of A.R.S. § 49-282.06 and this Article.
- 6. A time for commencing implementation of the remedy and a specific time period for completing the remedy.
- 7. The total estimated cost of the remedy.
- 8. A time-frame for review of the remedy to determine the effectiveness of the remedy in achieving the remedial objectives.
- C. The total estimated cost of the remedy shall include:
 - 1. Remedial action costs other than nonrecoverable costs incurred by the Department, including credit given in a settlement.
 - 2. Remedial action costs other than nonrecoverable costs incurred by the state.
 - 3. Remedial action costs other than nonrecoverable costs that have been approved by the Department under R18-16-409.
 - 4. Projected future remedial action costs other than nonrecoverable costs.
- D. The record of decision shall be issued only by the Department. Notice of the record of decision shall be provided under A.R.S. § 49-287.04(G) and R18-16-404.
- E. A record of decision may be amended in accordance with A.R.S. § 49-289(B), (C), and (D).

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-411. Design, Implementation, Operation and Maintenance of the Early Response Action or Remedy.

- A. Any person who intends to implement all or any portion of a remedy or an early response action shall obtain the Department's approval when required in either a record of decision or under subsection (C) or (E). The design and implementation of the remedy shall conform with the remedial action plan as adopted in the record of decision.
- B. If the remedy or an early response action includes well replacement or provision of an alternative water supply, the Department or any person developing the design shall consult with the affected well owner or water provider. For a well owner, the design of that portion of the remedy or early response action shall meet the well owner's water quality and quantity needs in accordance with A.R.S. § 49-282.06(B)(4)(b) and R18-16-407(G). For a water provider, the design of that portion of the remedy or early response action shall:
 - 1. Comply with laws and regulations governing the water provider's obligations to its customers;
 - 2. Be implementable without significant alteration of the water provider's existing system; and
 - 3. Meet the water provider's water quality and quantity needs in accordance with A.R.S. § 49-282.06(B)(4)(b) and R18-16-407(G).
- C. The Department's approval of the design of any water treatment facilities is required prior to the construction as part of the remedy or an early response action. The design shall be based on an evaluation of potential treatment system failure that could affect public health and shall incorporate safeguards including any site-specific engineering and operation controls necessary to assure protection of public health against such failure. The safeguards shall incorporate, at a minimum, if applicable to the technology:
 - 1. Monitors and alarms on all key treatment system components, e.g. power, air flow.

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2. Automatic termination of discharge from the treatment system when monitors detect abnormal operation of key treatment system components.
- D.** If operation and maintenance of a remedy following completion of construction are necessary to ensure the continued achievement of the remedial objectives, an operation and maintenance plan shall be prepared and implemented.
- E.** The Department's approval of an operation and maintenance plan shall be required for each WQARF site where the remedy or an early response action involves treatment of water to remove contaminants of concern at the site. The community advisory board, if one has been established for the site, shall be provided with the opportunity to comment on the operations and maintenance plan. Notice and community involvement shall be in accordance with R18-16-404. The operation and maintenance plan shall include:
1. Certification by the Department that the elements of the operations and maintenance plan adequately protect public health against treatment system failure.
 2. A schedule and plan for water quality monitoring.
 3. A requirement that affected water providers receive a copy of the completed application and a copy of the final permit for any National Pollutant Discharge Elimination System permit for the site.
 4. A process for the treatment system operator to promptly notify potentially affected water providers of a failure of a key treatment system component that could affect the quality of a discharge of treated water.
 5. For a discharge to a water of the United States, operational, maintenance and management practices to assure achievement of water quality discharge standards established in 18 A.A.C. 11 prior to the point of discharge for those volatile organic compounds which are contaminants of concern at the site.
- F.** Any person who intends to implement any portion of a remedy may request the Department to approve the design or the operation and maintenance plan. A request for approval of a remedial design shall be submitted in accordance with R18-16-413. The Department shall approve any remedial design that is in compliance with this Section and the remedial action plan as adopted in the record of decision.
- G.** The well owner or water provider whose water use is being addressed may, in its sole discretion, elect to construct, operate, or construct and operate the water treatment, well replacement or alternative water supply component of the remedy or early response action which is designed to address its use. This election shall not alter the responsibility of the Department or any person under A.R.S. Title 49, Chapter 2, Article 5 to fund all or a portion of the remedy or early response action. The well owner or water provider shall enter into a written agreement with the appropriate person that will govern the terms of the construction, operation or construction and operation of the water treatment, well replacement or alternative water supply component of the remedy.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-412. Innovative Technologies

- A.** The Department may approve the use of an innovative technology for a site if the Department determines that the technology has been demonstrated to be reasonably likely to achieve its objectives and meets the other criteria set forth in this Article. Such a demonstration may be made through pilot or bench testing studies, peer reviewed studies, or other appropriate means of demonstration. If an innovative technology is

approved as part of a remedy, the remedial action plan shall provide for a contingency in the event that the technology fails to achieve its objectives.

- B.** The Department may use monies from the WQARF fund to contract for review of an innovative technology.
- C.** The Department may provide incentives for the selection of the innovative technology that may include the following:
1. The Department may agree not to assess penalties, issue a notice of violation, pursue an order, or take other enforcement action authorized by law for a delay that is caused by the use of the innovative technology provided that the party conducting the remedial action remains in compliance with the plans for implementing the innovative technology and implements a contingent remedial action in a timely manner.
 2. The Department may use monies from the Water Quality Assurance Revolving Fund to finance some or all of the use of the innovative technology.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-413. Approval of Remedial Actions Under A.R.S. § 49-285(B)

- A.** Any person who seeks approval of a remedial action at a site or a portion of a site on the registry under A.R.S. § 49-285(B) shall submit a written request to the Department that contains all of the following:
1. The name and address of the person submitting the request and the nature of the relationship of the person to the site, if any.
 2. The location and boundaries of the site or portion of the site addressed by the remedial action
 3. The nature, degree, and extent of the hazardous substance contamination, if known.
 4. A description of any remedial action performed before the request is submitted.
 5. A work plan for any remedial action to be performed after the request is submitted.
 6. A demonstration of how the remedial action complied, or will comply, with this Article.
 7. A proposal for public notice and an opportunity for public comment on the application for approval under this Section. The proposal shall include a list of the names and addresses of persons whom the applicant believes to be responsible parties under A.R.S. § 49-283 and a summary of the basis for that belief.
 8. An agreement in which the person requesting the approval agrees:
 - a. To grant access to the Department as necessary to evaluate the request for approval.
 - b. To reimburse the Department for the Department's costs under subsection (G).
 9. An original seal imprint and signature of a registered professional if required by the Arizona Board of Technical Registrations under A.R.S. Title 32, Chapter 1 and the rules made under that Chapter.
- B.** A request for approval under this Section may be combined with a no further action request under R18-16-414.
- C.** The Department may request additional information necessary to evaluate or to take action on the request for approval.
- D.** The Department shall provide notice of the request for approval and of the opportunity to comment on the request for approval.
- E.** The Department shall, after considering public comments, approve a remedial action under this Section if the Department

determines that the remedial action is in substantial compliance with this Article. The Department's approval shall be in writing and shall state the basis for the approval.

- F. The Department may deny approval of a remedial action under this Section if the remedial action does not meet the requirements of this Article, may request additional information, may request modification of the remedial action, or may condition approval of the remedial action on modifications necessary to achieve substantial compliance with this Article.
- G. The person making the request for approval shall reimburse the Department for the total reasonable cost of the Department's review and action under this Section, including costs of notices, unless the Department waives all or part of the reimbursement. The total reasonable costs include direct and indirect costs to the Department in conducting these activities.
- H. Approval of a remedial action under this Section does not constitute approval of the costs of conducting the remedial action.
- I. A remedial action approved by the Department under this Section shall be deemed to be in substantial compliance with this Article. The Department's approval under this Section is not required to preserve any right to recover remedial action costs under A.R.S. § 49-285.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-414. Determination of No Further Action

- A. The Department shall determine that no further action is necessary at a site or a portion of a site if, based upon the information submitted under A.R.S. § 49-287.01, the Department finds that the site or portion of the site does not present a significant risk to the public health, welfare, or the environment. The determination may be made by the Department based upon any of the following:
 - 1. A finding by the Department that the requirements of A.R.S. § 49-152 and 18 A.A.C. 7, Article 2 have been met shall be sufficient to support a determination that no further action is necessary for soils at the site or a portion of the site.
 - 2. A finding by the Department that no hazardous substances at the site or a portion of the site have impacted or will impact groundwater shall be sufficient to support a determination that the site or a portion of the site does not present a significant risk to groundwater.
 - 3. The determination of no further action for waters of the state at a site or a portion of the site may be made by the Department based upon any of the following:
 - a. A finding that the site or portion of a site has been remediated under a Title 49 program other than A.R.S. Title 49, Chapter 2, Article 5.
 - b. A finding that the release of a hazardous substance does not and will not exceed water quality standards in Title 18, Chapter 11 or if there is no water quality standard, a risk level approved by the Department to protect public health, welfare, and the environment.
 - c. A finding that there is no current or reasonably foreseeable use of water that would be impaired by the release, as determined by information collected under R18-16-406.
- B. A determination of no further action for a site or a portion of a site shall be published in the registry.
- C. If the remedial action for which a no further action determination is sought under this Section has not been previously approved by the Department, the submittal under subsection (A) may be accompanied by a request for approval of the remedial action under R18-16-413.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-415. Soil Remediation

- A. Soil remediation may be conducted as part of a remedy selected under R18-16-410 or may be conducted by any person at a site or portion of a site on the registry prior to the selection of a remedy if the following requirements are met:
 - 1. The soil remediation is performed in accordance with A.R.S. § 49-152 and 18 A.A.C. 7, Article 2.
 - 2. Community involvement activities are conducted in accordance with R18-16-404.
 - 3. A notice of remediation under R18-7-209 is prepared and submitted to the Department before the remediation is conducted. The notice of remediation shall be accompanied by a written report including the information described in R18-16-406(C)(1), (2), and (3). If the Department has issued a notice under A.R.S. § 49-287.03 for the site or portion of a site, the notice of remediation shall be submitted to the Department 15 calendar days before commencing the remediation or, if the remediation has commenced prior to the Department's notice, within 15 calendar days after the Department's notice is given.
- B. Submission of the information required under subsection (A) to the Department shall not be considered to be an approval of the soil remediation. Approval of a work plan for soil remediation work to be performed or approval for remediation performed under this Section may be obtained by submitting a request under R18-16-413. The Department shall approve the request if the request demonstrates that the soil remediation was conducted in accordance with this Section.
- C. The Department may request any additional information regarding the soil remediation in accordance with A.R.S. § 49-288.
- D. The Department may include information regarding soil remediation conducted under this Section in a record of decision for a remedy for the site or portion of the site under R18-16-410.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-416. Satisfaction of Settlement Agreement and Achievement of Remedial Objectives

- A. If the Department enters into a settlement under A.R.S. § 49-292 with a person who agrees to perform all or any portion of the remedy, the settlement agreement shall include criteria to determine when the work required by the settlement agreement is completed. A party to the settlement agreement who has performed all or a portion of a remedy may request a determination that the required work has been completed. The request shall describe how the requirements of the settlement agreement have been satisfied. The Department may require additional information to consider the request.
- B. Any person may request that the Department determine whether each of the remedial objectives for the site have been satisfied and will continue to be satisfied. The request shall demonstrate how the remedial objectives have been satisfied in accordance with the remedy and will continue to be satisfied, including information regarding any financial mechanisms in place to ensure the continued satisfaction of the remedial objectives. The Department may require additional information to consider the request. The Department shall issue notice of the request and provide an opportunity for public comment. Based upon the request and the public comments, the Department shall issue a written determination to approve or deny the request. If the request is approved, the

Department of Environmental Quality - Water Quality Assurance Revolving Fund Program

written determination shall identify all actions that must continue to be taken to continue to satisfy the remedial objectives for the site.

- C. Following an approval under subsection (B), the Department shall not undertake or require additional remedial action under this Article for the site or portion of the site other than the actions stated in the determination under subsection (B). However, the Department may reopen an investigation and take or require additional remedial action for any of the following reasons:
 1. On discovery of new information which would result in the potential denial of a request under subsection (B).
 2. That information submitted to the Department under subsection (B) was inaccurate, misleading, or incomplete.
 3. The reopening of an investigation or the taking of a remedial action is necessary to respond to a release or the threat of a release of a hazardous substance that may present an imminent and substantial danger to the public health, welfare, or the environment.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

Appendix A. Standard Measurements for Comparison of Remedial Alternatives

Plume Characterization	Typical Units
Length	feet
Width	feet
Depth (thickness)	feet
Areal extent	acres
Volume	acre-feet
Plume leading edge advancement rate	feet/year
Plume volume expansion rate	acre-feet/year
Contaminant and Source Characterization	
Probable contributing sources	(number)
Number of contaminants	(number)
Maximum concentration of each contaminant	µg/l
Contaminant concentration vs. MCL	ratio
Contaminant mass in plume	pounds
Weighted average contaminant concentration in plume	µg/l
If present, estimated mass of LNAPL	pounds
If present, estimated mass of DNAPL	pounds
Sorbed contaminant mass in plume	pounds
Rate of downgradient contaminant mass transport	pounds/year
Remedial Efficiency	
Contaminant mass naturally degraded	pounds/year

Contaminant mass removed through remediation	pounds/year
Groundwater removed through remediation	acre-feet/year
Groundwater added (injected) by remediation	acre-feet/year
Net groundwater removed/added	acre-feet/year
Groundwater removed per year vs. plume volume expansion per year	percentage
Contaminant mass removed per year vs. pre-remedial contaminant mass transported downgradient per year	percentage
Time per first log cycle decline in average concentration	years per log cycle decline
Cost Efficiency	
Contaminant mass removal	\$ per pound
Groundwater removal	\$ per acre-foot
Cost per first cycle decline in average concentration	\$ per log cycle decline

Historical Note

New Appendix made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

ARTICLE 5. INTERIM REMEDIAL ACTIONS

R18-16-501. Definitions

In addition to the definitions set forth in A.R.S. § 49-281, the following definitions shall apply in this Article, unless the context otherwise requires:

“Abandoned well” means a well that has been permanently sealed or closed with cement or a cement-bentonite mixture that cannot be re-entered except by redrilling the wellbore, or a well that has been formally abandoned under R12-15-816.

“Currently supplies water” means a well that supplies water at the time the request for interim remedial action is submitted to the Department. Wells that supply water as needed to meet demand, including wells that serve water on an infrequent basis, are considered to currently supply water under this definition.

“Department” means the Arizona Department of Environmental Quality.

“Interim remedial action” means an action taken by the Department or by a well owner or operator under A.R.S. § 49-282.03.

“Part of a public water system” means a well that is owned or operated by an operator of a public water system, but has not been abandoned. A well that has been capped, air gapped or closed due to contamination, but not abandoned, shall be considered part of a public water system.

“Public water system” has the same meaning as defined in 42 U.S.C. § 300(f).

“Registry sites” means sites that have been investigated and placed on the Water Quality Assurance Revolving Fund registry of sites.

“Remedy” has the same meaning as defined in A.R.S. § 49-281(13).

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-502. Eligibility

- A.** A well is eligible for consideration for funding or performance of interim remedial action if a remedy has not been selected and the well meets the following criteria:
1. The well currently supplies water for municipal, domestic, irrigation, or agricultural use 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; and
 3. The well is not an abandoned well.
- B.** Only costs directly related to an interim remedial action approved by the Department are eligible for funding from a grant from the Water Quality Assurance Revolving Fund. Costs incurred by any person after the date of submittal of a complete request which meets the requirements of R18-16-503 are eligible for funding if the request and proposed interim remedial action are subsequently approved by the Department. Costs incurred by any person prior to the submittal of a request under R18-16-503 are not reimbursable by the Department.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-503. Request for Interim Remedial Action

- A.** Any person may request that the Department perform or provide a grant for an interim remedial action. The request shall be in writing and shall include a statement describing the eligibility of the well under R18-16-502 and a statement describing the reasons why interim remedial action is appropriate considering the factors in R18-16-504(A)(1) through (4). The request shall also include all of the following information that is in the possession of or is readily available to the person submitting the request:
1. A description of the well, including its location, Arizona Department of Water Resources registration number, construction details, and water production history.
 2. An explanation of any water rights associated with the well and uses of the well, including any quality and quantity requirements associated with the end use of the water.
 3. Any available water quality and water level data from the requesting party's wells that are the subject of the request.
 4. Information that demonstrates that the well is contaminated or threatened by contamination from a release of hazardous substance from a registry site.
 5. A proposal for interim remedial action, including a description of the proposed action, a schedule for implementation, and an estimate of the cost of the action.
 6. A description of reasonable alternate interim remedial actions, costs associated with each alternative, and documentation supporting a finding that the proposed interim remedial action is the minimum necessary to address the loss or reduction of available water until a remedy is selected.
 7. A description of any impacts the loss of the well would have on any assured water supply designation or any adequacy statement under 12 A.A.C. 7, Article 15, or on the

ability of the water system to meet its legal obligations or its customer or user needs.

8. A description of the person's interest in the well and any limitations on the owner or operator's legal rights to use the well.
- B.** If the person requesting interim remedial action intends to perform all or part of the remedial action work, the Department may require submittal of a detailed work plan for the proposed action.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-504. Review and Approval of Requests for Interim Remedial Action

- A.** The Department shall approve or deny requests for interim remedial action or request modifications to the proposal based on the following:
1. Whether immediate action may prevent contamination of the well.
 2. Whether immediate action is necessary to provide for supply of water because contamination of the well is imminent.
 3. Whether the well is currently contaminated, and there are water supply needs including needs related to drought or emergency supply that would be addressed by the well but for the contamination.
 4. Whether the well is critical to the ability to satisfy the water supply needs of the well's users, including drought or emergency supply needs.
 5. Whether the proposed action or alternative actions are the minimum necessary to address the loss or reduction of water.
 6. Whether a proposed action is likely to be inconsistent with the final remedy.
 7. Any information that might reasonably suggest that the party requesting the interim remedial action is responsible for the release of hazardous substances contaminating the well.
 8. Funding considerations of the Department.
- B.** The Department may gather additional information before making a decision under subsection (A).
- C.** The Department shall condition approval of the request for interim remedial action upon execution by the requesting party of the following:
1. A reimbursement agreement under R18-16-505(C).
 2. An agreement, as appropriate, to provide the Department access to the property at reasonable times for the purpose of conducting or overseeing the interim remedial action or to gather information necessary to evaluate the interim remedial action.
- D.** If any person other than the Department performs the work, the Department shall require that person to submit contracts, invoices or other evidence that the work was performed.
- E.** The Department may initiate an early response action in lieu of granting the request for interim remedial action if the requested remedial action meets the requirements of R18-16-405.
- F.** An interim remedial action shall be the minimum action necessary to address the loss or reduction of water available to well users during the period before selection and implementation of a final remedy at a site. The Department may approve an action that provides a permanent solution to the water supply problem if a temporary solution is unavailable, more expensive, or incapable of fully addressing the problem during the period before a final remedy is implemented for the site.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-505. Reimbursement

- A. If, in the record of decision, the Department determines that the interim remedial action taken was not necessary, based on criteria established in A.R.S. § 49-282.06, the Department shall require the person requesting the interim remedial action to reimburse all costs incurred in taking that action.
- B. A person requesting the interim remedial action who is later determined by the Department to be a responsible party contributing to the contamination of the affected well shall reimburse the Department for all costs incurred by the Department in conducting or funding the interim remedial action.

- C. The Department shall provide the person requesting the interim remedial action with a reimbursement agreement that clearly states the conditions under which the person requesting the interim remedial action must reimburse the Water Quality Assurance Revolving Fund. The person requesting the interim remedial action shall execute the reimbursement agreement as a prerequisite to approval of the interim remedial action. The Department may require that the person requesting the interim remedial action provide financial assurance for the obligation to reimburse the Water Quality Assurance Revolving Fund.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

Authorizing Statutes

General Statutory Authority:

A.R.S. § 41-1003: Each agency shall make rules of practice setting forth the nature and requirements of all formal procedures available to the public.

A.R.S. § 49-104(B)(4): The department, through the director, shall: Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.

Specific Statutory Authority:

A.R.S. § 49-282.03(D): The director shall adopt rules governing when interim remedial action may be taken pursuant to subsection A of this section.

A.R.S. § 49-282.06(B):

The director shall adopt rules necessary to implement this article. The director may adopt CERCLA rules, guidelines or procedures by reference to the extent consistent with this article. Rules adopted pursuant to this subsection shall include rules for:

1. The use of monies from the fund, including establishing priorities for the use of the monies from the fund.
2. The scoring and rescoring of sites or portions of sites.
3. The criteria for a finding of no further action for sites pursuant to section 49-287.01.
4. The selection of remedial actions including the establishment of the level and extent of cleanup at a site or a portion of a site. The rules shall provide for the selection of a remedial action by comparison of alternative remedial actions, which may include no action, monitoring, source control, controlled migration, physical containment, plume remediation and the consideration of the criteria in subsection C of this section. The rules also shall provide that the selected remedial action meet the requirements of subsection A of this section and the following:
 - (a) For remediation of soil, the selected remedial action shall be consistent with the soil remediation standards adopted pursuant to section 49-152.
 - (b) For remediation of waters of the state, the selected remedial action shall address, at a minimum, any well that at the time of selection of the remedial action either supplies water for municipal, domestic, industrial, irrigation or agricultural uses or is part of a public water system if the well would now or in the reasonably foreseeable future produce water that would not be fit for its current or reasonably foreseeable end uses without treatment due to the release of hazardous substances. The specific measures to address any such well shall not reduce the supply of water available to the owner of the well.

Laws 1997, Ch. 287, § 56(B):

Sec. 56. Interim implementation of WQARF

A. Arizona administrative code title 18, chapter 7, article 1 is superseded by any rules adopted pursuant to subsection B.

B. The director of environmental quality shall adopt interim rules to implement the water quality assurance revolving fund program pursuant to title 49, chapter 2, article 5, Arizona Revised Statutes. The director of water resources shall adopt interim rules to implement the programs established pursuant to section 45-605, Arizona Revised Statutes. Interim rules are exempt from title 41, chapter 6, article 3, Arizona Revised Statutes, except that the department shall submit the rules for publication and the secretary of state shall publish the rules in the Arizona administrative register. The directors shall provide sixty days for interested persons to comment on the proposed rules after publication.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 9, Article 9



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 2, 2022

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: July 1, 2022

SUBJECT: DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 9, Article 9

Summary

This Five-Year Review Report (5YRR) from the Department of Environmental Quality (Department) relates to rules in Title 18, Chapter 9, Article 9 regarding the Arizona Pollutant Discharge Elimination System.

In the previous 5YRR, which the Council approved in 2017, the Department proposed to make several changes to the rules by December 2018. The Department indicates it did not complete the proposed changes due to resource constraints, federal rule changes, and uncertainty due to federal court challenges. The Department indicates it plans to submit an expedited rulemaking to the Council by September 2022 and a rulemaking to the Council by February 2023.

Proposed Action

The Department proposes to amend rules that are no longer relevant, incorporate and update rules to conform with federal rule changes, modernize public notice requirements for hearing to allow electronic publication for minor facilities, update citation references, and change the language of rules to be more clear. The Department proposes to first update the rules by incorporating by reference updated Federal standards and plans to submit an expedited

rulemaking to the Council by September 2022. The Department proposes to address all other issues in a separate rulemaking they intend to submit to the Council by February 2023.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes, the Department cites both general and specific statutory authority.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Department described probable economic impacts in qualitative and quantitative terms in the economic impact statements prepared in 2001, when the rules were promulgated, and again in 2003, when the Concentrated Animal Feed Operation (CAFO) rules were added. The Department states that in 2002, the Department made minor amendments to three rules based on EPA's request to conform to the Clean Water Act, but the 2002 amendments did not change the economic impact. The Department believes that the qualitative assessments of the economic impacts to the rules in 2001 and 2003 were accurate and any costs have been minor. Overall, the Department believes that the impact of the Article 9 rules on the state's economy, small business and consumers has not changed since the effective date. Stakeholders include the Department and entities engaged in CAFO and subject to regulation by the Environmental Protection Agency (EPA) and the Arizona Department of Environmental Quality (ADEQ).

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The Department states that the CAFO program is federally-mandated and required by A.R.S. § 49-255.01(B). The Department believes that this Article imposes the least burden and costs to regulated persons, including paperwork and other compliance costs, while still achieving the underlying regulatory and statutory objective.

4. Has the agency received any written criticisms of the rules over the last five years?

Yes, the Department indicates they received numerous written criticisms to the rules which are outlined in more detail in Section 7 of the report, as well as the Department's responses. Council staff believes the Department has adequately responded to the written criticisms.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

Yes, the Department indicates the rules are generally clear, concise and understandable with the exception of three (3) rules. The Department indicates the rules would become clear, concise and understandable by updating incorporation by references and rewriting the language in R18-9-C901.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

Yes, the Department indicates the rules are generally consistent with other rules and statutes with the exception of four (4) rules that need to be updated with correct citations and references.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

Yes, the Department indicates the rules are generally effective in achieving their objectives, with the exception of four (4) rules. The Department indicates these four (4) rules need to be updated to incorporate federal rule changes and to incorporate modern public notice requirements to make them effective.

8. Has the agency analyzed the current enforcement status of the rules?

Yes, the Department indicates the rules are enforced as written.

9. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

No, the Department indicates that the rules are not more stringent than corresponding federal laws.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable. The Department indicates the rules were adopted before July 29, 2010.

11. Conclusion

This 5YRR relates to twenty-five (25) rules in Title 18, Chapter 9, Article 9 regarding the Arizona Pollutant Discharge Elimination System. The Department indicates the rules are generally clear, concise, understandable, consistent, effective, and enforced as written. The Department intends to submit an expedited rulemaking to the Council by September 2022 and a rulemaking by February 2023.

Council staff finds the Department submitted a 5YRR that meets the requirements of A.R.S. 41-1056. Council staff recommends approval of this report.



Douglas A. Ducey
Governor

ARIZONA DEPARTMENT
OF
ENVIRONMENTAL QUALITY



Misael Cabrera
Director

April 26, 2022

Nicole Sornsins, Chairperson
Governor's Regulatory Review Council
100 N. 15th Avenue, #305
Phoenix, AZ 85007

Re: Submittal of Five-Year Rule Review Report for A.A.C. Title 18, Chapter 9, Article 9.

Dear Chair Sornsins:

I am pleased to submit to you, pursuant to A.R.S. § 41-1056 and A.A.C. R1-6-301, our agency's 5-Year Review Report for Title 18, Chapter 9, Article 9 – Arizona Pollutant Discharge Elimination System.

Pursuant to A.R.S. § 41-1056(A), I certify that ADEQ is in compliance with A.R.S. § 41-1091 requirements for filing of notices of substantive policy statements and annual publication of a substantive policy statement directory.

Please contact Jon Rezabek in the Water Quality Division at 602-771-8219, or rezabek.jon@azdeq.gov, if you have any questions.

Sincerely,

Misael Cabrera
Director
Arizona Department of Environmental Quality

Enclosure

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**Arizona Department of Environmental Quality
 Five-Year-Review Report
 Title 18. Environmental Quality
 Chapter 9. Department of Environmental Quality -
 Water Pollution Control
 Article 9. Arizona Pollutant Discharge Elimination System
 April 26, 2022**

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 49-203(A)(2),

Specific Statutory Authority: A.R.S. §§ 49-255.01(B) and (C) and 49-255.02

2. The objective of each rule:

Rule	Objective
R18-9-A901	The definition section defines important terms used in 18 A.A.C. Chapter 9, Article 9 so that the rules are understandable to the general public, such as acronyms and words with uncommon meanings.
R18-9-A902	This rule establishes how Arizona Department of Environmental Quality (ADEQ) will provide notice to National Pollutant Discharge Elimination System (NPDES) permit holders of the transfer of NPDES coverage to the Arizona Pollutant Discharge Elimination System (AZPDES) program and defines discharge categories which may require a permit and those which are excluded. The rule also explains the Director's authority to designate a municipal separate storm sewer system (MS4) to obtain an AZPDES stormwater permit.
R18-9-A903	This rule establishes the conditions under which ADEQ will not issue a permit.
R18-9-A904	This rule advises AZPDES permittees of the proprietary and legal limitations of the discharge permit.
R18-9-A905	This rule incorporates by reference federal regulations, specifically 40 CFR sections and appendices, containing NPDES program requirements and pollutant test procedures.
R18-9-A906	This rule explains the pretreatment process, provides a list of appropriate treatment technologies, and defines the scope of the pretreatment application.
R18-9-A907	This rule establishes the public notice process when ADEQ prepares a draft individual permit, denies an individual permit, or considers issuing a general permit pursuant to R18-9-C901.
R18-9-A908	This rule explains how the U.S. Environmental Protection Agency (EPA) or any interested person may comment in writing during the 30 days following public notice for an individual or general permit application. The rule provides requirements on how ADEQ will respond to the comments and establishes criteria for the Director on how to respond to the public participation and public hearing processes.
R18-9-A909	This rule establishes the requirements for any person wanting to petition the Director for a general permit, an individual permit covering a discharge into an MS4, or an individual permit when a general permit is authorized.
R18-9-B901	This rule explains the individual permit application process and provides for the Director's authority to consolidate permit applications or grant a waiver.
R18-9-B902	This rule provides an owner or operator the opportunity to seek revocation of an individual permit where the source is excluded from the general permit solely because it already had an individual permit.
R18-9-B903	This rule provides for the Director's issuance of an individual permit and establishes a process in the case of a denied individual permit application, which includes written notice to the permittee, appellate rights, public comment, and a specified time period.

R18-9-B904	This rule explains that the individual permit is effective for a fixed term of not more than five years and that it may be reissued or continued pending receipt of a completed application filed within 180 days of the permit expiration date.
R18-9-B905	This rule establishes the conditions under which an individual permit may be transferred.
R18-9-B906	This rule establishes the parameters under which an individual permit may be modified, revoked and reissued, or terminated. In instances when a permit is modified or revoked and reissued, a permittee must comply with the existing permit until a new permit is issued.
R18-9-B907	This rule describes the process of applying for an individual permit variance.
R18-9-C901	This rule establishes a procedure to issue general permits for one or multiple discharge categories.
R18-9-C902	This rule explains when a general permit holder may be required or choose to seek an individual permit and to describe that process.
R18-9-C903	This rule explains that the general permit is effective for no more than five years and that it is administratively continued until reissued, or replaced.
R18-9-C904	This rule establishes the procedure for handling a change of facility ownership.
R18-9-C905	This rule explains that the Director may modify or revoke a general permit for reasons listed in 40 CFR 122.62(a) and (b) and shall follow procedures specified in R18-9-A907(B) and R18-9-908 to do so.
R18-9-D901	This rule defines a Concentrated Animal Feed Operation (CAFO) designation, notifies the owner of two or more adjoining animal feeding operations contributing a pollutant to waters of the United States that they are subject to the discharge permit requirements of this Article, and establishes that a CAFO that significantly contributes a pollutant to waters of the United States is required to comply with this Article.
R18-9-D903	This rule provides an owner or operator of a CAFO with a procedure for requesting the CAFO's removal from the requirements of this Article when the CAFO has not had a pollutant discharge within the last five years from either the production area or land application area.
R18-9-D904	This rule specifies that a CAFO owner must obtain and maintain permit coverage and to establish deadlines for applying for permit coverage.
R18-9-D905	This rule establishes the closure requirements for a CAFO, including an operation cessation plan and reporting date.

3. **Are the rules effective in achieving their objectives?** Yes X No

The rules are effective in achieving their objectives. A few minor changes are recommended to the rules as noted below.

Rule	Explanation
R18-9-A902	Subsection (A) describes the transition process from NPDES to the AZPDES program and is no longer relevant as it already occurred and could be deleted. Subsection (F) may also be repealed because this phase-in provision is specific to the timeframe within which ADEQ received permitting authority and only applies to the initial permitting of small MS4s.
R18-9-A906	The existing pretreatment rule does not incorporate federal rule changes that allow for the streamlining of Significant Industrial Users discharging to municipalities' waste water systems.
R18-9-A907	While this rule is effective, ADEQ would like the flexibility to modernize public notice requirements for permits to allow electronic publication.
R18-9-A908	While this rule is effective, ADEQ would like the flexibility to modernize public notice requirements for hearings to allow electronic publication for minor facilities. Major

	facilities would continue to issue public notice using a newspaper publication as specified in the Clean Water Act.
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4. **Are the rules consistent with other rules and statutes?** Yes X No ___

The rules are consistent with the administrative rules, statutes, and constitutions of Arizona and the United States. While consistent, the rule citations, noted below, have become dated.

Rule	Explanation
R18-9-A905	The 2003 Code of Federal Regulations that is incorporated by reference is no longer current, specifically sections 40 CFR 122.21, 122.22, 122.26, 122.33, 122.34, 122.35, 122.41, 122.42, 122.43, 122.44, 122.48, 122.62, and Parts 125, 136, 403, 412, 420, 423, 430, 431, 432, 435, 437, 438, 439, 442, 450, 451, 455, 465, and 503. However, only the amendments to the pretreatment rules (The Streamlining Rule; 40 CFR 403) have affected administering the program in Arizona. Currently, facilities cannot implement streamlining rule provisions designed to reduce the overall regulatory burden on both Industrial Users (IUs) and Control Authorities without adversely affecting environmental protection. Also, the citation in subsection (B)(4) to R9-14-610(B) needs to be updated to R9-14-610(C).
R18-9-A906	This section is no longer current as it relies on the provisions of the 2003 version of 40 CFR, Part 403. EPA issued a Pretreatment Streamlining Rule in 2005, which was an effort to achieve better environmental results at a lower cost with increased regulatory flexibility by allowing equivalent concentration-based limits in lieu of flow-based mass limits for certain industrial categories. The Streamlining Rule was designed to reduce the overall regulatory burden on both Industrial Users (IUs) and Control Authorities without adversely affecting environmental protection.
R18-9-B901	Subsection (B)(1)(a) references 40 CFR § 122.21(l). This reference should be changed to 40 CFR § 122.21(f) through (k), because subsection (l) discusses new sources in states that do not have primacy of the NPDES program and is not applicable to an authorized NDPEs program state like Arizona.
Part D	Part D of Article 9 constitutes ADEQ's CAFO rules, which were last updated on February 2nd, 2004. The Federal CAFO rule equivalent exists at 40 CFR 122.23, which was last updated on July 30th, 2012 at 77 FR 44497. Where rules are not consistent with federal rules because of outdated incorporations by reference, ADEQ either uses general authority to ensure that permits are adequately protective (e.g. 40 CFR 122.43(a), incorporated at R18-9-A905(A)(3)(c)), or recommends compliance with the federal rule.

5. **Are the rules enforced as written?** Yes X No ___

6. **Are the rules clear, concise, and understandable?** Yes X No ___

The rules are clear, concise, and understandable. A few minor changes are recommended to the rules as noted below.

Rule	Explanation
R18-9-B904	The term "NPDES" in subsection (C) could be deleted as there are no state NPDES permits due to ADEQ's authorization from EPA to administer the NDPEs program (as the AZPDES program) through primacy.
R18-9-B906	Subsection (B)(1)(h) references the federal pretreatment program rules as incorporated by reference in R18-9-A905(A)(7)(b), which is incorrect. The pretreatment program incorporation by reference was renumbered to R18-9-A905(A)(8) in the 2003 amendments, but no conforming change was made to R18-9-B906. However, R18-9-B906(B)(1)(h) clearly references "pretreatment," as does R18-9-A905(A)(8)(b), while

	R18-9-A905(A)(7) does not. Also, there are no additional subsections to (7), where there is an (a) and a (b) under subsection (A)(8).
R18-9-C901	Subsection (C)(2) could be rewritten to better communicate that under 40 CFR § 122.28(b)(2)(iv), ADEQ has authority to create general permits in the future that do not require the submission of a Notice of Intent.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes X No

Rule	Criticism/Response
General	<p><u>Criticism 1:</u> The current rule references federal rules throughout. While this made the rule complete, it required the regulated community to access both federal and state rules to understand what was required to comply. One remedy would be to craft final Arizona rules that are complete unto themselves. Issuance of the Navigable Waters Protection Rule by EPA and the Army Corps of Engineers, will complicate this process.</p> <p><u>Response 1:</u> ADEQ appreciates the comment. ADEQ periodically revises regulations to be in sync with federal rule. Where appropriate, ADEQ incorporates by reference for efficiency. Please note that the NWPR is no longer in effect in Arizona, having been vacated by a federal court. ADEQ’s rules reference the Clean Water Act statutory definition of “Water of the United States”.</p>
General	<p><u>Criticism 2:</u> There are a number of old or outdated references, such as the one to the 1990 US Census, the 2001 legislative rulemaking, etc. throughout the rule. These should be updated, and any other old or outdated requirements stated in the text that is based on old or outdated references should be revised as applicable.</p> <p><u>Response 2:</u> ADEQ appreciates the comment. ADEQ will work to update outdated references in upcoming rulemakings. However, please note that not all references to older documents are incorrect. For example, the citation to the 1990 US Census is correct. The federal rule regarding large and medium Municipal Separate Storm Sewer Systems (MS4) continues to reference the 1990 census and not any subsequent census.</p>
General	<p><u>Criticism 3:</u> The current rule includes references to federal rules. The references will only be applicable to navigable waters (aka Waters of the United States - WOTUS). They will not be applicable to non-WOTUS Protected Surface Waters. However, both WOTUS and non-WOTUS Protected Surface Waters will need to be addressed in a final Arizona rule package. All of this will be further complicated by any changes that are made to the definition of WOTUS under the new Administration.</p> <p><u>Response 3:</u> ADEQ appreciates the comment and agrees federal rule changes complicate implementation of the Clean Water Act in Arizona which is why it is so important to continue to focus on State program development that provides local control over Arizona’s Waters. ADEQ will complete a rulemaking by December 2022 to reflect House Bill 2691 in which established protected surface waters in Arizona that includes WOTUS & Non-WOTUS surface waters.</p> <p><u>Criticism 4:</u> The rule should stipulate what terms and conditions should be specified in a permit. Also, the rule should state specifically how ADEQ determines discharge limits for pollutants that are set in AZPDES permits.</p> <p><u>Response 4:</u> ADEQ appreciates the comment, but needs more information to better understand what the commenter is proposing. ADEQ invites the commenter to approach Department separately.</p>

	<p>established in some way, perhaps by specifying some number of animals per square acre by category.</p> <p><u>Response 2:</u> ADEQ appreciates the comment. ADEQ does not have federal Clean Water Act (CWA) statutory authority to implement animal density limits for CAFOs because the CWA uses total animal numbers, not density to determine requirements.</p>
<p>R18-9-A902</p>	<p><u>Criticism 1:</u> Subsection (C)(1): Remove this provision because treatment facilities that do not require an AZPDES permit should not be required to meet biosolids requirements. Those that send biosolids for agricultural application will need to meet them voluntarily in order to satisfy the biosolids classification. For facilities using other disposal options, there is no authority for this requirement.</p> <p><u>Response 1:</u> ADEQ appreciates the comment. Federal permitting requirements for preparation of biosolids applies regardless of whether that facility discharges to a WOTUS. If a facility that prepares biosolids does not discharge to a Protected Surface Water, then an AZPDES permit is not required. However, such a facility would be required to gain coverage under the Biosolids General Permit.</p>
<p>R18-9-A905</p>	<p><u>Criticism 1:</u> R18-9-A905 must be updated to incorporate the most recent amendments to 40 CFR 403 relating to the Pretreatment Streamlining Rule, effective November 14, 2005. The state is required to adopt the mandatory changes specified in the Pretreatment Streamlining Rule, including slug control requirements, expanded definition of significant noncompliance (SNC), and best management practices (BMP) requirements. In addition to the 13 mandatory changes, the City requests ADEQ adopt several of the optional provisions, including:</p> <ol style="list-style-type: none"> a. Three optional program changes that allow the control authority to use discretion in the use of mass units or concentration-based units for discharge limits. The use of equivalent mass units in lieu of concentration based limits for specific groups of categorical industrial users encourages industries to implement water conservation practices. b. The optional provision to allow the control authority to develop general discharge permits for groups of significant industrial users with substantially similar activities. This provision streamlines the permitting process for industries and ensures constituency in permit requirements. c. The optional provision to allow the control authority to extend the deadline for submission of compliance reports from industrial users from 30 to 45 days. This provision will reduce the number of violations issued to industries for reports that are only a few days late. d. The optional provisions that strengthen the ability of the control authority to use and enforce narrative best management practices in lieu of numeric limits. <p><u>Response 1:</u> ADEQ appreciates the comment. ADEQ is currently conducting a rulemaking to update state pretreatment regulations to incorporate the latest federal rule changes, including the Streamlining Rule.</p>
<p>R18-9-A905</p>	<p><u>Criticism 2:</u> Arizona Administrative Code R18-9-A905(A) limits the incorporation by reference of the Federal Code of Regulations (CFR) to versions up to July 1, 2003 and no later. The limitation in AAC R18-9-A905(A) limits ADEQ and the regulated community when it comes to industrial pretreatment regulations at 40 CFR 403, its appendices, and related industrial effluent guidelines (See AAC R18-9-A905(A)(8) & (9)). In 2005, the EPA updated the pretreatment regulations at 40 CFR 403 to the streamlining regulations these regulations are less stringent than ADEQ's incorporated 40 CFR 403 regulations. For example, in the 2003 version of 40 CFR 403, an industrial user will be considered significantly non-compliant if a self-monitoring report is submitted greater than 30 days late. In the 2005 streamlining regulations, the rule is less stringent and an industrial user</p>

	<p>will be considered significantly non-compliant if a self-monitoring report is submitted greater than 45 days late. Issues such as this complicate ADEQ's review of pretreatment program submissions and program modification submissions for municipalities that would like to update their rules. Also, enforcement becomes complex and problematic due to the differences between the current federal pretreatment regulations and the 2003 regulations. I believe that relieving this rule of the July 1, 2003 limitation will resolve issues between Federal regulations and State regulations in Arizona and benefit the regulated community with modernized rules.</p> <p><u>Response 2:</u> ADEQ appreciates the comment. In an upcoming rulemaking ADEQ plans to update state pretreatment regulations to incorporate the latest federal rule changes, including the Streamlining Rule.</p>
<p>R18-9-A907</p>	<p><u>Criticism 1:</u> Subsection (B)(4): Clarify this provision. The cited rule allows for a water quality variance issued by rule. This provision indicates it can be granted by individual permit.</p> <p><u>Response 1:</u> ADEQ appreciates the comment. R18-9-A907 regards public comment, not variances. R18-9-B907 - Individual Permit Variances is the rule for variances. Under R18-9-B907 ADEQ may issue a permit, with EPA's approval, under certain circumstances.</p> <p><u>Criticism 2:</u> Subsection (A)(2): Insert "prior to public notice and at the earliest possible date."</p> <p><u>Response 2:</u> ADEQ appreciates the comment. ADEQ does not see the need for including such language as the agency's standard operating procedure is to share the pre-draft version of the permit with the applicant for a 15-day review period before public notice.</p>
<p>R18-9-C901</p>	<p><u>Criticism 1:</u> The newly proposed general permit for small MS4s contains several provisions which are not clear. As an initial matter, the proposed general permit uses the terms "reach" and "tributary" without defining these terms. While a common-sense meaning can be inferred, clarity of the rule would be enhanced by including a definition for each of these terms. In particular, this will avoid potential confusion over application of the requirements that apply to ephemeral reaches of designated major rivers, but which should not be applied to tributaries. Also, under the newly proposed general permit for small MS4s, there is a lack of clarity around the application of the proposed rules to ephemeral waterways. While the legislature has been clear that ephemeral waterways should not be subject to the regulations, other than ephemeral reaches of certain designated major rivers, the proposed list of covered waterways appears to include other ephemeral waterways within the scope of the rule that should be excluded pursuant to the legislative directives. Therefore, ADEQ's proposed application of the rule lacks clarity and consistency with the legislative directives, which creates the potential for confusion. There is also a lack of clarity regarding the scope of the covered area under the newly proposed permit for small MS4s. The language should be Subpart 1.1 of the newly proposed general permit should be amended to clarify that the requirements of the general permit only apply in that portion of a small MS4 that is located within an urbanized area.</p> <p><u>Response 1:</u> ADEQ appreciates the comment. The references above to "reach" and "tributary" are from proposed permits, not rule. However, in the final version of those permits both terms were removed to avoid confusion. The final Small MS4 General Permit associated with the case referenced above identifies coverage area as extending only to "[u]rbanized area(s) determined by the most recent Decennial Census by the</p>

<p>R18-9-C901</p>	<p>Bureau of Census...”</p> <p><u>Criticism 2:</u> The newly proposed general permit for small MS4s does not impose the least burden possible to achieve its objectives, and contains several provisions which are beyond the scope authorized by the legislature. The provisions which impose burdens beyond what is authorized and beyond that allowed under ARS § 49-104.A.16 and ARS § 49-255.01.B include the following: As noted above, to the extent the undefined terms “reach” and “tributary” are applied in such a way as to impose requirements on waters beyond those authorized by the legislature, they exceed the authority of ADEQ, and do not impose the least burden possible to achieve the objectives. Likewise, to the extent the covered area subject to the permit is not limited to urbanized areas, it exceeds the authorized scope of applicability and does not impose the least burden possible to achieve the objectives of the permit. The proposed compliance period in Subpart 1.2.3, which purports to require full compliance with the permit within 1 year, imposes an undue hardship. The compliance period should be extended to 3 years, consistent with the requirements of 40 CFR 122.42(d) and 40 CFR 122.47(a)(3)(ii.) Similarly, Subpart 2.0(1) purports to establish an unreasonable 60-day timeframe for update of the Stormwater Management Program (“SWPMP”). Consistent with Part 4 of the permit, this should be revised to allow one year for the update of the SWPMP. The permit also calls for the applicant to provide information beyond that required under the federal regulations, including requesting in Subpart 4.1.2 information on the “process and schedule” for mapping, and asking generally in Subpart 4.1.5 for “a description of any other practices to achieve compliance,” which is overbroad, and not required under the federal regulations. In addition, the proposed permit imposes in Subpart 5.1 information gathering, characterization and control requirements on non-stormwater discharges which are beyond those imposed under the federal requirements. Subpart 6.1.3 likewise imposes evaluation requirements for public education and outreach requirements which are beyond those imposed under the federal program. Subpart 6.4 imposes construction site inspection frequencies which are overly burdensome and place a financial and resource drain on Permittee staff, and which do not allow achievement of objectives in the least burdensome manner. Subpart 7.0 and its subparts are confusing and lack clarity regarding the scope of applicability. It is unclear which provisions are applicable to all small MS4 systems and which are applicable to those that discharge to impaired, not-attaining, or OAWs. Subpart 7.2, imposes a characterization requirement on small MS4 systems that is not authorized, and which is inconsistent with the federal regulations, which only impose such requirements on medium and large systems. Section 7.2 also imposes a requirement to perform wet weather monitoring, which is not authorized under the federal regulations for small MS4 systems, and implementation of which would be unreasonably costly, and dangerous to municipal staff. At the federal level, such requirements are only imposed on large or medium MS4 systems. Appendix C of the proposed permit also includes provisions specific to identified municipalities. This is inconsistent with the purposes of a general permit, and these requirements should be deleted.</p>
<p>R18-9-C901</p>	<p><u>Response 2:</u> ADEQ appreciates the comment. This comment is appropriate for a permit (and indeed was submitted during that permit’s comment period) but is outside the scope of this rule review.</p>
<p>R18-9-C901</p>	<p><u>Criticism 3:</u> As required by ARS § 49-104(A)(16) and ARS § 49-255.01(B), the stormwater regulations and permitting requirements adopted by ADEQ should be consistent with and no more stringent than the corresponding federal requirements. The provisions in the stormwater permit which impose requirements more stringent than those under federal law should be removed.</p>

	<p><u>Response 3:</u> ADEQ appreciates the comment. This comment is appropriate for a permit (and indeed was submitted during this particular permit’s comment period), but is outside the scope of this rule review.</p> <p><u>Criticism 4:</u> Subsection (C)(2): Add another item to the list as “g” which should state, “When a facility is already covered by a general permit that is being reissued and the reissued permit has terms and conditions that are substantially the same.”</p> <p><u>Response 4:</u> ADEQ appreciates the comment. The Department disagrees that the suggested language is appropriate. However, the Department invites the commenter to inquire further through a separate communication channel.</p>
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8. Economic, small business, and consumer impact comparison:

ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statements prepared in 2001, when the rules were promulgated, and again in 2003, when the CAFO rules were added. In 2002, ADEQ made minor amendments to three rules based on EPA's request to conform to the Clean Water Act, but the 2002 amendments did not change the economic impact (See 7 A.A.R. 5889, Heading 9 and 9 A.A.R. 5573, Heading 9 for the summary of the economic, small business, and consumer impacts of the 2001 and 2003 rulemakings referenced above).

In 2001, EPA’s authorization of the NPDES program to Arizona through primacy was not expected to have any negative consequences, because state agencies and business entities were already subject to NPDES program requirements, and regulated entities were expected to benefit from the faster processing of applications and the elimination of the requirement to submit applications and monthly reporting data to both EPA and ADEQ. ADEQ believes that the qualitative assessments of the economic impacts to the rules in 2001 and 2003 were accurate and any costs have been minor. Overall, ADEQ believes that the impact of the Article 9 rules on the state’s economy, small business and consumers has not changed since the effective date.

9. Has the agency received any business competitiveness analyses of the rules? Yes No

10. Has the agency completed the course of action indicated in the agency’s previous five-year-review report?

Rule	Explanation
R18-9-A902	<p><u>2017 Proposed Course of Action:</u> Subsection (A) describing the transition process from NPDES to the AZPDES program is no longer relevant as it already occurred and could be deleted. Subsection (F) may also be repealed because this phase-in provision is specific to the timeframe within which ADEQ received permitting authority and only applies to the initial permitting of small MS4s. ADEQ may need to add additional permitting exclusions to comply with EPA’s Water Transfers Rule, 73 Fed. Reg. 33697 (Mar. 13, 2008) and Pesticides to the Waters of US in Compliance with FIFRA Rule, 71 Fed. Reg. 68483 (Nov. 27, 2006). ADEQ currently anticipates submitting a Notice of Final Rulemaking to the Council by December 2018.</p> <p><u>Completed:</u> No.</p> <p><u>Explanation:</u> Further analysis found this rule to be consistent with federal statute and rule. Therefore, there is no reason to add additional permitting exclusions to comply with</p>

	EPA’s Water Transfers Rule. The preference to remove subsections (A) and (F) remain. ADEQ anticipates submitting a rulemaking to Council by February 2023.
R18-9-A905	<p><u>2017 Proposed Course of Action:</u> Update the out of date incorporations by reference. ADEQ anticipates submitting a Notice of Final Rulemaking to the Council by December 2018.</p> <p><u>Completed:</u> No.</p> <p><u>Explanation:</u> Due to resource constraints, federal rule changes, and uncertainty due to federal court challenges, these changes were not made. Specifically, the U.S. Environmental Protection Agency (EPA) changed the definition of “Waters of the United States” (WOTUS) in June 2020, significantly altering the scope of Clean Water Act (CWA) permits, which includes the AZPDES program and the rules at issue in Title 18, Chapter 9, Article 9. In response to EPA’s rule change, ADEQ spent over \$1 million dollars in an urgent effort to protect Arizona’s surface waters under state authorities. This effort consumed significant staff resources. Then, in August 2021, a federal court overturned the new EPA rule, followed by another proposed definitional WOTUS rule change by EPA. Currently, the Supreme Court of the United States (SCOTUS) has taken a case concerning WOTUS¹, which is scheduled to be heard in Fall 2022. Their ruling will likely prompt another definitional change to WOTUS. In summary², the volatility of the WOTUS definition frustrates any ADEQ rulemaking attempting to update to the current Federal standard. Furthermore, under Section 401 of the CWA, an agency may not issue a permit or license to conduct activities that may result in a discharge of pollutants into a WOTUS unless a Section 401 water quality certification is issued, or certification is waived. EPA finalized a new CWA Section 401 certification rule in 2021. This rule was also overturned by a federal court, then reinstated by SCOTUS, all while EPA conducts rulemaking to change rule again. Again, the volatility of a central component of the AZPDES program frustrates any ADEQ rulemaking attempting to update Federal standards. Despite this frustration, ADEQ anticipates submitting an expedited rulemaking incorporating Federal rule by reference by September 2022.</p>
R18-9-A906	<p><u>2017 Proposed Course of Action:</u> Update the out of date incorporations by reference. ADEQ anticipates submitting a Notice of Final Rulemaking to the Council by December 2018.</p> <p><u>Completed:</u> No.</p> <p><u>Explanation:</u> See explanation to R18-9-A905 above.</p>
R18-9-A907	<p><u>2017 Proposed Course of Action:</u> Add ability to provide notice via Department’s website. ADEQ anticipates submitting a Notice of Final Rulemaking to the Council by December 2018.</p> <p><u>Completed:</u> No.</p> <p><u>Explanation:</u> Due to resource constraints, federal rule changes, and uncertainty due to federal court challenges, these changes were not made. Specifically, the U.S. Environmental Protection Agency (EPA) changed the definition of “Waters of the United States” (WOTUS) in June 2020, significantly altering the scope of Clean Water Act (CWA) permits, which includes the AZPDES program and the rules at issue in Title 18, Chapter 9, Article 9. In response to EPA’s rule change, ADEQ spent over \$1 million dollars in an urgent effort to protect Arizona’s surface waters under state authorities. This effort consumed significant staff resources. Then, in August 2021, a federal court overturned the new EPA rule, followed by another proposed definitional WOTUS rule change by EPA. Currently, the Supreme Court of the United States (SCOTUS) has taken a case concerning WOTUS³, which is scheduled to be heard in Fall 2022. Their ruling will likely prompt another definitional change to WOTUS. In</p>

¹ <https://www.scotusblog.com/case-files/cases/sackett-v-environmental-protection-agency/>

² <https://www.epa.gov/wotus/current-implementation-waters-united-states>

³ <https://www.scotusblog.com/case-files/cases/sackett-v-environmental-protection-agency/>

	summary ⁴ , the volatility of the WOTUS definition frustrates any ADEQ rulemaking attempting to update to the current Federal standard. Furthermore, under Section 401 of the CWA, an agency may not issue a permit or license to conduct activities that may result in a discharge of pollutants into a WOTUS unless a Section 401 water quality certification is issued, or certification is waived. EPA finalized a new CWA Section 401 certification rule in 2021. This rule was also overturned by a federal court, then reinstated by SCOTUS, all while EPA conducts rulemaking to change rule again. Again, the volatility of a central component of the AZPDES program frustrates any ADEQ rulemaking attempting to update Federal standards. Despite this frustration, ADEQ anticipates submitting an expedited rulemaking incorporating Federal rule by reference by February 2023.
R18-9-A908	<u>2017 Proposed Course of Action:</u> Add ability to provide notice via Department’s website. ADEQ anticipates submitting a Notice of Final Rulemaking to the Council by December 2018. <u>Completed:</u> No. <u>Explanation:</u> See explanation to R18-9-A907 above.
R18-9-B901	<u>2017 Proposed Course of Action:</u> Update incorrect reference. ADEQ currently anticipates submitting a Notice of Final Rulemaking to the Council by December 2018. <u>Completed:</u> No. <u>Explanation:</u> See explanation to R18-9-A907 above.
R18-9-B904	<u>2017 Proposed Course of Action:</u> Minor editing to the rule. ADEQ currently anticipates submitting a Notice of Final Rulemaking to the Council by December 2018. <u>Completed:</u> No. <u>Explanation:</u> See explanation to R18-9-A907 above.
R18-9-B906	<u>2017 Proposed Course of Action:</u> Update the out of date incorporations by reference. ADEQ anticipates submitting a Notice of Final Rulemaking to the Council by December 2018. <u>Completed:</u> No. <u>Explanation:</u> See explanation to R18-9-A907 above.
R18-9-C901	<u>2017 Proposed Course of Action:</u> Subsection (C)(2) could be rewritten to better communicate that under 40 CFR § 122.28(b)(2)(iv), ADEQ has authority to create general permits in the future that do not require the submission of a Notice of Intent. ADEQ anticipates submitting a Notice of Final Rulemaking to the Council by December 2018. <u>Completed:</u> No. <u>Explanation:</u> See explanation to R18-9-A907 above.
Part D	<u>2017 Proposed Course of Action:</u> Update CAFO rule to align with Federal equivalent. ADEQ currently anticipates submitting a Notice of Final Rulemaking to the Council by December 2018. <u>Completed:</u> No. <u>Explanation:</u> See explanation to R18-9-A907 above.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

The costs of Article 9 include time spent in the application process through paperwork and application meetings with ADEQ staff, as well as compliance with the program and its standards. This program is federally-mandated and required by A.R.S. § 49-255.01(B). The benefits include compliance with the federal Clean Water Act and the maintenance of federal grant money to support the program. Should ADEQ not issue permits in accordance with

⁴ <https://www.epa.gov/wotus/current-implementation-waters-united-states>

federal law, EPA would issue permits that may be substantially the same, but they would be issued with less consideration for local concerns and permit issuance would take significantly more time. Weighing the benefits and costs, ADEQ believes the benefits of the AZPDES rules outweigh the costs. Ensuring discharges of pollutants to Protected Surface Waters are prohibited or limited in an effort to protect human health and the environment is a high priority to Arizona. ADEQ believes that this Article imposes the least burden and costs to regulated persons, including paperwork and other compliance costs, while still achieving the underlying regulatory and statutory objective.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

These rules were adopted before 2010.

14. **Proposed course of action**

ADEQ's rules provide the necessary information for the regulated community. The Department will address the issues identified in Questions 3 through 6 by February 2023 in two rulemakings. An expedited rulemaking addressing A.A.C. R18-9-A905 and A.A.C. R18-9-A906 is scheduled to be submitted to Council by September 2022. This rulemaking will incorporate by reference updated Federal standards and has been determined to be of higher priority than the rest of the commitments above.

Thereafter, and in coordination with agency resources and other high-priority rulemakings (such as Underground Injection Control, the State Water Protection Plan, Aquifer Water Quality Standards Updates), ADEQ will address the remaining issues identified in Questions 3 through 6 in a rulemaking scheduled to be submitted to GRRC by February 2023. Moving up these rulemakings any further will disrupt longstanding plans of more impactful ADEQ rulemakings.

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER POLLUTION CONTROL

Section R18-9-808 (Supp. 87-3). Amended effective July 25, 1990 (Supp. 90-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-809. Repealed**Historical Note**

Former Section R9-8-324 renumbered without change as Section R18-9-809 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-810. Repealed**Historical Note**

Former Section R9-8-325 renumbered without change as Section R18-9-810 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-811. Repealed**Historical Note**

Former Section R9-8-326 repealed, new Section R9-8-326 adopted effective October 2, 1986 (Supp. 86-5). Former Section R9-8-326 renumbered without change as Section R18-9-811 (Supp. 87-3). First entry in Historical Note corrected to reflect Section numbers at time of rule repeal and adoption by changing R18-9-326 to R9-8-326 (Supp. 96-4). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-812. Repealed**Historical Note**

Former Section R9-8-327 renumbered without change as Section R18-9-812 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-813. Repealed**Historical Note**

Amended effective April 18, 1979 (Supp. 79-2). Former Section R9-8-329 renumbered without change as Section R18-9-813 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-814. Repealed**Historical Note**

Former Section R9-8-331 renumbered without change as Section R18-9-814 (Supp. 87-3). Amended effective October 19, 1989 (Supp. 89-4). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-815. Repealed**Historical Note**

Former Section R9-8-332 renumbered without change as Section R18-9-815 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-816. Repealed**Historical Note**

Former Section R9-8-351 renumbered without change as Section R18-9-816 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8,

2000 (Supp. 00-4).

R18-9-817. Repealed**Historical Note**

Former Section R9-8-352 renumbered without change as Section R18-9-817 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-818. Repealed**Historical Note**

Former Section R9-8-353 renumbered without change as Section R18-9-818 (Supp. 87-3). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

R18-9-819. Repealed**Historical Note**

Former Section R9-8-361 renumbered without change as Section R18-9-819 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section repealed by final rulemaking at 7 A.A.R. 235, effective December 8, 2000 (Supp. 00-4).

ARTICLE 9. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM

Editor's Note: The recodification at 7 A.A.R. 2522 described below erroneously moved Sections into 18 A.A.C. 9, Article 9. Those Sections were actually recodified to 18 A.A.C. 9, Article 10. See the Historical Notes for more information (Supp. 01-4).

Article 9, consisting of Sections R18-9-901 through R18-9-914 and Appendix A, recodified from 18 A.A.C. 13, Article 15 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2).

PART A. GENERAL REQUIREMENTS**R18-9-A901. Definitions**

In addition to the definitions in A.R.S. § 49-201 and 49-255, the following terms apply to this Article:

1. "Animal confinement area" means any part of an animal feeding operation where animals are restricted or confined including open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables.
2. "Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:
 - a. Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and
 - b. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.
3. "Aquaculture project" means a defined managed water area that uses discharges of pollutants into that designated project area for the maintenance or production of harvestable freshwater plants or animals. For purposes of this definition, "designated project area" means the portion or portions of the navigable waters within which the permittee or permit applicant plans to confine the cultivated species using a method or plan of operation, including physical confinement, that on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy

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- increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.
4. "Border area" means 100 kilometers north and south of the Arizona-Sonora, Mexico border.
 5. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.
 6. "CAFO" means any large concentrated animal feeding operation, medium concentrated animal feeding operation, or animal feeding operation designated under R18-9-D901.
 7. "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility that contains, grows, or holds aquatic animals in either of the following categories:
 - a. Cold-water aquatic animals. Cold-water fish species or other cold-water aquatic animals (including the Salmonidae family of fish) in a pond, raceway, or other similar structure that discharges at least 30 days per year, but does not include:
 - i. A facility that produces less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and
 - ii. A facility that feeds the aquatic animals less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.
 - b. Warm-water aquatic animals. Warm-water fish species or other warm-water aquatic animals (including the Ameiuridae, Centrarchidae, and Cyprinidae families of fish) in a pond, raceway, or other similar structure that discharges at least 30 days per year, but does not include:
 - i. A closed pond that discharges only during periods of excess runoff; or
 - ii. A facility that produces less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.
 8. "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.
 9. "Discharge of a pollutant" means any addition of any pollutant or combination of pollutants to a navigable water from any point source.
 - a. The term includes the addition of any pollutant into a navigable water from:
 - i. A treatment works treating domestic sewage;
 - ii. Surface runoff that is collected or channeled by man;
 - iii. A discharge through a pipe, sewer, or other conveyance owned by a state, municipality, or other person that does not lead to a treatment works; and
 - iv. A discharge through a pipe, sewer, or other conveyance, leading into a privately owned treatment works.
 - b. The term does not include an addition of a pollutant by any industrial user as defined in A.R.S. § 49-255(4).
 10. "Draft permit" means a document indicating the Director's tentative decision to issue, deny, modify, revoke and reissue, terminate, or reissue a permit.
 - a. A notice of intent to terminate a permit is a type of draft permit unless the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW, but not by land application or disposal into a well.
 - b. A notice of intent to deny a permit is a type of draft permit.
 - c. A proposed permit or a denial of a request for modification, revocation and reissuance, or termination of a permit, are not draft permits.
 11. "EPA" means the U.S. Environmental Protection Agency.
 12. "General permit" means an AZPDES permit issued under 18 A.A.C. 9, Article 9, authorizing a category of discharges within a geographical area.
 13. "Individual permit" means an AZPDES permit for a single point source, a single facility, or a municipal separate storm sewer system.
 14. "Land application area," for purposes of Article 9, Part D, means land under the control of an animal feeding operation owner or operator, whether it is owned, rented, or leased, to which manure, litter, or process wastewater from the production area is or may be applied.
 15. "Large concentrated animal feeding operation" means an animal feeding operation that stables or confines at least the number of animals specified in any of the following categories:
 - a. 700 mature dairy cows, whether milked or dry;
 - b. 1,000 veal calves;
 - c. 1,000 cattle other than mature dairy cows or veal calves. Cattle includes heifers, steers, bulls, and cow and calf pairs;
 - d. 2,500 swine each weighing 55 pounds or more;
 - e. 10,000 swine each weighing less than 55 pounds;
 - f. 500 horses;
 - g. 10,000 sheep or lambs;
 - h. 55,000 turkeys;
 - i. 30,000 laying hens or broilers, if the animal feeding operation uses a liquid manure handling system;
 - j. 125,000 chickens (other than laying hens), if the animal feeding operation uses other than a liquid manure handling system;
 - k. 82,000 laying hens, if the animal feeding operation uses other than a liquid manure handling system;
 - l. 30,000 ducks, if the animal feeding operation uses other than a liquid manure handling system; or
 - m. 5,000 ducks, if the animal feeding operation uses a liquid manure handling system.
 16. "Large municipal separate storm sewer system" means a municipal separate storm sewer that is either:
 - a. Located in an incorporated area with a population of 250,000 or more as determined by the 1990 Decennial Census by the Bureau of the Census;
 - b. Located in a county with an unincorporated urbanized area with a population of 250,000 or more, according to the 1990 Decennial Census by the Bureau of Census, but not a municipal separate storm sewer that is located in an incorporated place, township, or town within the county; or
 - c. Owned or operated by a municipality other than those described in subsections (16)(a) and (16)(b) and that are designated by the Director under R18-9-A902(D)(2) as part of the large municipal separate storm sewer system.

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17. "Manure" means any waste or material mixed with waste from an animal including manure, bedding, compost and raw materials, or other materials commingled with manure or set aside for disposal.
18. "Manure storage area" means any part of an animal feeding operation where manure is stored or retained including lagoons, run-off ponds, storage sheds, stockpiles, under-house or pit storages, liquid impoundments, static piles, and composting piles.
19. "Medium concentrated animal feeding operation" means an animal feeding operation in which:
- The type and number of animals that it stables or confines falls within any of the following ranges:
 - 200 to 699 mature dairy cows, whether milked or dry;
 - 300 to 999 veal calves;
 - 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes heifers, steers, bulls, and cow and calf pairs;
 - 750 to 2,499 swine each weighing 55 pounds or more;
 - 3,000 to 9,999 swine each weighing less than 55 pounds;
 - 150 to 499 horses;
 - 3,000 to 9,999 sheep or lambs;
 - 16,500 to 54,999 turkeys;
 - 9,000 to 29,999 laying hens or broilers, if the animal feeding operation uses a liquid manure handling system;
 - 37,500 to 124,999 chickens (other than laying hens), if the animal feeding operation uses other than a liquid manure handling system;
 - 25,000 to 81,999 laying hens, if the animal feeding operation uses other than a liquid manure handling system;
 - 10,000 to 29,999 ducks, if the animal feeding operation uses other than a liquid manure handling system; or
 - 1,500 to 4,999 ducks, if the animal feeding operation uses a liquid manure handling system; and
 - Either one of the following conditions are met:
 - Pollutants are discharged into a navigable water through a man-made ditch, flushing system, or other similar man-made device; or
 - Pollutants are discharged directly into a navigable water that originates outside of and passes over, across, or through the animal feeding operation or otherwise comes into direct contact with the animals confined in the operation.
20. "Medium municipal separate storm sewer system" means a municipal separate storm sewer that is either:
- Located in an incorporated area with a population of 100,000 or more but less than 250,000, as determined by the 1990 Decennial Census by the Bureau of the Census; or
 - Located in a county with an unincorporated urbanized area with a population of 100,000 or more but less than 250,000 as determined by the 1990 Decennial Census by the Bureau of the Census; or
 - Owned or operated by a municipality other than those described in subsections (20)(a) and (20)(b) and that are designated by the Director under R18-9-A902(D)(2) as part of the medium municipal separate storm sewer system.
21. "MS4" means municipal separate storm sewer system.
22. "Municipal separate storm sewer" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, and storm drains):
- Owned or operated by a state, city, town county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the Clean Water Act (33 U.S.C. 1288) that discharges to waters of the United States;
 - Designed or used for collecting or conveying stormwater;
 - That is not a combined sewer; and
 - That is not part of a POTW.
23. "Municipal separate storm sewer system" means all separate storm sewers defined as "large," "medium," or "small" municipal separate storm sewer systems or any municipal separate storm sewers on a system-wide or jurisdiction-wide basis as determined by the Director under R18-9-C902(A)(1)(g)(i) through (iv).
24. "New discharger" includes an industrial user and means any building, structure, facility, or installation:
- From which there is or may be a discharge of pollutants;
 - That did not commence the discharge of pollutants at a particular site before August 13, 1979;
 - That is not a new source; and
 - That has never received a finally effective NPDES or AZPDES permit for discharges at that site.
25. "New source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:
- After the promulgation of standards of performance under section 306 of the Clean Water Act (33 U.S.C. 1316) that are applicable to the source, or
 - After the proposal of standards of performance in accordance with section 306 of the Clean Water Act (33 U.S.C. 1316) that are applicable to the source, but only if the standards are promulgated under section 306 (33 U.S.C. 1316) within 120 days of their proposal.
26. "NPDES" means the National Pollutant Discharge Elimination System, which is the national program for issuing, modifying, revoking, reissuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment and biosolids requirements under sections 307 (33 U.S.C. 1317), 318 (33 U.S.C. 1328), 402 (33 U.S.C. 1342), and 405 (33 U.S.C. 1345) of the Clean Water Act.
27. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. It does not mean:
- Sewage from vessels; or
 - Water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is

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- approved by authority of this state, and if the state determines that the injection or disposal will not result in the degradation of ground or surface water resources. (40 CFR 122.2)
28. "POTW" means a publicly owned treatment works.
 29. "Process wastewater," for purposes of Article 9, Part D, means any water that comes into contact with a raw material, product, or byproduct including manure, litter, feed, milk, eggs, or bedding and water directly or indirectly used in the operation of an animal feeding operation for any or all of the following:
 - a. Spillage or overflow from animal or poultry watering systems;
 - b. Washing, cleaning, or flushing pens, barns, manure pits, or other animal feeding operation facilities;
 - c. Direct contact swimming, washing, or spray cooling of animals; or
 - d. Dust control.
 30. "Proposed permit" means an AZPDES permit prepared after the close of the public comment period (including EPA review), and any applicable public hearing and administrative appeal, but before final issuance by the Director. A proposed permit is not a draft permit.
 31. "Pretreatment" means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater before or instead of discharging or otherwise introducing the pollutants into a POTW.
 32. "Production area," for purposes of Article 9, Part D, means the animal confinement area, manure storage area, raw materials storage area, and waste containment areas. Production area includes any egg washing or egg processing facility and any area used in the storage, handling, treatment, or disposal of animal mortalities.
 33. "Raw materials storage area" means the part of an animal feeding operation where raw materials are stored including feed silos, silage bunkers, and bedding materials.
 34. "Silviculture point source" means any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities that are operated in connection with silvicultural activities and from which pollutants are discharged into navigable waters. The term does not include nonpoint source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff. For purposes of this definition:
 - a. "Log sorting and log storage facilities" means facilities whose discharge results from the holding of unprocessed wood, for example, logs or round wood with or without bark held in self-contained bodies of water or stored on land if water is applied intentionally on the logs.
 - b. "Rock crushing and gravel washing facilities" mean facilities that process crushed and broken stone, gravel, and riprap.
 35. "Small municipal separate storm sewer system" means a separate storm sewer that is:
 - a. Owned or operated by the United States, a state, city, town, county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Clean Water Act (33 U.S.C. 1288) that discharge to navigable waters.
 - b. Not defined as a "large" or "medium" municipal separate storm sewer system or designated under R18-9-A902(D)(2).
 - c. Similar to municipal separate storm sewer systems such as systems at military bases, large hospital or prison complexes, universities, and highways and other thoroughfares. The term does not include a separate storm sewer in a very discrete area such as an individual building.
 36. "Stormwater" means stormwater runoff, snow melt runoff, and surface runoff and drainage.
 37. "Treatment works treating domestic sewage" means a POTW or any other sewage sludge or waste water treatment device or system, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, "domestic sewage" includes waste and wastewater from humans or household operations that are discharged to or otherwise enter a treatment works.
 38. "Waste containment area" means any part of an animal feeding operation where waste is stored or contained including settling basins and areas within berms and diversions that separate uncontaminated stormwater.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-A902. AZPDES Permit Transition, Applicability, and Exclusions

- A. Upon the effective date of EPA approval of the AZPDES program, the Department shall, under A.R.S. Title 49, Chapter 2, Article 3.1 and Articles 9 and 10 of this Chapter, administer any permit authorized or issued under the NPDES program, including an expired permit that EPA has continued in effect under 40 CFR 122.6.
 1. The Director shall give a notice to all Arizona NPDES permittees, except NPDES permittees located on and discharging in Indian Country, and shall publish a notice in one or more newspapers of general circulation in the state. The notice shall contain:
 - a. The effective date of EPA approval of the AZPDES program;
 - b. The name and address of the Department;
 - c. The name of each individual permitted facility and its permit number;
 - d. The title of each general permit administered by the Department;
 - e. The name and address of the contact person, to which the permittee will submit notification and monitoring reports;
 - f. Information specifying the state laws equivalent to the federal laws or regulations referenced in a NPDES permit; and

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- g. The name, address, and telephone number of a person from whom an interested person may obtain further information about the transition.
- 2. The Department shall provide the following entities with a copy of the notice:
 - a. Each county department of health, environmental services, or comparable department;
 - b. Each Arizona council of government, tribal government, the states of Utah, Nevada, New Mexico, and California, and EPA Region 9;
 - c. Any person who requested, in writing, notification of the activity;
 - d. The Mexican Secretaria de Medio Ambiente y Recursos Naturales, and
 - e. The United States Section of the International Boundary and Water Commission.
- 3. If a timely application for a NPDES permit is submitted to EPA before approval of the AZPDES program, the applicant may continue the process with EPA or request the Department to act on the application. In either case, the Department shall issue the permit.
- 4. The terms and conditions under which the permit was issued remain the same until the permit is modified.
- B.** Article 9 of this Chapter applies to any "discharge of a pollutant." Examples of categories that result in a "discharge of a pollutant" and may require an AZPDES permit include:
 - 1. CAFOs;
 - 2. Concentrated aquatic animal production facilities;
 - 3. Case-by-case designation of concentrated aquatic animal production facilities;
 - a. The Director may designate any warm- or cold-water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to navigable waters. The Director shall consider the following factors when making this determination:
 - i. The location and quality of the receiving waters of the United States;
 - ii. The holding, feeding, and production capacities of the facility;
 - iii. The quantity and nature of the pollutants reaching navigable waters; and
 - iv. Any other relevant factor;
 - b. A permit application is not required from a concentrated aquatic animal production facility designated under subsection (B)(3)(a) until the Director conducts an onsite inspection of the facility and determines that the facility should and could be regulated under the AZPDES permit program;
 - 4. Aquaculture projects;
 - 5. Manufacturing, commercial, mining, and silviculture point sources;
 - 6. POTWs;
 - 7. New sources and new dischargers;
 - 8. Stormwater discharges:
 - a. Associated with industrial activity as defined under 40 CFR 122.26(b)(14), incorporated by reference in R18-9-A905(A)(1)(d). The Department shall not consider a discharge to be a discharge associated with industrial activity if the discharge is composed entirely of stormwater and meets the conditions of no exposure as defined under 40 CFR 122.26(g), incorporated by reference in R18-9-A905(A)(1)(d);
 - b. From a large, medium, or small MS4;
- c. From a construction activity, including clearing, grading, and excavation, that results in the disturbance of:
 - i. Equal to or greater than one acre or;
 - ii. Less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre; but
 - iii. Not including routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility;
- d. Any discharge that the Director determines contributes to a violation of a water quality standard or is a significant contributor of pollutants to a navigable water, which may include a discharge from a conveyance or system of conveyances (including roads with drainage systems and municipal streets) used for collecting and conveying stormwater runoff or a system of discharges from municipal separate storm sewers.
- C.** Articles 9 and 10 of this Chapter apply to the following biosolids categories and may require an AZPDES permit:
 - 1. Treatment works treating domestic sewage that would not otherwise require an AZPDES permit; and
 - 2. Using, applying, generating, marketing, transporting, and disposing of biosolids.
- D.** Director designation of MS4s.
 - 1. The Director may designate and require any small MS4 located outside of an urbanized area to obtain an AZPDES stormwater permit. The Director shall base this designation on whether a stormwater discharge results in or has the potential to result in an exceedance of a water quality standard, including impairment of a designated use, or another significant water quality impact, including a habitat or biological impact.
 - a. When deciding whether to designate a small MS4, the Director shall consider the following criteria:
 - i. Discharges to sensitive waters,
 - ii. Areas with high growth or growth potential,
 - iii. Areas with a high population density,
 - iv. Areas that are contiguous to an urbanized area,
 - v. Small MS4s that cause a significant contribution of pollutants to a navigable water,
 - vi. Small MS4s that do not have effective programs to protect water quality, and
 - vii. Any other relevant criteria.
 - b. The same requirements for small MS4s designated under 40 CFR 122.32(a)(1) apply to permits for designated MS4s not waived under R18-9-B901(A)(3).
 - 2. The Director may designate an MS4 as part of a large or medium system due to the interrelationship between the discharges from a designated storm sewer and the discharges from a municipal separate storm sewer described under R18-9-A901(16)(a) and (b), or R18-9-A901(20)(a) or (b), as applicable. In making this determination, the Director shall consider the following factors:
 - a. Physical interconnections between the municipal separate storm sewers;
 - b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in R18-9-A901(16)(a) and R18-9-A901(20)(a);
 - c. The quantity and nature of pollutants discharged to a navigable water;

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- d. The nature of the receiving waters; and
- e. Any other relevant factor.
3. The Director shall designate a small MS4 that is physically interconnected with a MS4 that is regulated by the AZPDES program if the small MS4 substantially contributes to the pollutant loading of the regulated MS4.
- E. Petitions.** The Director may, upon a petition, designate as a large, medium or small MS4, a municipal separate storm sewer located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in R18-9-A901(16), R18-9-A901(20) or R18-9-A901(35), as applicable.
- F. Phase-ins.**
1. The Director may phase-in permit coverage for a small MS4 serving a jurisdiction with a population of less than 10,000 if a phasing schedule is developed and implemented for approximately 20 percent annually of all small MS4s that qualify for the phased-in coverage.
 - a. If the phasing schedule is not yet approved for permit coverage, the Director shall, by December 9, 2002, determine whether to issue an AZPDES permit or allow a waiver under R18-9-B901(A)(3) for each eligible MS4.
 - b. All regulated MS4s shall have coverage under an AZPDES permit no later than March 8, 2007.
 2. The Director may provide a waiver under R18-9-B901(A)(3) for any municipal separate storm sewage system operating under a phase-in plan.
- G. Exclusions.** The following discharges do not require an AZPDES permit:
1. Discharge of dredged or fill material into a navigable water that is regulated under section 404 of the Clean Water Act (33 U.S.C. 1344);
 2. The introduction of sewage, industrial wastes, or other pollutants into POTWs by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with a permit until all discharges of pollutants to a navigable water are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through a pipe, sewer, or other conveyance owned by the state, a municipality, or other party not leading to treatment works;
 3. Any discharge in compliance with the instructions of an on-scene coordinator under 40 CFR 300, The National Oil and Hazardous Substances Pollution Contingency Plan; or 33 CFR 153.10(e), Control of Pollution by Oil and Hazardous Substances, Discharge Removal;
 4. Any introduction of pollutants from a nonpoint source agricultural or silvicultural activity, including stormwater runoff from an orchard, cultivated crop, pasture, rangeland, and forest land, but not discharges from a concentrated animal feeding operation, concentrated aquatic animal production facility, silvicultural point source, or to an aquaculture project;
 5. Return flows from irrigated agriculture;
 6. Discharges into a privately owned treatment works, except as the Director requires under 40 CFR 122.44(m), which is incorporated by reference in R18-9-A905(A)(3)(d);
 7. Discharges from conveyances for stormwater runoff from mining operations or oil and gas exploration, production, processing or treatment operations, or transmission facilities, composed entirely of flows from conveyances or systems of conveyances, including pipes, conduits, ditches, and channels, used for collecting and conveying precipitation runoff and that are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct, or waste product located on the site of the operations.
- H. Conditional no exposure exclusion.**
1. Discharges composed entirely of stormwater are not considered stormwater discharges associated with an industrial activity if there is no exposure, and the discharger satisfies the conditions under 40 CFR 122.26(g), which is incorporated by reference in R18-9-A905(A)(1)(d).
 2. For purposes of this subsection:
 - a. "No exposure" means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and runoff.
 - b. "Industrial materials or activities" include material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products.
 - c. "Material-handling activities" include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, or waste product.
- Historical Note**
- New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 2704, effective June 5, 2002 (Supp. 02-2). Amended by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).
- R18-9-A903. Prohibitions**
- The Director shall not issue a permit:
1. If the conditions of the permit do not provide for compliance with the applicable requirements of A.R.S. Title 49, Chapter 2, Article 3.1; 18 A.A.C. 9, Articles 9 and 10; and the Clean Water Act;
 2. Before resolution of an EPA objection to a draft or proposed permit under R18-9-A908(C);
 3. If the imposition of conditions cannot ensure compliance with the applicable water quality requirements from Arizona or an affected state or tribe, or a federally promulgated water quality standard under 40 CFR 131.31;
 4. If in the judgment of the Secretary of the U.S. Army, acting through the Chief of Engineers, the discharge will substantially impair anchorage and navigation in or on any navigable water;
 5. For the discharge of any radiological, chemical, or biological warfare agent, or high-level radioactive waste;
 6. For any discharge inconsistent with a plan or plan amendment approved under section 208(b) of the Clean Water Act (33 U.S.C. 1288); and
 7. To a new source or a new discharger if the discharge from its construction or operation will cause or contribute to the violation of a water quality standard. The owner or operator of a new source or new discharger proposing to discharge into a water segment that does not meet water quality standards or is not expected to meet those standards even after the application of the effluent limitations required under R18-9-A905(A)(8), and for which the Department has performed a wasteload allocation for the proposed discharge, shall demonstrate before the close of the public comment period that:

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- a. There are sufficient remaining wasteload allocations to allow for the discharge, and
- b. The existing dischargers into the segment are subject to schedules of compliance designed to bring the segment into compliance with water quality standards.
5. Toxic pollutant effluent standards. 40 CFR 129.
6. Secondary treatment regulation. 40 CFR 133.
7. Guidelines for establishing test procedures for the analysis of pollutants, 40 CFR 136.
8. Effluent guidelines and standards.
 - a. General provisions, 40 CFR 401; and
 - b. General pretreatment regulations for existing and new sources of pollution, 40 CFR 403 and Appendices A, D, E, and G.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 2704, effective June 5, 2002 (Supp. 02-2).

R18-9-A904. Effect of a Permit

- A. Except for a standard or prohibition imposed under section 307 of the Clean Water Act (33 U.S.C. 1317) for a toxic pollutant that is injurious to human health and standards for sewage sludge use or disposal under Article 10 of this Chapter, compliance with an AZPDES permit during its term constitutes compliance, for purposes of enforcement, with Article 9 of this Chapter. However, the Director may modify, revoke and reissue, suspend, or terminate a permit during its term for cause under R18-9-B906.
- B. The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.
- C. The issuance of a permit does not authorize any injury to a person or property or invasion of other private rights, or any infringement of federal, state, or local law, or regulations.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-A905. AZPDES Program Standards

- A. Except for subsection (A)(11), the following 40 CFR sections and appendices, July 1, 2003 edition, as they apply to the NPDES program, are incorporated by reference, do not include any later amendments or editions of the incorporated matter, and are on file with the Department:
 1. General program requirements.
 - a. 40 CFR 122.7;
 - b. 40 CFR 122.21, except 40 CFR 122.21(a) through (e) and (l);
 - c. 40 CFR 122.22;
 - d. 40 CFR 122.26, except 40 CFR 122.26(c)(2), and 40 CFR 122.26(e)(2);
 - e. 40 CFR 122.29;
 - f. 40 CFR 122.32;
 - g. 40 CFR 122.33;
 - h. 40 CFR 122.34;
 - i. 40 CFR 122.35;
 - j. 40 CFR 122.62(a) and (b).
 2. Procedures for Decision making.
 - a. 40 CFR 124.8, except 40 CFR 124.8(b)(3); and
 - b. 40 CFR 124.56.
 3. Permit requirements and conditions.
 - a. 40 CFR 122.41, except 40 CFR 122.41(a)(2) and (a)(3);
 - b. 40 CFR 122.42;
 - c. 40 CFR 122.43;
 - d. 40 CFR 122.44;
 - e. 40 CFR 122.45;
 - f. 40 CFR 122.47;
 - g. 40 CFR 122.48; and
 - h. 40 CFR 122.50.
 4. Criteria and standards for the national pollutant discharge elimination system. 40 CFR 125, subparts A, B, D, H, and I.

9. Effluent limitations guidelines. 40 CFR 405 through 40 CFR 471.
10. Standards for the use or disposal of sewage sludge. 40 CFR 503, Subpart C.
11. The following substitutions apply to the material in subsections (A)(1) through (A)(10):
 - a. Substitute the term AZPDES for any reference to NPDES;
 - b. Except for 40 CFR 122.21(f) through (q), substitute R18-9-B901 (individual permit), and R18-9-C901 (general permit), for any reference to 40 CFR 122.21;
 - c. Substitute Articles 9 and 10 of this Chapter for any reference to 40 CFR 122;
 - d. Substitute R18-9-C901 for any reference to 40 CFR 122.28;
 - e. Substitute R18-9-B901 (individual permit), and R18-9-C901 (general permit), for any reference to 40 CFR 122 subpart B;
 - f. Substitute Articles 9 and 10 of this Chapter for any reference to 40 CFR 123;
 - g. Substitute Articles 9 and 10 of this Chapter for any reference to 40 CFR 124;
 - h. Substitute R18-9-1006 for any reference to 40 CFR 503.32; and
 - i. Substitute R18-9-1010 for any reference to 40 CFR 503.33.

- B. A person shall analyze a pollutant using a test procedure for the pollutant specified by the Director in an AZPDES permit. If the Director does not specify a test procedure for a pollutant in an AZPDES permit, a person shall analyze the pollutant using:
 1. A test procedure listed in 40 CFR 136, which is incorporated by reference in subsection (A)(7);
 2. An alternate test procedure approved by the EPA as provided in 40 CFR 136;
 3. A test procedure listed in 40 CFR 136, with modifications allowed by the EPA and approved as a method alteration by the Arizona Department of Health Services under A.A.C. R9-14-610(B); or
 4. If a test procedure for a pollutant is not available under subsection (B)(1) through (B)(3), a test procedure listed in A.A.C. R9-14-612 or approved under A.A.C. R9-14-610(B).

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 2704, effective June 5, 2002 (Supp. 02-2). Amended by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-A906. General Pretreatment Regulations for Existing and New Sources of Pollution

- A. The reduction or alteration of a pollutant may be obtained by physical, chemical, or biological processes, process changes, or by other means, except as prohibited under 40 CFR 403.6(d), which is incorporated by reference in R18-9-

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A905(A)(8)(b). Appropriate pretreatment technology includes control equipment, such as equalization tanks or facilities, for protection against surges or slug loading that might interfere with or otherwise be incompatible with the POTW. However, if wastewater from a regulated process is mixed in an equalization facility with unregulated wastewater or with wastewater from another regulated process, the effluent from the equalization facility shall meet an adjusted pretreatment limit calculated under 40 CFR 403.6(e), which is incorporated by reference in R18-9-A905(A)(8)(b).

B. Pretreatment applies to:

1. Pollutants from non-domestic sources covered by pretreatment standards that are indirectly discharged, transported by truck or rail, or otherwise introduced into POTWs;
2. POTWs that receive wastewater from sources subject to national pretreatment standards; and
3. Any new or existing source subject to national pretreatment standards.

C. National pretreatment standards do not apply to sources that discharge to a sewer that is not connected to a POTW.**D. For purposes of this Section the terms "National Pretreatment Standard" and "Pretreatment Standard" mean any regulation containing pollutant discharge limits promulgated by EPA under section 307(b) and (c) of the Clean Water Act (33 U.S.C. 1317), which applies to Industrial Users. This term includes prohibitive discharge limits established under 40 CFR 403.5.****Historical Note**

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-A907. Public Notice**A. Individual permits.**

1. The Director shall publish a notice that a draft individual permit has been prepared, or a permit application has been tentatively denied, in one or more newspapers of general circulation where the facility is located. The notice shall contain:
 - a. The name and address of the Department;
 - b. The name and address of the permittee or permit applicant and if different, the name of the facility or activity regulated by the permit;
 - c. A brief description of the business conducted at the facility or activity described in the permit application;
 - d. The name, address, and telephone number of a person from whom an interested person may obtain further information, including copies of the draft permit, fact sheet, and application;
 - e. A brief description of the comment procedures, the time and place of any hearing, including a statement of procedures to request a hearing (unless a hearing has already been scheduled), and any other procedure by which the public may participate in the final permit decision;
 - f. A general description of the location of each existing or proposed discharge point and the name of the receiving water;
 - g. For sources subject to section 316(a) of the Clean Water Act, a statement that the thermal component of the discharge is subject to effluent limitations under the Clean Water Act, section 301 (33 U.S.C. 1311) or 306 (33 U.S.C. 1316) and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under section 301 (33 U.S.C. 1311) or 306 (33 U.S.C. 1316);

- h. Requirements applicable to cooling water intake structures at new facilities subject to 40 CFR 125, subpart I; and
 - i. Any additional information considered necessary to the permit decision.
2. The Department shall provide the applicant with a copy of the draft individual permit.
 3. Copy of the notice. The Department shall provide the following entities with a copy of the notice:
 - a. The applicant or permittee;
 - b. Any user identified in the permit application of a privately owned treatment works;
 - c. Any affected federal, state, tribal, or local agency, or council of government;
 - d. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources, the Arizona Historic Preservation Office, and the U.S. Army Corps of Engineers;
 - e. Each applicable county department of health, environmental services, or comparable department;
 - f. Any person who requested, in writing, notification of the activity; and
 - g. The Secretaria de Medio Ambiente y Recursos Naturales and the United States Section of the International Boundary and Water Commission, if the Department is aware the effluent discharge is expected to reach Sonora, Mexico, either through surface water or groundwater.

B. General permits. If the Director considers issuing a general permit applicable to a category of discharge under R18-9-C901, the Director shall publish a general notice of the draft permit in the *Arizona Administrative Register*. The notice shall contain:

1. The name and address of the Department,
2. The name of the person to contact regarding the permit,
3. The general permit category,
4. A brief description of the proposed general permit,
5. A map or description of the permit area,
6. The web site or any other location where the proposed general permit may be obtained, and
7. The ending date for public comment.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-A908. Public Participation, EPA Review, EPA Hearing**A. Public comment period.**

1. The Director shall accept written comments from any interested person before a decision is made on any notice published under R18-9-A907(A) or (B).
2. The public comment period begins on the publication date of the notice and extends for 30 calendar days.
3. The Director may extend the comment period to provide commenters a reasonable opportunity to participate in the decision-making process.
4. If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the Director may reopen or extend the comment period to provide interested persons an opportunity to comment on the information or arguments submitted. Comments filed during a reopened comment period are limited to the substantial new questions that caused its reopening.
 - a. Corps of Engineers.

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- i. If the District Engineer advises the Director that denying the permit or imposing specified conditions upon a permit is necessary to avoid any substantial impairment of anchorage or navigation, then the Director shall deny the permit or include the specified conditions in the permit.
 - ii. A person shall use the applicable procedures of the Corps of Engineers Review and not the procedures under this Article to appeal the denial of a permit or conditions specified by the District Engineer.
 - iii. If the conditions are stayed by a court of competent jurisdiction or by applicable procedures of the Corps of Engineers, those conditions are considered stayed in the AZPDES permit for the duration of that stay.
 - b. If an agency with jurisdiction over fish, wildlife, or public health advises the Director in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, or wildlife resource, the Director may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of the Clean Water Act.
- B. Public hearing.**
- 1. The Director shall provide notice and conduct a public hearing to address a draft permit or denial regarding a final decision if:
 - a. Significant public interest in a public hearing exists, or
 - b. Significant issues or information have been brought to the attention of the Director during the comment period that was not considered previously in the permitting process.
 - 2. If, after publication of the notice under R18-9-A907, the Director determines that a public hearing is necessary, the Director shall schedule a public hearing and publish notice of the public hearing at least once, in one or more newspapers of general circulation where the facility is located. The notice for public hearing shall contain:
 - a. The date, time, and place of the hearing;
 - b. Reference to the date of a previous public notice relating to the proposed decision, if any; and
 - c. A brief description of the nature and purpose of the hearing, including reference to the applicable laws and rules.
 - 3. The Department shall accept written public comment until the close of the hearing or until a later date specified by the person presiding at the public hearing.
- C. EPA review of draft and proposed permits.**
- 1. Individual permits.
 - a. The Department shall send a copy of the draft permit to EPA.
 - b. If EPA objects to the draft permit within 30 days from the date of receipt of the draft permit, the EPA comment period is extended to 90 days from the date of receipt of the draft permit and the substantive review time-frame is suspended until EPA makes a final determination.
 - c. If, based on public comments, the Department revises the draft permit, the Department shall send EPA a copy of the proposed permit. If EPA objects to the proposed permit within 30 days from the date of receipt of the proposed permit, the EPA comment period is extended to 90 days from the date of receipt of the proposed permit and the substantive review time-frame is suspended until EPA makes a final determination.
 - d. If EPA withdraws its objection to the draft or proposed permit or does not submit specific objections within 90 days, the Director shall issue the permit.
 - 2. General permits. The Director shall send a copy of the draft permit to EPA and comply with the following review procedure for EPA comments:
 - a. If EPA objects to the draft permit within 90 days from receipt of the draft permit, the Department shall not issue the permit until the objection is resolved;
 - b. If, based on public comments, the Department revises the draft permit, the Department shall send EPA a copy of the proposed permit. If EPA objects to the proposed permit within 90 days from receipt of the proposed permit, the Department shall not issue the permit until the objection is resolved;
 - c. If EPA withdraws its objection to the draft or proposed permit or does not submit specific objections within 90 days, the Director shall issue the permit.
- D. EPA hearing.** Within 90 days of receipt by the Director of a specific objection by EPA, the Director or any interested person may request that EPA hold a public hearing on the objection.
- 1. If following the public hearing EPA withdraws the objection, the Director shall issue the permit.
 - 2. If a public hearing is not held, and EPA reaffirms the original objection, or modifies the terms of the objection, and the Director does not resubmit a permit revised to meet the EPA objection within 90 days of receipt of the objection, EPA may issue the permit for one term. Following the completion of the permit term, authority to issue the permit reverts to the Department.
 - 3. If a public hearing is held and EPA does not withdraw an objection or modify the terms of the objection, and the Director does not resubmit a permit revised to meet the EPA objection within 30 days of notification of the EPA objection, EPA may issue the permit for one permit term. Following the completion of the permit term, authority to issue the permit reverts to the Department.
 - 4. If EPA issues the permit instead of the Director, the Department shall close the application file.
- E. Final permit determination.**
- 1. Individual permits. At the same time the Department notifies a permittee or an applicant of the final individual permit determination, the Department shall send, through regular mail, a notice of the determination to any person who submitted comments or attended a public hearing on the final individual permit determination. The Department shall:
 - a. Specify the provisions, if any, of the draft individual permit that have been changed in the final individual permit determination, and the reasons for the change; and
 - b. Briefly describe and respond to all significant comments on the draft individual permit or the permit application raised during the public comment period, or during any hearing.
 - 2. General permits. The Director shall publish a general notice of the final permit determination in the *Arizona Administrative Register*. The notice shall:
 - a. Specify the provisions, if any, of the draft general permit that have been changed in the final general

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- permit determination, and the reasons for the change;
- b. Briefly describe and respond to all significant comments on the draft general permit raised during the public comment period, or during any hearing; and
 - c. Specify where a copy of the final general permit may be obtained.
3. The Department shall make the response to comments available to the public.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-A909. Petitions

- A. Any person may submit a petition to the Director requesting:
 1. The issuance of a general permit;
 2. An individual permit covering any discharge into an MS4 under 40 CFR 122.26(f), which is incorporated by reference in R18-9-A905(A)(1)(d); or
 3. An individual permit under R18-9-C902(B)(1).
- B. The petition shall contain:
 1. The name, address, and telephone number of the petitioner;
 2. The location of the facility;
 3. The exact nature of the petition, and
 4. Evidence of the validity of the petition.
- C. The Department shall provide the permittee with a copy of the petition.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

PART B. INDIVIDUAL PERMITS

R18-9-B901. Individual Permit Application

- A. Time to apply.
 1. Any person who owns or operates a facility covered by R18-9-A902(B) or R18-9-A902(C), shall apply for an AZPDES individual permit at least 180 days before the date of the discharge or a later date if granted by the Director, unless the person:
 - a. Is exempt under R18-9-A902(G);
 - b. Is covered by a general permit under Article 9, Part C of this Chapter; or
 - c. Is a user of a privately owned treatment works, unless the Director requires a permit under 40 CFR 122.44(m).
 2. Construction. Any person who proposes a construction activity under R18-9-A902(B)(9)(c) or R18-9-A902(B)(9)(d) and wishes coverage under an individual permit, shall apply for the individual permit at least 90 days before the date on which construction is to commence.
 3. Waivers.
 - a. Unless the Director grants a waiver under 40 CFR 122.32, a person operating a small MS4 is regulated under the AZPDES program.
 - b. The Director shall review any waiver granted under subsection (A)(3)(a) at least every five years to determine whether any of the information required for granting the waiver has changed.
- B. Application. An individual permit applicant shall submit the following information on an application obtained from the Department. The Director may require more than one application from a facility depending on the number and types of discharges or outfalls.
 1. Discharges, other than stormwater.

- a. The information required under 40 CFR 122.21(f) through (l);
 - b. The signature of the certifying official required under 40 CFR 122.22;
 - c. The name and telephone number of the operator, if the operator is not the applicant; and
 - d. Whether the facility is located in the border area, and, if so:
 - i. A description of the area into which the effluent discharges from the facility may flow, and
 - ii. A statement explaining whether the effluent discharged is expected to cross the Arizona-Sonora, Mexico border.
2. Stormwater. In addition to the information required in subsection (B)(1)(c) and (B)(1)(d):
 - a. For stormwater discharges associated with industrial activity, the application requirements under 40 CFR 122.26(c)(1);
 - b. For large and medium MS4s, the application requirements under 40 CFR 122.26(d);
 - c. For small MS4s:
 - i. A stormwater management program under 40 CFR 122.34, and
 - ii. The application requirements under 40 CFR 122.33.
- C. Consolidation of permit applications.
 1. The Director may consolidate two or more permit applications for any facility or activity that requires a permit under Articles 9 and 10 of this Chapter.
 2. Whenever a facility or activity requires an additional permit under Articles 9 and 10 of this Chapter, the Director may coordinate the expiration date of the new permit with the expiration date of an existing permit so that all permits expire simultaneously. The Department may then consolidate the processing of the subsequent applications for renewal permits.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-B902. Requested Coverage Under a General Permit

An owner or operator may request that an individual permit be revoked, if a source is excluded from a general permit solely because it already has an individual permit.

1. The Director shall grant the request for revocation of an individual permit upon determining that the permittee otherwise qualifies for coverage under a general permit.
2. Upon revocation of the individual permit, the general permit applies to the source.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-B903. Individual Permit Issuance or Denial

- A. Once the application is complete, the Director shall tentatively decide whether to prepare a draft permit or to deny the application.
- B. Permit issuance. If, based upon the information obtained by or available to the Department under R18-9-A907, R18-9-A908, and R18-9-B901, the Director determines that an applicant complies with A.R.S. Title 49, Chapter 2, Article 3.1 and Articles 9 and 10 of this Chapter, the Director shall issue a permit that is effective as prescribed in A.R.S. 49-255.01(H).
- C. Permit denial.
 1. If the Director decides to deny the permit application, the Director shall provide the applicant with a written notice

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of intent to deny the permit application. The written notification shall include:

- a. The reason for the denial with reference to the statute or rule on which the denial is based;
 - b. The applicant's right to appeal the denial with the Water Quality Appeals Board under A.R.S. § 49-323, the number of days the applicant has to file a protest challenging the denial, and the name and telephone number of the Department contact person who can answer questions regarding the appeals process; and
 - c. The applicant's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.
2. The Director shall provide an opportunity for public comment under R18-9-A907 and R18-9-A908 on a denial.
 3. The decision of the Director to deny the permit application takes effect 30 days after the decision is served on the applicant, unless the applicant files an appeal under A.R.S. 49-255.01(H)(1).

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-B904. Individual Permit Duration, Reissuance, and Continuation**A. Permit duration.**

1. An AZPDES individual permit is effective for a fixed term of not more than five years. The Director may issue a permit for a duration that is less than the full allowable term.
2. If the Director does not reissue a permit within the period specified in the permit, the permit expires, unless it is continued under subsection (C).
3. If a permittee of a large or medium MS4 allows a permit to expire by failing to reapply within the time period specified in subsection (B), the permittee shall submit a new application under R18-9-B901 and follow the application requirements under 40 CFR 122.26(d), which is incorporated by reference in R18-9-A905(A)(1)(d).

B. Permit reissuance.

1. A permittee shall reapply for an individual permit at least 180 days before the permit expiration date.
2. Unless otherwise specified in the permit, an annual report submitted 180 days before the permit expiration date satisfies the reapplication requirement for an MS4 permit. The annual report shall contain:
 - a. The name, address, and telephone number of the MS4;
 - b. The name, address, and telephone number of the contact person;
 - c. The status of compliance with permit conditions, including an assessment of the appropriateness of the selected best management practices and progress toward achieving the selected measurable goals for each minimum measure;
 - d. The results of any information collected and analyzed, including monitoring data, if any;
 - e. A summary of the stormwater activities planned for the next reporting cycle;
 - f. A change in any identified best management practices or measurable goals for any minimum measure; and
 - g. Notice of relying on another governmental entity to satisfy some of the permit obligations.

C. Continuation. A NPDES or AZPDES individual permit may continue beyond its expiration date if:

1. The permittee has submitted a complete application for an AZPDES individual permit at least 180 days before the expiration date of the existing permit and the permitted activity is of a continuing nature; and
2. The Department is unable, through no fault of the permittee, to issue an AZPDES individual permit on or before the expiration date of the existing permit.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-B905. Individual Permit Transfer

A. A permittee may request the Director to transfer an individual permit to a new permittee. The Director may modify, or revoke and reissue the permit to identify the new permittee, or make a minor modification to identify the new permittee.

B. Automatic transfer. The Director may automatically transfer an individual permit to a new permittee if:

1. The current permittee notifies the Director by certified mail at least 30 days in advance of the proposed transfer date and includes a written agreement between the existing and new permittee containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
2. The Director does not notify the existing permittee and the proposed new permittee of the Director's intent to modify, or revoke and reissue the permit. A modification under this subsection may include a minor modification specified in R18-9-B906(B).

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-B906. Modification, Revocation and Reissuance, and Termination of Individual Permits

A. Permit modification, revocation and reissuance.

1. The Director may modify, or revoke and reissue an individual permit for any of the following reasons:
 - a. The Director receives a written request from an interested person;
 - b. The Director receives information, such as when inspecting a facility;
 - c. The Director receives a written request to modify, or revoke and reissue a permit from a permittee as required in the individual permit; or
 - d. After review of a permit file, the Director determines one or more of the causes listed under 40 CFR 122.62(a) or (b) exists.
 - i. If the Director decides a written request is not justified under 40 CFR 122.62 or subsection (B), the Director shall send the requester a brief written response giving a reason for the decision.
 - ii. The denial of a request for modification, or revocation and reissuance is not subject to public notice, comment, or hearing under R18-9-A907 and R18-9-A908(A) and (B).
2. If the Director tentatively decides to modify, or revoke and reissue an individual permit, the Director shall prepare a draft permit incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application.

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- a. Modified individual permit. The Director shall reopen only the modified conditions when preparing a new draft permit and process the modifications.
 - b. Revoked and reissued individual permit.
 - i. The permittee shall submit a new application.
 - ii. The Director shall reopen the entire permit just as if the permit had expired and was being reissued.
 3. During any modification, or revocation and reissuance proceeding, the permittee shall comply with all conditions of the existing permit until a new final permit is issued.
- B. Minor modifications.**
1. Upon consent of the permittee, the Director may make any of the following modifications to an individual permit:
 - a. Correct typographical errors;
 - b. Update a permit condition that changed as a result of updating an Arizona water quality standard;
 - c. Require more frequent monitoring or reporting by the permittee;
 - d. Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;
 - e. Allow for a change in ownership or operational control of a facility, if no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director;
 - f. Change the construction schedule for a new source discharger. The change shall not affect a discharger's obligation to have all pollution control equipment installed and in operation before the discharge;
 - g. Delete a point source outfall if the discharge from that outfall is terminated and does not result in a discharge of pollutants from other outfalls except under permit limits;
 - h. Incorporate conditions of a POTW pretreatment program approved under 40 CFR 403.11 and 40 CFR 403.18, which is incorporated by reference in R18-9-A905(A)(7)(b) as enforceable conditions of the permit, and
 - i. Annex an area by a municipality.
 2. Any modification processed under subsection (B)(1) is not subject to the public notice provision under R18-9-A907 or public participation procedures under R18-9-A908.
- C. Permit termination.**
1. The Director may terminate an individual permit during its term or deny reissuance of a permit for any of the following causes:
 - a. The permittee's failure to comply with any condition of the permit;
 - b. The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant fact;
 - c. The Director determined that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or
 - d. A change occurs in any condition that requires either a temporary or permanent reduction or elimination of any discharge, sludge use, or disposal practice controlled by the permit, for example, a plant closure or termination of discharge by connection to a POTW.
 2. If the Director terminates a permit during its term or denies a permit renewal application for any cause listed in subsection (C)(1), the Director shall issue a Notice of Intent to Terminate, except when the entire discharge is terminated.
 - a. Unless the permittee objects to the termination notice within 30 days after the notice is sent, the termination is final at the end of the 30 days.
 - b. If the permittee objects to the termination notice, the permittee shall respond in writing to the Director within 30 days after the notice is sent.
 - c. Expedited permit termination. If a permittee requests an expedited permit termination procedure, the permittee shall certify that the permittee is not subject to any pending state or federal enforcement actions, including citizen suits brought under state or federal law.
 - d. The denial of a request for termination is not subject to public notice, comment, or hearing under R18-9-A907 and R18-9-A908(A) and (B).

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-B907. Individual Permit Variances

- A.** The Director may grant or deny a request for any of the following variances:
1. An extension under section 301(i) of the Clean Water Act (33 U.S.C. 1311) based on a delay in completion of a POTW;
 2. After consultation with EPA, an extension under section 301(k) of the Clean Water Act (33 U.S.C. 1311) based on the use of innovative technology;
 3. A variance under section 316(a) of the Clean Water Act (33 U.S.C. 1326) for thermal pollution, or
 4. A variance under R18-11-122 for a water quality standard.
- B.** The Director may deny, forward to EPA with a written concurrence, or submit to EPA without recommendation a completed request for:
1. A variance based on the economic capability of the applicant under section 301(c) of the Clean Water Act (33 U.S.C. 1311); or
 2. A variance based on water quality related effluent limitations under 302(b)(2) (33 U.S.C. 1312) of the Clean Water Act.
- C.** The Director may deny or forward to EPA with a written concurrence a completed request for:
1. A variance based on the presence of fundamentally different factors from those on which an effluent limitations guideline is based; and
 2. A variance based upon water quality factors under section 301(g) of the Clean Water Act (33 U.S.C. 1311).
- D.** If the Department approves a variance under subsection (A) or if EPA approves a variance under subsection (B) or (C), the Director shall prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing the decision.

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Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

PART C. GENERAL PERMITS**R18-9-C901. General Permit Issuance**

- A.** The Director may issue a general permit to cover one or more categories of discharges, sludge use, or disposal practices, or facilities within a geographic area corresponding to existing geographic or political boundaries, if the sources within a covered category of discharges are either:
1. Stormwater point sources; or
 2. One or more categories of point sources other than stormwater point sources, or one or more categories of treatment works treating domestic sewage, if the sources, or treatment works treating domestic sewage, within each category all:
 - a. Involve the same or substantially similar types of operations;
 - b. Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;
 - c. Require the same effluent limitations, operating conditions, or standards for sludge use or disposal;
 - d. Require the same or similar monitoring; and
 - e. Are more appropriately controlled under a general permit than under an individual permit.
- B.** Any person seeking coverage under a general permit issued under subsection (A) shall submit a Notice of Intent on a form provided by the Department within the time-frame specified in the general permit unless exempted under the general permit as provided in subsection (C)(2). The person shall not discharge before the time specified in the general permit unless the discharge is authorized by another permit.
- C.** Exemption from filing a Notice of Intent.
1. The following dischargers are not exempt from submitting a Notice of Intent:
 - a. A discharge from a POTW;
 - b. A combined sewer overflow;
 - c. A MS4;
 - d. A primary industrial facility;
 - e. A stormwater discharge associated with industrial activity;
 - f. A CAFO;
 - g. A treatment works treating domestic sewage; and
 - h. A stormwater discharge associated with construction activity.
 2. For dischargers not listed in subsection (C)(1), the Director may consider a Notice of Intent inappropriate for the discharge and authorize the discharge under a general permit without a Notice of Intent. In making this finding, the Director shall consider:
 - a. The type of discharge,
 - b. The expected nature of the discharge,
 - c. The potential for toxic and conventional pollutants in the discharge,
 - d. The expected volume of the discharge,
 - e. Other means of identifying the discharges covered by the permit, and
 - f. The estimated number of discharges covered by the permit.
 3. The Director shall provide reasons for not requiring a Notice of Intent for a general permit in the public notice.
- D.** Notice of Intent. The Director shall specify the contents of the Notice of Intent in the general permit and the applicant shall submit information sufficient to establish coverage under the general permit, including, at a minimum:

1. The name, position, address, and telephone number of the owner of the facility;
 2. The name, position, address, and telephone number of the operator of the facility, if different from subsection (D)(1);
 3. The name and address of the facility;
 4. The type and location of the discharge;
 5. The receiving streams;
 6. The latitude and longitude of the facility;
 7. For a CAFO, the information specified in 40 CFR 122.21(i)(1) and a topographic map;
 8. The signature of the certifying official required under 40 CFR 122.22; and
 9. Any other information necessary to determine eligibility for the AZPDES general permit.
- E.** The general permit shall contain:
1. The expiration date; and
 2. The appropriate permit requirements, permit conditions, and best management practices, and measurable goals for MS4 general permits, under R18-9-A905(A)(1), R18-9-A905(A)(2), and R18-9-A905(A)(3) and determined by the Director as necessary and appropriate for the protection of navigable waters.
- F.** The Department shall inform a permittee if EPA requests the permittee's Notice of Intent, unless EPA requests that the permittee not be notified.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4). Amended by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-C902. Required and Requested Coverage Under an Individual Permit

- A.** Individual permit requirements.
1. The Director may require a person authorized by a general permit to apply for and obtain an individual permit for any of the following cases:
 - a. A discharger or treatment works treating domestic sewage is not in compliance with the conditions of the general permit;
 - b. A change occurs in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;
 - c. Effluent limitation guidelines are promulgated for point sources covered by the general permit;
 - d. An Arizona Water Quality Management Plan containing requirements applicable to the point sources is approved;
 - e. Circumstances change after the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;
 - f. Standards for sewage sludge use or disposal are promulgated for the sludge use and disposal practices covered by the general permit; or
 - g. If the Director determines that the discharge is a significant contributor of pollutants. When making this determination, the Director shall consider:
 - i. The location of the discharge with respect to navigable waters,
 - ii. The size of the discharge,
 - iii. The quantity and nature of the pollutants discharged to navigable waters, and

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- iv. Any other relevant factor.
2. If an individual permit is required, the Director shall notify the discharger in writing of the decision. The notice shall include:
 - a. A brief statement of the reasons for the decision,
 - b. An application form,
 - c. A statement setting a deadline to file the application,
 - d. A statement that on the effective date of issuance or denial of the individual permit, coverage under the general permit will automatically terminate,
 - e. The applicant's right to appeal the individual permit requirement with the Water Quality Appeals Board under A.R.S. § 49-323, the number of days the applicant has to file a protest challenging the individual permit requirement, and the name and telephone number of the Department contact person who can answer questions regarding the appeals process; and
 - f. The applicant's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.
 3. The discharger shall apply for a permit within 90 days of receipt of the notice, unless the Director grants a later date. In no case shall the deadline be more than 180 days after the date of the notice.
 4. If the permittee fails to submit the individual permit application within the time period established in subsection (A)(3), the applicability of the general permit to the permittee is automatically terminated at the end of the day specified by the Director for application submittal.
 5. Coverage under the general permit shall continue until an individual permit is issued unless the permit coverage is terminated under subsection (A)(4).
- B. Individual permit request.**
1. An owner or operator authorized by a general permit may request an exclusion from coverage of a general permit by applying for an individual permit.
 - a. The owner or operator shall submit an individual permit application under R18-9-B901(B) and include the reasons supporting the request no later than 90 days after publication of the general permit.
 - b. The Director shall grant the request if the reasons cited by the owner or operator are adequate to support the request.
 2. If an individual permit is issued to an owner or operator otherwise subject to a general permit, the applicability of the general permit to the discharge is automatically terminated on the effective date of the individual permit.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-C903. General Permit Duration, Reissuance, and Continuation

- A. General permit duration.**
1. An AZPDES general permit is effective for a fixed term of not more than five years. The Director may issue a permit for a duration that is less than the full allowable term.
 2. If the Director does not reissue a general permit before the expiration date, the current general permit will be administratively continued and remain in force and effect until the general permit is reissued.
- B. Continued coverage.** Any permittee granted permit coverage before the expiration date automatically remains covered by the continued permit until the earlier of:

1. Reissuance or replacement of the permit, at which time the permittee shall comply with the Notice of Intent conditions of the new permit to maintain authorization to discharge; or
2. The date the permittee has submitted a Notice of Termination; or
3. The date the Director has issued an individual permit for the discharge; or
4. The date the Director has issued a formal permit decision not to reissue the general permit, at which time the permittee shall seek coverage under an alternative general permit or an individual permit.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-C904. Change of Ownership or Operator Under a General Permit

If a change of ownership or operator occurs for a facility operating under a general permit:

1. Permitted owner or operator. The permittee shall provide the Department with a Notice of Termination by certified mail within 30 days after the new owner or operator assumes responsibility for the facility.
 - a. The Notice of Termination shall include all requirements for termination specified in the general permit for which the Notice of Termination is submitted.
 - b. A permittee shall comply with the permit conditions specified in the general permit for which the Notice of Termination is submitted until the Notice of Termination is received by the Department.
2. New owner or operator.
 - a. The new owner or operator shall complete and file a Notice of Intent with the Department within the time period specified in the general permit before taking over operational control of, or initiation of activities at, the facility.
 - b. If the previous permittee was required to implement a stormwater pollution prevention plan, the new owner shall develop a new stormwater pollution prevention plan, or may modify, certify, and implement the old stormwater pollution prevention plan if the old stormwater pollution prevention plan complies with the requirements of the current general permit.
 - c. The permittee shall provide the Department with a Notice of Termination if a permitted facility ceases operation, ceases to discharge, or changes operator status. In the case of a construction site, the permittee shall submit a Notice of Termination to the Department when:
 - i. The facility ceases construction operations and the discharge is no longer associated with construction or construction-related activities,
 - ii. The construction is complete and final site stabilization is achieved, or
 - iii. The operator's status changes.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5879, effective December 7, 2001 (Supp. 01-4).

R18-9-C905. General Permit Modification and Revocation and Reissuance

- A.** The Director may modify or revoke a general permit issued under R18-9-A907(B), R18-9-A908, and R18-9-C901 if one or more of the causes listed under 40 CFR 122.62(a) or (b) exists.

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- B. The Director shall follow the procedures specified in R18-9-A907(B) and R18-9-A908 to modify or revoke and reissue a general permit.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

PART D. ANIMAL FEEDING OPERATIONS AND CONCENTRATED ANIMAL FEEDING OPERATIONS

R18-9-D901. CAFO Designations

- A. Two or more animal feeding operations under common ownership are considered a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.
- B. The Director shall designate an animal feeding operation as a CAFO if the animal feeding operation significantly contributes a pollutant to a navigable water. The Director shall consider the following factors when making this determination:
1. The size of the animal feeding operation and the amount of wastes reaching a navigable water;
 2. The location of the animal feeding operation relative to a navigable water;
 3. The means of conveyance of animal wastes and process wastewaters into a navigable water;
 4. The slope, vegetation, rainfall, and any other factor affecting the likelihood or frequency of discharge of animal wastes and process wastewaters into a navigable water; and
 5. Any other relevant factor.
- C. The Director shall conduct an onsite inspection of the animal feeding operation before the making a designation under subsection (B).
- D. The Director shall not designate an animal feeding operation having less than the number of animals established in R18-9-A901(19)(a) as a CAFO unless a pollutant is discharged:
1. Into a navigable water through a manmade ditch, flushing system, or other similar manmade device; or
 2. Directly into a navigable water that originates outside of and passes over, across, or through the animal feeding operation or otherwise comes into direct contact with the animals confined in the operation.
- E. If the Director makes a designation under subsection (B), the Director shall notify the owner or operator of the operation, in writing, of the designation.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-D902. AZPDES Permit Coverage Requirements

- A. Any person who owns or operates a CAFO, except as provided in subsections (B) and (C), shall submit an application for an individual permit under R18-9-B901(B) or seek coverage under a general permit under R18-9-C901(B) within the applicable deadline specified in R18-9-D904(A).
- B. If a person who owns or operates a large CAFO receives a no potential to discharge determination under R18-9-D903, coverage under an AZPDES permit described in this Part is not required.
- C. The discharge of manure, litter, or process wastewater to a navigable water from a CAFO as a result of the application of manure, litter, or process wastewater by the CAFO to land areas under its control is subject to AZPDES permit requirements, except where it is an agricultural stormwater discharge as provided in section 502(14) of the Clean Water Act (33 U.S.C. 1362(14)). For purposes of this Section, an "agricultural stormwater discharge" means a precipitation-related dis-

charge of manure, litter, or process wastewater from land areas under the control of a CAFO when the person who owns or operates the CAFO has applied the manure, litter, or process wastewater according to site-specific nutrient management practices to ensure appropriate agricultural use of the nutrients in the manure, litter, or process wastewater, as specified under 40 CFR 122.42(e)(1)(vi) through (ix).

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-D903. No Potential To Discharge Determinations for Large CAFOs

- A. For purposes of this Section, "no potential to discharge" means that there is no potential for any CAFO manure, litter, or process wastewater to enter into a navigable water under any circumstance or climatic condition.
- B. Any person who owns or operates a large CAFO and has not had a discharge within the previous five years may request a no potential to discharge determination by submitting to the Department:
1. The information specified in 40 CFR 122.21(f) and 40 CFR 122.21(i)(1)(i) through (ix) on a form obtained from the Department, by the applicable date specified in R18-9-D904(A); and
 2. Any additional information requested by the Director to supplement the request or requested through an onsite inspection of the CAFO.
- C. Process for making a no potential to discharge determination.
1. Upon receiving a request under subsection (B), the Director shall consider:
 - a. The potential for discharges from both the production area and any land application area, and
 - b. Any record of prior discharges by the CAFO.
 2. The Director shall issue a public notice that includes:
 - a. A statement that a no potential to discharge request has been received;
 - b. A fact sheet, when applicable;
 - c. A brief description of the type of facility or activity that is the subject of the no potential to discharge determination;
 - d. A brief summary of the factual basis, upon which the request is based, for granting the no potential to discharge determination; and
 - e. A description of the procedures for reaching a final decision on the no potential to discharge determination.
 3. The Director shall base the decision to grant a no potential to discharge determination on the administrative record, which includes all information submitted in support of a no potential to discharge determination and any other supporting data gathered by the Director.
 4. The Director shall notify the owner or operator of the large CAFO of the final determination within 90 days of receiving the request.
- D. If the Director determines that the operation has the potential to discharge, the person who owns or operates the CAFO shall seek coverage under an AZPDES permit within 30 days after the determination of potential to discharge.
- E. A no potential to discharge determination does not relieve the CAFO from the consequences of a discharge. An unpermitted CAFO discharging a pollutant into a navigable water is in violation of the Clean Water Act even if the Director issues a no potential to discharge determination for the facility. If the Director issues a determination of no potential to discharge to a CAFO facility but the owner or operator anticipates a change

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in circumstances that could create the potential for a discharge, the owner or operator shall contact the Director and apply for and obtain permit authorization before the change of circumstances.

- F. When the Director issues a determination of no potential to discharge, the Director retains the authority to subsequently require AZPDES permit coverage if:
1. Circumstances at the facility change;
 2. New information becomes available; or
 3. The Director determines, through other means, that the CAFO has a potential to discharge.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-D904. AZPDES Permit Coverage Deadlines

- A. Any person who owns or operates a CAFO shall apply for or seek coverage under an AZPDES permit and shall comply with all applicable AZPDES requirements, including the duty to maintain permit coverage under subsection (C).
1. Permit coverage deadline for an animal feeding operation operating before April 14, 2003.
 - a. An owner or operator of an animal feeding operation that operated before April 14, 2003 and was defined as a CAFO before February 2, 2004 shall apply for or seek permit coverage or maintain permit coverage and comply with the conditions of the applicable AZPDES permit;
 - b. An owner or operator of an animal feeding operation that operated before April 14, 2003 and was not defined as a CAFO until February 2, 2004 shall apply for or seek permit coverage by a date specified by the Director, but no later than February 13, 2006;
 - c. An owner or operator of an animal feeding operation that operated before April 14, 2003 who changes the operation on or after February 2, 2004, resulting in the operation being defined as a CAFO, shall apply for or seek permit coverage as soon as possible, but no later than 90 days after the operational change. If the operational change will not make the operation a CAFO as defined before February 2, 2004, the owner or operator may take until April 13, 2006 or 90 days after the operation is defined as a CAFO, whichever is later, to apply for or seek permit coverage;
 - d. An owner or operator of an animal feeding operation that operated before April 14, 2003 who constructs additional facilities on or after February 2, 2004, resulting in the operation being defined as a CAFO that is a new source, shall apply for or seek permit coverage at least 180 days before the new source portion of the CAFO commences operation. If the calculated 180-day deadline occurs before February 2, 2004 and the operation is not subject to this Article before February 2, 2004, the owner or operator shall apply for or seek permit coverage no later than March 3, 2004.
 2. Permit coverage deadline for an animal feeding operation operating on or after April 14, 2003. An owner or operator who started construction of a CAFO on or after April 14, 2003, including a CAFO subject to the effluent limitations guidelines in 40 CFR 412, shall apply for or seek permit coverage at least 180 days before the CAFO commences operation. If the calculated 180-day deadline occurs before February 2, 2004 and the operation is not subject to this Article before February 2, 2004, the owner

or operator shall apply for or seek permit coverage no later than March 3, 2004.

3. Permit coverage deadline for a designated CAFO. Any person who owns or operates a CAFO designated under R18-9-D901(B) shall apply for or seek permit coverage no later than 90 days after receiving a designation notice.
- B. Unless specified under R18-9-D903(E) and (F), the Director shall not require permit coverage for a CAFO that the Director determines under R18-9-D903 to have no potential to discharge. If circumstances change at a CAFO that has a no potential to discharge determination and the CAFO now has a potential to discharge, the person who owns or operates the CAFO shall notify the Director within 30 days after the change in circumstances and apply for or seek coverage under an AZPDES permit.
- C. Duty to maintain permit coverage.
1. The permittee shall:
 - a. If covered by an individual AZPDES permit, submit an application to renew the permit no later than 180 days before the expiration of the permit under R18-9-B904(B); or
 - b. If covered by a general AZPDES permit, comply with R18-9-C903(B).
 2. Continued permit coverage or reapplication for a permit is not required if:
 - a. The facility ceases operation or is no longer a CAFO; and
 - b. The permittee demonstrates to the Director that there is no potential for a discharge of remaining manure, litter, or associated process wastewater (other than agricultural stormwater from land application areas) that was generated while the operation was a CAFO.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

R18-9-D905. Closure Requirements

- A. Closure.
1. A person who owns or operates a CAFO shall notify the Department of the person's intent to cease operations without resuming an activity for which the facility was designed or operated.
 2. A person who owns or operates a CAFO shall submit a closure plan to the Department for approval 90 days before ceasing operation. The closure plan shall describe:
 - a. For operations that met the "no potential to discharge" under R18-9-D903, facility-related information based on the Notice of Termination form for the applicable general permit;
 - b. The approximate quantity of manure, process wastewater, and other materials and contaminants to be removed from the facility;
 - c. The destination of the materials to be removed from the facility and documentation that the destination is approved to accept the materials;
 - d. The method to treat any material remaining at the facility;
 - e. The method to control the discharge of pollutants from the facility;
 - f. Any limitations on future land or water use created as a result of the facility's operations or closure activities;
 - g. A schedule for implementing the closure plan; and
 - h. Any other relevant information the Department determines necessary.

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- B. The owner or operator shall provide the Department with written notice that a closure plan has been fully implemented within 30 calendar days of completion and before redevelopment.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5564, effective February 2, 2004 (Supp. 03-4).

ARTICLE 10. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM - DISPOSAL, USE, AND TRANSPORTATION OF BIOSOLIDS

R18-9-1001. Definitions

In addition to the definitions in A.R.S. § 49-255 and R18-9-A901, the following terms apply to this Article:

1. "Aerobic digestion" means the biochemical decomposition of organic matter in biosolids into carbon dioxide and water by microorganisms in the presence of air.
2. "Agronomic rate" means the whole biosolids application rate on a dry-weight basis that meets the following conditions:
 - a. The amount of nitrogen needed by existing vegetation or a planned or actual crop has been provided, and
 - b. The amount of nitrogen that passes below the root zone of the crop or vegetation is minimized.
3. "Anaerobic digestion" means the biochemical decomposition of organic matter in biosolids into methane gas and carbon dioxide by microorganisms in the absence of air.
4. "Annual biosolids application rate" means the maximum amount of biosolids (dry-weight basis) that can be applied to an acre or hectare of land during a 365-day period.
5. "Annual pollutant loading rate" means the maximum amount of a pollutant that can be applied to an acre or hectare of land during a 365-day period.
6. "Applicator" means a person who arranges for and controls the site-specific land application of biosolids in Arizona.
7. "Biosolids" means sewage sludge, including exceptional quality biosolids, that is placed on, or applied to the land to use the beneficial properties of the material as a soil amendment, conditioner, or fertilizer. Biosolids do not include any of the following:
 - a. Sludge determined to be hazardous under A.R.S. Title 49, Chapter 5, Article 2 and 40 CFR 261;
 - b. Sludge with a concentration of polychlorinated biphenyls (PCBs) equal to or greater than 50 milligrams per kilogram of total solids (dry-weight basis);
 - c. Grit (for example, sand, gravel, cinders, or other materials with a high specific gravity) or screenings generated during preliminary treatment of domestic sewage by a treatment works;
 - d. Sludge generated during the treatment of either surface water or groundwater used for drinking water;
 - e. Sludge generated at an industrial facility during the treatment of industrial wastewater, including industrial wastewater combined with domestic sewage;
 - f. Commercial septage, industrial septage, or domestic septage combined with commercial or industrial septage; or
 - g. Special wastes as defined and controlled under A.R.S. Title 49, Chapter 4, Article 9.
8. "Bulk biosolids" means biosolids that are transported and land-applied in a manner other than in a bag or other container holding biosolids of 1.102 short tons or 1 metric ton or less.
9. "Class I sludge management facility" means any POTW identified under 40 CFR 403.8(a) as being required to have an approved pretreatment program (including a POTW for which the Department assumes local program responsibilities under 40 CFR 403.10(e)) and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the regional administrator in conjunction with the Director or by the Director because of the potential for its sludge use or disposal practices to adversely affect public health or the environment.
10. "Clean water act" means the federal water pollution control act amendments of 1972, as amended (P.L. 92-500; 86 Stat. 816; 33 United States Code sections 1251 through 1376). A.R.S. 49-201(6).
11. "Coarse fragments" means rock particles in the gravel-size range or larger.
12. "Coarse or medium sands" means a soil mixture of which more than 50% of the sand fraction is retained on a No. 40 (0.425 mm) sieve.
13. "Cumulative pollutant loading rate" means the maximum amount of a pollutant applied to a land application site.
14. "Domestic septage" means the liquid or solid material removed from a septic tank, cesspool, portable toilet, marine sanitation device, or similar system or device that receives only domestic sewage. Domestic septage does not include commercial or industrial wastewater or restaurant grease-trap wastes.
15. "Domestic sewage" means waste or wastewater from humans or household operations that is discharged to a publicly or privately owned treatment works. Domestic sewage also includes commercial and industrial wastewaters that are discharged into a publicly-owned or privately-owned treatment works if the industrial or commercial wastewater combines with human excreta and other household and nonindustrial wastewaters before treatment.
16. "Dry-weight basis" means the weight of biosolids calculated after the material has been dried at 105° C until reaching a constant mass.
17. "Exceptional quality biosolids" means biosolids certified under R18-9-1013(A)(6) as meeting the pollutant concentrations in R18-9-1005 Table 2, Class A pathogen reduction in R18-9-1006, and one of the vector attraction reduction requirements in subsections R18-9-1010(A)(1) through R18-9-1010(A)(8).
18. "Feed crops" means crops produced for animal consumption.
19. "Fiber crops" means crops grown for their physical characteristics. Fiber crops, including flax and cotton, are not produced for human or animal consumption.
20. "Food crops" means crops produced for human consumption.
21. "Gravel" means soil predominantly composed of rock particles that will pass through a 3-inch (75 mm) sieve and be retained on a No. 4 (4.75 mm) sieve.
22. "Industrial wastewater" means wastewater that is generated in a commercial or industrial process.
23. "Land application," "apply biosolids," or "biosolids applied to the land" means spraying or spreading biosolids on the surface of the land, injecting biosolids below the land's surface, or incorporating biosolids into the soil to amend, condition, or fertilize the soil.

49-203. Powers and duties of the director and department

A. The director shall:

1. Adopt, by rule, water quality standards in the form and subject to the considerations prescribed by article 2 of this chapter.
2. Adopt, by rule, a permit program for WOTUS that is consistent with but not more stringent than the requirements of the clean water act for the point source discharge of any pollutant or combination of pollutants into WOTUS. The program and the rules shall be sufficient to enable this state to administer the permit program identified in section 402(b) of the clean water act, including the sewage sludge requirements of section 405 of the clean water act and as prescribed by article 3.1 of this chapter.
3. Apply the program and rules authorized under paragraph 2 of this subsection to point source discharges to non-WOTUS protected surface waters, consistent with section 49-255.04, which establishes the program components and rules that do not apply to non-WOTUS protected surface waters. The following are exempt from the non-WOTUS protected surface waters point source discharge program:
 - (a) Discharges to a non-WOTUS protected surface water incidental to a recharge project.
 - (b) Established or ongoing farming, ranching and silviculture activities such as plowing, seeding, cultivating, minor drainage or harvesting for the production of food, fiber or forest products or upland soil and water conservation practices.
 - (c) Maintenance but not construction of drainage ditches.
 - (d) Construction and maintenance of irrigation ditches.
 - (e) Maintenance of structures such as dams, dikes and levees.
4. Adopt, by rule, a program to control nonpoint source discharges of any pollutant or combination of pollutants into WOTUS.
5. Adopt, by rule, an aquifer protection permit program to control discharges of any pollutant or combination of pollutants that are reaching or may with a reasonable probability reach an aquifer. The permit program shall be as prescribed by article 3 of this chapter.
6. Adopt, by rule, the permit program for underground injection control described in the safe drinking water act.
7. Adopt, by rule, technical standards for conveyances of reclaimed water and a permit program for the direct reuse of reclaimed water.
8. Adopt, by rule or as permit conditions, discharge limitations, best management practice standards, new source performance standards, toxic and pretreatment standards and other standards and conditions as reasonable and necessary to carry out the permit programs and regulatory duties described in paragraphs 2 through 6 of this subsection.
9. Assess and collect fees to revoke, issue, deny, modify or suspend permits issued pursuant to this chapter and to process permit applications. The director may also assess and collect costs reasonably necessary if the director must conduct sampling or monitoring relating to a facility because the owner or operator of the facility has refused or failed to do so on order by the director. The director shall set fees that are reasonably related to the department's costs of providing the service for which the fee is charged. Monies collected from aquifer protection permit fees and from Arizona pollutant discharge elimination system permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. Monies from other permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund

unless otherwise provided by law. Monies paid by an applicant for review by consultants for the department pursuant to section 49-241.02, subsection D shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. State agencies are exempt from all fees imposed pursuant to this chapter except for those fees associated with the dredge and fill permit program established pursuant to article 3.2 of this chapter. For services provided under the dredge and fill permit program, a state agency shall pay either:

- (a) The fees established by the department under the dredge and fill permit program.
- (b) The reasonable cost of services provided by the department pursuant to an interagency service agreement.

10. Adopt, modify, repeal and enforce other rules that are reasonably necessary to carry out the director's functions under this chapter.

11. Require monitoring at an appropriate point of compliance for any organic or inorganic pollutant listed under section 49-243, subsection I if the director has reason to suspect the presence of the pollutant in a discharge.

12. Adopt rules establishing what constitutes a significant increase or adverse alteration in the characteristics or volume of pollutants discharged for purposes of determining what constitutes a major modification to an existing facility under the definition of new facility pursuant to section 49-201. Before the adoption of these rules, the director shall determine whether a change at a particular facility results in a significant increase or adverse alteration in the characteristics or volume of pollutants discharged on a case-by-case basis, taking into account site conditions and operational factors.

13. Consider evidence gathered by the Arizona navigable stream adjudication commission established by section 37-1121 when deciding whether a permit is required to discharge pursuant to article 3.1 of this chapter.

B. The director may:

1. On presentation of credentials, enter into, on or through any public or private property from which a discharge has occurred, is occurring or may occur or on which any disposal, land application of sludge or treatment regulated by this chapter has occurred, is occurring or may be occurring and any public or private property where records relating to a discharge or records that are otherwise required to be maintained as prescribed by this chapter are kept, as reasonably necessary to ensure compliance with this chapter. The director or a department employee may take samples, inspect and copy records required to be maintained pursuant to this chapter, inspect equipment, activities, facilities and monitoring equipment or methods of monitoring, take photographs and take other action reasonably necessary to determine the application of, or compliance with, this chapter. The owner or managing agent of the property shall be afforded the opportunity to accompany the director or department employee during inspections and investigations, but prior notice of entry to the owner or managing agent is not required if reasonable grounds exist to believe that notice would frustrate the enforcement of this chapter. If the director or department employee obtains any samples before leaving the premises, the director or department employee shall give the owner or managing agent a receipt describing the samples obtained and a portion of each sample equal in volume or weight to the portion retained. If an analysis is made of samples, or monitoring and testing are performed, a copy of the results shall be furnished promptly to the owner or managing agent.

2. Require any person who has discharged, is discharging or may discharge into the waters of the state under article 3, 3.1, 3.2 or 3.3 of this chapter and any person who is subject to pretreatment standards and requirements or sewage sludge use or disposal requirements under article 3.1 of this chapter to collect samples, to establish and maintain records, including photographs, and to install, use and maintain sampling and monitoring equipment to determine the absence or presence and nature of the discharge or indirect discharge or sewage sludge use or disposal.

3. Administer state or federal grants, including grants to political subdivisions of this state, for the construction and installation of publicly and privately owned pollutant treatment works and pollutant control devices and

establish grant application priorities.

4. Develop, implement and administer a water quality planning process, including a ranking system for applicant eligibility, wherein appropriated state monies and available federal monies are awarded to political subdivisions of this state to support or assist regional water quality planning programs and activities.

5. Enter into contracts and agreements with the federal government to implement federal environmental statutes and programs.

6. Enter into intergovernmental agreements pursuant to title 11, chapter 7, article 3 if the agreement is necessary to more effectively administer the powers and duties described in this chapter.

7. Participate in, conduct and contract for studies, investigations, research and demonstrations relating to the causes, minimization, prevention, correction, abatement, mitigation, elimination, control and remedy of discharges and collect and disseminate information relating to discharges.

8. File bonds or other security as required by a court in any enforcement actions under article 4 of this chapter.

9. Adopt by rule a permit program for the discharge of dredged or fill material into WOTUS for purposes of implementing the permit program established by 33 United States Code section 1344.

C. Subject to section 38-503 and other applicable statutes and rules, the department may contract with a private consultant to assist the department in reviewing aquifer protection permit applications and on-site wastewater treatment facilities to determine whether a facility meets the criteria and requirements of this chapter and the rules adopted by the director. Except as provided in section 49-241.02, subsection D, the department shall not use a private consultant if the fee charged for that service would be greater than the fee the department would charge to provide that service. The department shall pay the consultant for the services rendered by the consultant from fees paid by the applicant or facility to the department pursuant to subsection A, paragraph 9 of this section.

D. The director shall integrate all of the programs authorized in this section and other programs affording water quality protection that are administered by the department for purposes of administration and enforcement and shall avoid duplication and dual permitting to the maximum extent practicable.

[49-255.01. Arizona pollutant discharge elimination system program; rules and standards; affirmative defense; fees; general permit](#)

A. A person shall not discharge except under either of the following conditions:

1. In conformance with a permit that is issued or authorized under this article or rules authorized under section 49-203, subsection A, paragraph 2.

2. Pursuant to a permit that is issued or authorized by the United States environmental protection agency until a permit that is issued or authorized under this article takes effect.

B. The director shall adopt rules to establish an AZPDES permit program for discharges to WOTUS consistent with the requirements of sections 402(b) and 402(p) of the clean water act. This program shall include requirements to ensure compliance with section 307 and requirements for the control of discharges consistent with sections 318 and 405(a) of the clean water act. The director shall not adopt any requirement for WOTUS that is more stringent than any requirement of the clean water act. The director shall not adopt any requirement that conflicts with any requirement of the clean water act. The director may adopt federal rules pursuant to section 41-1028 or may adopt rules to reflect local environmental conditions to the extent that the rules are consistent with and not more stringent than the clean water act and this article.

C. The rules adopted by the director under subsection B of this section shall provide for:

1. Issuing, authorizing, denying, modifying, suspending or revoking individual or general permits.

2. Establishment of permit conditions, discharge limitations and standards of performance as prescribed by section 49-203, subsection A, paragraph 8 including case-by-case effluent limitations that are developed in a manner consistent with 40 Code of Federal Regulations section 125.3(c).

3. Modifications and variances as allowed by the clean water act.

4. Other provisions necessary for maintaining state program authority under section 402(b) of the clean water act.

D. This article does not affect the validity of any existing rules that are adopted by the director and that are equivalent to and consistent with the national pollutant discharge elimination system program authorized under section 402 of the clean water act until new rules for AZPDES discharges are adopted pursuant to this article.

E. An upset constitutes an affirmative defense to any administrative, civil or criminal enforcement action brought for noncompliance with technology-based permit discharge limitations if the permittee complies with all of the following:

1. The permittee demonstrates through properly signed contemporaneous operating logs or other relevant evidence that:

(a) An upset occurred and that the permittee can identify the specific cause of the upset.

(b) The permitted facility was being properly operated at the time of the upset.

(c) If the upset causes the discharge to exceed any discharge limitation in the permit, the permittee submitted notice to the department within twenty-four hours after the upset.

(d) The permittee has taken appropriate remedial measures including all reasonable steps to minimize or prevent any discharge or sewage sludge use or disposal that is in violation of the permit and that has a reasonable likelihood of adversely affecting human health or the environment.

2. In any administrative, civil or criminal enforcement action, the permittee shall prove, by a preponderance of the evidence, the occurrence of an upset condition.

F. Compliance with a permit issued pursuant to this article shall be deemed compliance with both of the following:

1. All requirements in this article or rules adopted pursuant to this article relating to state implementation of sections 301, 302, 306 and 307 of the clean water act, except for any standard that is imposed under section 307 of the clean water act for a toxic pollutant that is injurious to human health.

2. Limitations for pollutants in WOTUS adopted pursuant to sections 49-221 and 49-222, if the discharge of the pollutant is specifically limited in a permit issued pursuant to this article or the pollutant was specifically identified as present or potentially present in facility discharges during the application process for the permit.

G. Notwithstanding section 49-203, subsection D, permits that are issued under this article shall not be combined with permits issued under article 3 of this chapter.

H. The decision of the director to issue or modify a permit takes effect on issuance if there were no changes requested in comments that were submitted on the draft permit unless a later effective date is specified in the decision. In all other cases, the decision of the director to issue, deny, modify, suspend or revoke a permit takes effect thirty days after the decision is served on the permit applicant, unless either of the following applies:

1. Within the thirty-day period, an appeal is filed with the water quality appeals board pursuant to section 49-323.

2. A later effective date is specified in the decision.

I. In addition to other reservations of rights provided by this chapter, this article does not impair or affect rights or the exercise of rights to water claimed, recognized, permitted, certificated, adjudicated or decreed pursuant to state or other law.

J. Only for a onetime rulemaking after July 29, 2010, the director shall establish by rule fees, including maximum fees, for processing, issuing and denying an application for a permit pursuant to this section. After the onetime rulemaking, the director shall not increase those fees by rule without specific statutory authority for the increase. Monies collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

K. Any permit conditions concerning threatened or endangered species shall be limited to those required by the endangered species act.

L. When developing a general permit for discharges of storm water from construction activity, the director shall provide for reduced control measures at sites that retain storm water in a manner that eliminates discharges from the site, except for the occurrence of an extreme event. Reduced control measures shall be available if all of the following conditions are met:

1. The nearest downstream receiving water is ephemeral and the construction site is a sufficient distance from a water warranting additional protection as described in the general permit.

2. The construction activity occurs on a site designed so that all storm water generated by disturbed areas of the site exclusive of public rights-of-way is directed to one or more retention basins that are designed to retain the runoff from an extreme event. For the purposes of this subsection, "extreme event" means a rainfall event that meets or exceeds the local one hundred-year, two-hour storm event as calculated by an Arizona registered professional engineer using industry practices.

3. The owner or operator complies with good housekeeping measures included in the general permit.

4. The owner or operator maintains the capacity of the retention basins.

5. Construction conforms to the standards prescribed by this section.

M. If the director commences proceedings for the renewal of a general permit issued pursuant to this article, the existing general permit shall not expire and coverage may continue to be obtained by new dischargers until the proceedings have resulted in a final determination by the director. If the proceedings result in a decision not to renew the general permit, the existing general permit shall continue in effect until the last day for filing for review of the decision of the director not to renew the permit or until any later date that is fixed by court order.

49-255.02. Pretreatment program; rules and standards

A. The director shall adopt rules to establish a pretreatment program that is consistent with the requirements of sections 307, 308 and 402 of the clean water act. The director shall not adopt any requirement that is more stringent than or conflicts with any requirements of the clean water act, except the director shall apply the pretreatment program to publicly owned treatment works that discharge to a non-WOTUS protected surface water.

B. The rules adopted by the director shall provide for all of the following:

1. Development or modification of local pretreatment programs by the owners of publicly owned treatment works that discharge or as otherwise required under the clean water act or this article to prevent the use or disposal of sewage sludge produced by a publicly owned treatment works in violation of section 405 of the clean water act or requirements established pursuant to section 49-255.03, subsection A.

2. Approval by the director of new or modified local pretreatment programs or site specific modifications to pretreatment standards.

3. Oversight by the director of local program implementation.

C. The rules adopted by the director shall provide for the department to ensure that any industrial user of any publicly owned treatment works will comply with the requirements of sections 307 and 308 of the clean water act.

DEPARTMENT OF ECONOMIC SECURITY
Title 6, Chapter 12



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 2, 2022

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: June 30, 2022

SUBJECT: DEPARTMENT OF ECONOMIC SECURITY
Title 6, Chapter 12

Summary

This Five-Year Review Report (5YRR) from the Department of Economic Security (Department) relates to rules in Title 6, Chapter 12 regarding the Cash Assistance Program.

In the previous 5YRR of these rules the Department indicated it planned to submit a rulemaking to the Council in July 2017 to amend rules that were inconsistent with federal and state regulations and ineffective. For various reasons stated in this report, the Department did not complete the course of actions indicated in the previous 5YRR.

Proposed Action

The Department proposes to amend several of its rules to improve their clarity, conciseness, understandability, consistency with other rules and statutes, and effectiveness. The Department plans to submit a Notice of Final Rulemaking to the Council in October 2022.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes, the Department cites both general and specific statutory authority for the rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department states that many of the rules in Chapter 12 were adopted without accompanying Economic Impact Statements. The Department believes that the impact of these rules on small businesses has been minimal because Temporary Assistance for Needy Families (TANF) Cash Assistance (CA) benefits to recipients are provided through federal TANF monies. The Department states that although TANF is a federal grant, it is appropriated at the state level. The TANF CA program provides temporary cash benefits and support services to low-income Arizona children and their families while parents seek employment that will allow them to obtain long-term self-sufficiency. The department states that the TANF CA benefits are determined by need, and TANF CA benefits are granted on a monthly basis, or in some instances, as a one-time lump sum known as a Grant Diversion. Stakeholders include the Department and low-income children and their families.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department states that through analysis provided by the Department's program subject matter experts and Financial Services Administration, the Department believes that the rules impose the least burden and cost to persons regulated by these rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objectives. The Department states that the program matter experts indicate that the amendments to the rules are the most cost-effective way to bring the Department into compliance with state requirements and ensure that the rules reflect current program practice.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Department indicates it has not received any written criticism of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, for the reasons mentioned in the report, the Department indicates ten (10) rules need to be amended to improve their clarity, conciseness, understandability

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes, the Department indicates ten (10) rules are not consistent with other rules and statutes due to inconsistency with statute and changes in statutory law.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Department indicates that forty-eight (48) rules and Article 13 are not effective in achieving their objectives because of changes in law and Department policy.

8. Has the agency analyzed the current enforcement status of the rules?

Yes, the Department indicates fifty (50) rules and Article 13 are not enforced as written for reasons in the report such as changes in law and the lack of specificity in the rules.

9. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

Yes, the Department indicates there are three (3) rules that are more stringent than corresponding federal law and cites statutory authority that allows the rules to exceed the requirements of federal law.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable. The Department indicates the rules do not require a permit or license.

11. Conclusion

For reasons mentioned in the report, the Department plans to amend several of its rules to improve their clarity, conciseness, understandability, consistency with other rules and statutes, and effectiveness. The Department plans to submit a Notice of Final Rulemaking to the Council in October 2022, allowing for stakeholder engagement before filing the Notice of Proposed Rulemaking.

Council staff finds the Department submitted a report that meets the requirements of A.R.S. § 41-1056. Council staff recommends approval of this report.



DEPARTMENT OF ECONOMIC SECURITY

Your Partner For A Stronger Arizona

Douglas A. Ducey
Governor

Michael Wisehart
Director

March 31, 2022

Ms. Nicole Sornsins
Council Chair
Governor's Regulatory Review Council
Department of Administration
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

Dear Ms. Sornsins:

Attached is the Arizona Department of Economic Security (Department) Five-Year Review Report for Arizona Administrative Code (A.A.C.) Title 6, Chapter 12, Cash Assistance Program. Also attached are copies of the Governor's Office approval to submit this report, authorizing statutes, and current rules.

Pursuant to A.R.S. § 41-1056(A) and A.A.C. R1-6-301(C)(4), the Department certifies that it is in compliance with A.R.S. § 41-1091.

Thank you for your attention to this report. The Department will be present at the Council meetings to respond to any questions the Council members may have about the report.

If you have any questions, please contact Melissa Henry, Deputy Administrator, Governance and Innovation Administration, at (480) 647-3110.

Sincerely,

Nicole Davis

Nicole Davis
Office of General Counsel

Attachment

-Preface-

Department of Economic Security

Five – Year Review Reports

A.R.S. § 41-1056 requires that at least once every five years, each agency shall review its administrative rules and produce reports that assess the rules with respect to considerations including the rule's effectiveness, clarity, conciseness, and understandability. The reports also describe the agency's proposed action to respond to any concerns identified during the review. The reports are submitted in compliance with the schedule provided by the Governor's Regulatory Review Council.

A.R.S. § 18-305, enacted in 2016, requires that statutorily required reports be posted on the agency's website.

**Department of Economic Security
Title 6, Chapter 12
Five-Year Review Report**

1. Authorization of the rule by existing statutes:

General Statutory Authority: A.R.S. § 41-1954(A)(3)

Specific Statutory Authority: A.R.S. §§ 46-134(10) and 46-292

2. The objective of each rule:

Rule	Objective
R6-12-101	The objective of this rule is to define terms used in Chapter 12.
R6-12-102	The objective of this rule is to guarantee that confidential client information is protected when services are being provided.
R6-12-103	The objective of this rule is to ensure that the Department retains the Temporary Assistance for Needy Families (TANF) Cash Assistance (CA) eligibility information regarding applicants and recipients for the required amount of time.
R6-12-104	The objective of this rule is to inform the public that the TANF CA program manual is available for inspection and copying during regular business hours.
R6-12-201	The objective of this rule is to inform the public of the application procedures and requirements for services.
R6-12-202	The objective of this rule is to explain the members who are included in an assistance unit.
R6-12-203	The objective of this rule is to explain the procedures for a TANF CA eligibility interview and what the applicant and Department's responsibilities are during the TANF CA eligibility interview process.
R6-12-204	The objective of this rule is to explain the procedures for verifying the existence of a disability and what the applicant and Department's responsibilities are when verifying that a household member is disabled.
R6-12-205	The objective of this rule is to explain the procedures for verifying TANF CA eligibility information and the responsibilities of the applicant and the Department for making a TANF CA eligibility determination.
R6-12-206	The objective of this rule is to explain the circumstances for which the Department will provide an in-home interview and the procedures for giving notice of an in-home interview.

R6-12-207	The objective of this rule is to explain the procedures for withdrawing an application and what the applicant and the Department's responsibilities are for making and processing the request.
R6-12-208	The objective of this rule is to describe the consequences and outcomes of the death of an applicant while an application is pending.
R6-12-209	The objective of this rule is to explain the time frame for the Department to complete a TANF CA eligibility determination and the process for when an application is approved or denied.
R6-12-210	The objective of this rule is to require the Department to perform a periodic review of continued TANF CA eligibility and to explain the responsibilities for the applicant and the Department during the TANF CA eligibility review.
R6-12-211	The objective of this rule is to explain the circumstances, requirements, and procedures that require the Department to reinstate a client's TANF CA benefits.
R6-12-301	The objective of this rule is to establish that a person must meet non-financial eligibility criteria to qualify for the TANF CA program.
R6-12-302	The objective of this rule is to specify the responsibilities of an applicant or recipient as conditions of initial or continuing TANF CA benefit eligibility.
R6-12-303	The objective of this rule is to specify the other benefits a person shall apply for in order to be eligible for TANF CA.
R6-12-304	The objective of this rule is to specify the Arizona residency requirements for TANF CA benefit eligibility.
R6-12-305	The objectives of this rule are to explain the citizenship requirements for an assistance unit member to receive TANF CA benefits, clarify that the Department is required to verify the legal status of noncitizens who are eligible for TANF CA benefits in accordance with the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), specify whose income is counted when an assistance unit includes one or more eligible noncitizens, and clarify that an ineligible noncitizen may act as payee on behalf of an assistance unit.
R6-12-306	The objective of this rule is to explain which members of a family may be included in the TANF CA program or are required to be in the assistance unit.
R6-12-307	The purpose of this rule is to explain that only persons who have been issued, or have applied for, a Social Security Number (SSN) are included in the assistance

	unit and to specify the applicant's responsibility to obtain an SSN and provide the SSN to the Department.
R6-12-308	The objective of this rule is to explain the family benefit cap exclusion and to specify the circumstances for which a child will be excluded from TANF CA due to the family benefit cap or for which the family benefit cap will be waived by the Department.
R6-12-309	The objectives of this rule are to explain how individuals must be related to a dependent child for the individuals to be part of an assistance unit that qualifies for TANF CA and identify the limited exceptions to this requirement.
R6-12-310	The objective of this rule is to explain that a dependent child must be deprived of parental support in order to receive TANF CA and to specify the circumstances that constitute a deprivation of parental support.
R6-12-311	The objective of this rule is to explain that an applicant for TANF CA is required to assign to the Department all rights to spousal or child support and to specify the applicant's responsibilities for meeting this requirement.
R6-12-312	The objective of this rule is to explain how an applicant is exempt from the requirements in R6-12-311 when good cause for non-cooperation exists and to specify the applicant's and the Department's responsibilities for verifying such circumstances.
R6-12-313	The objective of this rule is to explain that recipients of TANF CA who are work eligible shall participate in the Jobs Program described in A.A.C. Title 6, Chapter 10..
R6-12-314	The objective of this rule is to explain the requirement for parents and other non-parent heads of households to register school age children in school.
R6-12-315	The objective of this rule is to explain that proof of a child's immunization is required and to specify the actions that shall be taken upon failure to provide proof.
R6-12-316	The objective of this rule is to outline sanctions that will be imposed on an assistance unit that is not in compliance with specific rules.
R6-12-317	The objectives of this rule are to explain the requirement of the applicant or recipient to maintain employment or work efforts, to specify the circumstances that indicate a person voluntarily quit a job or reduced their work effort, the circumstances and consequences of voluntarily quitting a job or reducing work

	effort, and the circumstances in which a good cause exists for voluntarily quitting a job or reducing work effort.
R6-12-318	The objective of this rule is to explain the time limit of 36 months for TANF CA eligibility as specified in state law unless the assistance unit has a qualifying hardship.
R6-12-319	The objective of this rule is to explain the conditions and circumstances under which a household is eligible for an extension to the state and federal time limits when a qualifying hardship exists.
R6-12-320	The objective of this rule is to explain the 60-month time limit for receipt of assistance as specified in federal law and TANF program regulations unless the assistance unit has a qualifying hardship.
R6-12-321	The objective of this rule is to explain the different hardships that would qualify a household for an extension to the state and federal time limits and the verification requirements for those hardships.
R6-12-401	The objectives of this rule are to explain what resources the Department considers when determining TANF CA eligibility and to specify that an assistance unit is ineligible for any month the assistance unit's resources exceed a set amount.
R6-12-402	The objective of this rule is to explain what assets are included when determining the countable asset amount for the assistance unit for TANF CA eligibility.
R6-12-403	The objective of this rule is to identify which types of assets are excluded when determining the countable assets of an assistance unit for TANF CA eligibility.
R6-12-404	The objective of this rule is to explain that applicants and recipients are allowed to establish an Individual Development Account (IDA) to save money for specific purposes and to specify how the IDA may be initiated, the purposes for which the IDA may be used, and the limits on the amount in the IDA to be excluded from the countable asset limit.
R6-12-405	The objective of this rule is to explain the prohibition against the transfer of ownership of a resource within one year of applying for TANF CA or while receiving TANF CA unless fair consideration was received.
R6-12-406	The objective of this rule is to establish the requirement for the Department to verify the value of countable resources.

R6-12-501	The objective of this rule is to explain the treatment of income of both the family and the assistance unit when determining TANF CA eligibility and the cash grant amount.
R6-12-502	The objective of this rule is to explain whose income the Department will consider when determining the cash grant amount for an assistance unit.
R6-12-503	The objective of this rule is to identify which types of income are excluded when the Department is determining the countable income of a family and the countable income of an assistance unit.
R6-12-504	The objectives of this rule are to explain how the Department treats the receipt of child support, alimony, or spousal maintenance when determining TANF CA eligibility and to specify the penalties that are imposed when an assistance unit member fails to turn over support payments to the Department.
R6-12-505	The objective of this rule is to explain that a nonrecurring lump sum payment received by an assistance unit member or person whose income is considered available to the assistance unit will be considered a resource.
R6-12-506	The objective of this rule is to explain when the income of a sponsor is considered available to the sponsored noncitizen and to specify how the the Department determines the amount of the sponsor's income that is countable when determining TANF CA eligibility.
R6-12-507	The objective of this rule is to explain how the Department determines the monthly countable income for both a family, when determining income eligibility for TANF CA, and an assistance unit, when determining a cash grant amount.
R6-12-508	The objective of this rule is to explain the methods the Department uses when determining a projected monthly income amount.
R6-12-509	The objective of this rule is to require the Department to verify all income before determining TANF CA eligibility and a cash grant amount.
R6-12-601	The objective of this rule is to explain how the Department determines TANF CA eligibility and TANF CA benefit amount for households in which the applicant is the caretaker relative of children who are excluded from TANF CA due to the receipt of Social Security Income (SSI) or Foster Care Child income.
R6-12-602	The objective of this rule is to explain how the Department determines TANF CA income eligibility and a cash grant amount when a member of the household is on strike.

R6-12-603	The objective of this rule is to explain how the Department determines TANF CA income eligibility and cash grant amount when the applicant is the dependent child of an ineligible foster child residing in a needy family.
R6-12-604	The objective of this rule is to explain when a parent under the age of 18 is considered to be a minor parent and to specify the TANF CA eligibility rules that apply to minor parents.
R6-12-605	The objective of this rule is to explain when an assistance unit with a needy child deprived of parental support because the primary wage-earning parent is unemployed may receive TANF CA through the Two-Parent Employment Program (TPEP).
R6-12-606	The objective of this rule is to explain the requirement for both unemployed parents in a TPEP household to participate in training or employment activity and to specify the circumstances in which a parent is exempt from participating in training or employment activity.
R6-12-607	The objective of this rule is to explain the duration of the TPEP benefits and specify the circumstances for requesting an extension of such benefits.
R6-12-701	The objective of this rule is to specify the income limits for a family and explain the income limits do not apply to households in which the only dependent child for the requested assistance is in unlicensed foster care placement with the applicant.
R6-12-702	The objective of this rule is to establish TANF CA eligibility criteria.
R6-12-703	The objective of this rule is to identify the allowable deductions from the earned income of a family and any limitations on the amount of those deductions when determining TANF CA income eligibility for a family and a TANF CA benefit amount for an assistance unit.
R6-12-704	The objective of this rule is to identify the circumstances under which an assistance unit member may be disqualified from having earned income disregards deducted from the member's earned income and specify good cause reasons that will excuse the member from such disqualification.
R6-12-705	The objective of this rule is to explain the method used by the Department to determine the amount of a cash grant for an assistance unit.
R6-12-706	The objective of this rule is to explain the Department's responsibilities when informing an applicant of the results of a TANF CA eligibility determination and the information required in a denial notice.

R6-12-801	The objective of this rule is to explain the Department's responsibilities in the TANF CA benefit payment process.
R6-12-803	The objective of this rule is to explain the Department's responsibility to correct an underpayment of TANF CA benefits by issuing a supplemental payment to the assistance unit.
R6-12-806	The objective of this rule is to specify the circumstances in which the Department will designate a person other than the head of household to have access to the TANF CA benefit if the head of household is not providing the basic needs for the household.
R6-12-807	The objective of this rule is to specify that the Department may pay TANF CA to an emergency payee instead of a caretaker relative when the caretaker relative is no longer available to receive TANF CA on behalf of a dependent child and explain the length of time that TANF CA may be provided to the emergency payee.
R6-12-808	The objective of this rule is to explain the Department's responsibility to issue an identification card or an Electronic Benefit Transfer (EBT) card at no cost when requested by the recipient.
R6-12-901	The objective of this rule is to explain the recipient's responsibility to report changes in income, resources, or other circumstances which may affect TANF CA eligibility or benefit amount.
R6-12-902	The objective of this rule is to explain the Department's responsibilities when a caretaker relative requests to remove a household member from an assistance unit.
R6-12-903	The objective of this rule is to explain the methods by which the Department shall redetermine a TANF CA benefit amount when a member is added to, or removed from, an assistance unit.
R6-12-904	The objective of this rule is to explain that, when appropriate, the Department may reduce or terminate TANF CA benefits based on an assistance unit's reported changes or failure to comply with review requirements.
R6-12-905	The objective of this rule is to specify the different time frames in which ineligibility begins for an entire assistance unit and the circumstances for those time frames.
R6-12-906	The objective of this rule is to explain the time frame in which ineligibility begins for an ineligible individual within an eligible assistance unit.

R6-12-907	The objective of this rule is to explain the time frames within which the Department shall notify the assistance unit of an adverse action.
R6-12-908	The objective of this rule is to specify the circumstances in which the Family Assistance Administration (FAA) will refer a case to the Office of Special Investigations.
R6-12-1001	The objective of this rule is to explain the right of the applicant or recipient to a hearing to appeal an adverse action taken by the Department and to specify which adverse actions are not appealable.
R6-12-1002	The objective of this rule is to describe the formal and procedural timeliness requirements for filing an appeal and the requirements for an appellant to establish good cause for a late-filed appeal to be considered timely.
R6-12-1003	The objective of this rule is to specify the Department's responsibilities to prepare and process an appeal request by scheduling a hearing in a timely manner and the Department's obligation to inform the appellant of available free legal resources.
R6-12-1004	The objective of this rule is to explain that TANF CA benefits will continue during the course of an appeal and to specify the circumstances under which TANF CA benefits may not be continued during the appeals process.
R6-12-1005	The objective of this rule is to explain the qualifications and duties of a hearing officer and to specify the requirements for obtaining subpoenas.
R6-12-1006	The objective of this rule is to explain the guidelines and time frames for the scheduling of hearings and the Department's responsibilities for notifying the parties of the hearing.
R6-12-1007	The objective of this rule is to explain the process for parties to request the rescheduling of a hearing.
R6-12-1008	The objective of this rule is to explain the Department's responsibility to provide a medical examination by a licensed physician, psychologist, or psychiatrist when the issue on appeal is whether the appellant is a person with a disability, and to specify the hearing officer's responsibilities and options when deciding the appeal of a disability determination.
R6-12-1009	The objective of this rule is to explain the circumstances under which the Department may conduct a group hearing instead of separate, individual hearings.

R6-12-1010	The objective of this rule is to explain how the parties may request to withdraw an appeal and to explain what happens when an appellant fails to appear at a scheduled hearing.
R6-12-1011	The objective of this rule is to explain the procedures used in hearings.
R6-12-1012	The objective of this rule is to explain the time frames for the hearing officer to deliver a decision, the contents of the decision, and how the decision is delivered.
R6-12-1013	The objective of this rule is to explain when a decision adverse to the appellant will become effective and what the Department's responsibilities are if the adverse decision is reversed or set aside.
R6-12-1014	The objective of this rule is to specify the procedures and time frames for the party to have a hearing officer's decision reviewed by the Appeals Board and to explain that the Department shall not implement any adverse action against an appellant until the Appeals Board has issued a decision.
R6-12-1015	The objective of this rule is to explain the Appeals Board's responsibilities and the process for reviewing a hearing officer's decision.
R6-12-1101	The objective of this rule is to explain the time frames used to determine an overpayment period and specify the time frame in which the Department will initiate the overpayment referral.
R6-12-1102	The objective of this rule is to identify the persons in an assistance unit who are liable for an overpayment and specify the order from which the Department will seek recovery from those persons.
R6-12-1103	The objective of this rule is to explain the different methods the Department may use to recoup an overpayment.
R6-12-1201	The objective of this rule is to define an Intentional Program Violation (IPV).
R6-12-1202	The objective of this rule is to explain that when the Department initiates a disqualification proceeding for an IPV, the person suspected of the IPV has the right to waive the disqualification hearing. A further objective of this rule is to prescribe the contents of the waiver notice.
R6-12-1203	The objective of this rule is to explain the responsibilities of the Office of Appeals when notifying the recipient of an IPV hearing and when conducting an IPV hearing.
R6-12-1204	The objective of this rule is to explain the process for when the Department imposes a sanction against a recipient found guilty of committing an IPV.

R6-12-1205	The objective of this rule is to explain the option for a party found to have committed an IPV through an administrative disqualification hearing to have a hearing officer's decision reviewed by the Appeals Board.
R6-12-1206	The objective of this rule is to explain that the Department shall give full faith and credit to sanctions imposed on the applicant or recipient by another state's Title IV-A agency and shall consider these prior violations when imposing a subsequent sanction for an IPV conviction in Arizona.
R6-12-1301	The objective of this rule is to state that the Department shall operate the JOBSTART wage subsidy program on a statewide basis.
R6-12-1302	The objective of this rule is to define the terms used in Article 13.
R6-12-1303	The objective of this rule is to explain that when the Department has assigned a participant to a subsidized placement, the Department shall redirect the participants TANF CA benefits and Nutrition Assistance (NA) benefits to the wage pool to reimburse the participant's employer for wages paid to the participant.
R6-12-1304	The objective of this rule is to explain that the Department shall exclude the wages received from a JOBSTART participant's subsidized employment when determining the amount of the JOBSTART participant's TANF CA benefits.
R6-12-1305	The objective of this rule is to explain how the Department shall determine if a JOBSTART participant will be issued a TANF CA supplemental payment and to specify the type of supplemental payment that shall be provided.
R6-12-1306	The objective of this rule is to explain the sanction process for when a recipient fails or refuses to comply with the JOBSTART participation requirement.
R6-12-1401	The objective of this rule is to define terms used in Article 14.
R6-12-1402	The objective of this rule is to explain the circumstances in which the Department may offer a TANF CA applicant the option of receiving a lump sum Grant Diversion cash benefit.
R6-12-1403	The objective of this rule is to explain how the Department determines the amount of assistance that will be provided to an eligible assistance unit under the Grant Diversion option.
R6-12-1404	The objective of this rule is to explain how the Department redetermines the Grant Diversion option benefit amount when the assistance unit reports the addition of an eligible member and the change reporting responsibilities of the assistance unit.

3. **Are the rules effective in achieving their objectives?**

Yes No

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation
R6-12-101	This rule is ineffective because several definitions are either no longer accurate and should be revised to make this rule more effective or removed entirely. There are also terms that apply to Chapter 12 that need to be added to this rule.
R6-12-104	This rule is ineffective because manuals are no longer maintained in the FAA Local Office and are unavailable in paper format to be reviewed or copied. The FAA Policy manual is available to the public online via the Department's website.
R6-12-201	Subsection (A) of this rule is ineffective because the methods for submitting a TANF CA application now include the electronic transmittal of an online application and the submission of an application via fax. Subsection (D) is ineffective because an application for TANF CA is no longer automatically treated as an application for AHCCCS medical benefits, per a change in federal law.
R6-12-203	Subsection (A) of this rule is ineffective because the interview scheduling procedures specified in the rule have changed. Telephone interviews are now the primary interview method and in-person interviews at a Family Assistance office are no longer scheduled; they are conducted on a walk-in and stand-by basis. Subsection (C) is ineffective because the Department's responsibilities during the interview now vary depending depending on the interview method. Also, there is no longer a requirement to photograph the applicant.
R6-12-204	Subsection (D) of this rule is ineffective because the Department no longer employs a District Medical Consultant as part of the disability determination process because disability determinations are now made at the local office level.
R6-12-206	Subsection (B) of this rule is ineffective because the requirement to send a notice to the applicant at least seven days prior to a scheduled in-home TANF CA eligibility interview is no longer required as the applicant and the Department may mutually agree on an interview date that is sooner than seven days from the

	<p>application file date. Subsection (D) is ineffective because the Department no longer conducts unscheduled visits to gather information or to verify information previously provided by an applicant or recipient.</p>
R6-12-210	<p>Subsection (A) of this rule is ineffective because there are now different time frames in which a case is subject to a TANF CA eligibility review, depending on the type of TANF CA case. Not all cases are reviewed every six months. Subsections (C), (D), and (E) of the rule are ineffective because the interview scheduling procedures and the client interview requirements specified in these sections have changed. Telephone interviews are now the primary interview method and in-person interviews at a Family Assistance office are no longer scheduled; the interviews are conducted on a walk-in and stand-by basis.</p>
R6-12-211	<p>Subsection (B)(3) of this rule is ineffective because Department policy has changed to allow continuance of TANF CA benefits when a request for a fair hearing is received at any time prior to the effective date of the termination and not only within 10 days of the termination notice. Subsection (B)(3) is ineffective because the state time limit has changed to 12 months under A.R.S. § 46-294.</p>
R6-12-302	<p>Subsection (A)(2) of this rule is ineffective because:</p> <ul style="list-style-type: none"> ● The time frame for reporting a change is now the 10th day of the month following the month the change occurred. ● There are now two different change reporting requirements, and the changes that must be reported depend on which of the two reporting requirements the case has been assigned. <p>Subsection (C) is ineffective because the requirement to sign a Personal Responsibility Agreement has changed depending on what type of TANF CA case is being processed.</p>
R6-12-304	<p>Subsection (C) of this rule is ineffective because the section does not specify the circumstances in which a person may be absent from Arizona for more than 30 consecutive days and retain their Arizona residency status.</p>

R6-12-305	Subsection (B) of this rule is ineffective because the method that the Department uses to verify the legal immigration status of a noncitizen applicant, use of the automated Systematic Alien Verification for Entitlements (SAVE) program, is not specified.
R6-12-306	Subsection (A)(2) of this rule is ineffective because TANF CA eligibility for an 18 year old as a dependent child was expanded to include TANF CA eligibility for an 18 year old student who is an SSI recipient through the month the student turns 19, regardless of the expected date of the completion of the course of study.
R6-12-308	Subsection (C) of this rule is ineffective because the section does not include the changes that were implemented subsequent to statutory revisions to A.R.S. § 46-292 to remove the TANF CA benefit cap exclusion from children who are currently excluded from TANF CA, under certain circumstances. Subsection (F) is ineffective because the rule incorrectly includes AHCCCS medical benefits and Jobs Program services in the list of services that a benefit cap excluded child automatically qualifies for.
R6-12-309	Subsection (A)(5) of this rule is ineffective because the list of caretaker relatives with whom a dependent child may reside is incomplete. A legal permanent guardian who is appointed by any court during a dependency hearing or dependency proceeding is now allowed, and subsection (A)(6) is incomplete as state law at A.R.S. § 46-101(7) has been revised to include an unrelated adult who is an unlicensed kinship foster care provider when the child is in the legal custody of the Department of Child Safety, a tribal court, or a tribal child welfare agency located in Arizona.
R6-12-310	Subsection (A) of this rule is ineffective because the the circumstances that constitute Deprivation of Parental Support has expanded to include parents who are underemployed, and section (B)(1) is ineffective regarding deprivation of parental support due to “Continued Absence” of a parent as deprivation may exist when a parent is expected to be out of the home for a minimum of 30 continuous days.

R6-12-311	Subsection (G) of this rule is ineffective because the requirement that an applicant pre-comply with the DES Division of Child Support Enforcement as a condition of TANF CA eligibility is not included.
R6-12-313	Subsection (A) of this rule is ineffective because the requirement that, as a condition of TANF CA eligibility for the assistance unit, all work-eligible individuals shall complete a Jobs Program Preliminary Orientation (JPPO) is not included. Subsection (B) is ineffective as the section does not include the expanded list of recipients who are exempt from Jobs Program participation that now includes all dependent children including 18 year old dependent children who meet the TANF CA student criteria, with the exception of minor parents.
R6-12-314	This rule is ineffective because the rule does not contain a section regarding the good cause reasons that exempt the parent or relative head of household from ensuring that a dependent child ages 6 through 15 years old is enrolled in and attending school or is home schooled.
R6-12-315	This rule is ineffective because the rule does not explain that failure to provide proof of a child's immunization status may not be grounds for penalty if the parent or caretaker relative has good cause for failing to provide that proof..
R6-12-316	Subsection (B)(1) of this rule is ineffective because the graduated sanction levels for noncompliance with the requirements in the Personal Responsibility Agreement have changed per state law.
R6-12-318	This rule is ineffective because the time limit for receiving TANF CA benefits in the Arizona TANF CA program has changed to 12 countable months under A.R.S. § 46-294.
R6-12-319	This rule is ineffective because the Department practice of allowing an additional 12 months of TANF CA for assistance units that have reached either the 12-month state time limit or the 60-month federal time limit, and the criteria to be eligible for an additional 12 months of TANF CA, is not included in the rule.
R6-12-501	Subsection (B)(2) of this rule is ineffective because the section does not include the Self Employment Income Standard Deduction method by which the Department determines the countable gross income from self employment.

R6-12-506	Subsection (B) of this rule is ineffective because the list of reasons that an assistance unit may be exempt from the sponsor income and resource deeming requirement is incomplete.
R6-12-604	Subsections (C)(2)(a-c) of this rule are ineffective because the criteria for determining whether a minor parent may be potentially eligible when applying for TANF CA as the head of household as an emancipated minor has changed. Subsection (C)(3)(a)(i and ii) of this rule are ineffective because the A.R.S. citations for the terms “abuse” and “neglect” have changed in state law. Additionally, required reports of abuse and neglect are now made to the Department of Child Safety and not the former Child Protective Services, which is a term used throughout the rule.
R6-12-605	Subsection (A) of this rule is ineffective because potential TANF CA eligibility in two parent households has expanded to include the underemployment of the primary wage earning parent and not just unemployment of such a person.
R6-12-607	This rule is ineffective because the circumstances under which the Jobs Program determines whether the TPEP assistance unit may qualify for a three- month extension of TANF CA benefits has changed and is now included in R6-10-125.
R6-12-704	Subsection (B)(1) of this rule, which cross-references Jobs Program rules in R6-10-119(B) and R6-10-120(A) and (C) is no longer accurate. The correct Jobs Program “good cause” rule is now R6-10-123(F).
R6-12-801	Subsections (B) and (C) of this rule are ineffective because the Department does not make TANF CA benefit payments in the form of a state warrant. All TANF CA benefit payments are deposited into an Electronic Benefit Transfer (EBT) account which the Department establishes for the household.
R6-12-808	This rule is ineffective because the Department does not issue identification cards.
R6-12-901	This rule is ineffective because the Department no longer requires the assistance unit to report changes within 10 days from the date the change becomes known. The Department has instituted new change reporting requirements and new time frames that changes must be reported as well as new methods by which changes

	may be reported, which better aligns with NA reporting requirements and is more consistent for the client.
R6-12-903	Subsection (A)(3) of this rule is ineffective because the effective date of implementing a change is now based on the type of change reporting requirements the assistance unit has been assigned and the new time frames for reporting changes.
R6-12-905	This rule is ineffective because the effective date of ineligibility for an assistance unit is now based on the type of change reporting requirements the assistance unit has been assigned and the new time frames for reporting changes.
R6-12-906	This rule is ineffective because the effective date of ineligibility for an individual member is now based on the type of change reporting requirements the assistance unit has been assigned and the new time frames for reporting changes.
R6-12-907	Subsection (C)(3) of the rule is ineffective. This rule specifies that an adverse action notice for TANF CA will also include notification of "Any effect the intended action may have on the unit members' AHCCCS medical eligibility." The Department requires a separate adverse action notice for all Medical Assistance (AHCCCS) program adverse actions.
R6-12-908	This rule is ineffective because the reason for a referral for investigation specified in Section (2) is no longer valid. The Department does not issue TANF CA payments in the form of a cash warrant.
R6-12-1002	This rule is ineffective because the time frame for submitting a request for a hearing has changed and the methods for requesting a hearing have expanded to include oral requests and written requests submitted via fax or electronically via online transmittal.
R6-12-1004	This rule is ineffective because the time frame for the Department to stay the imposition of the adverse action pending a hearing has been changed to anytime the hearing request is received prior to the effective date of the adverse action.

R6-12-1005	Subsection (D) of this rule is ineffective because Department policy has changed to allow a request for change of hearing officer to be made at least five days prior to the hearing.
R6-12-1006	Subsection (A) of this rule is ineffective because hearings are now conducted telephonically unless a party requests an in-person hearing in advance of the scheduled hearing date.
R6-12-1007	Subsections (A) and (B) of this rule are ineffective because the Office of Appeals now allows one postponement of a hearing upon the appellant's request without requiring good cause and may grant subsequent postponements when good cause exists.
R6-12-1008	Subsections (C), (D), and (E) of this rule are ineffective because these determinations are now made at the local office level and the local office assists the participant with a disability in providing the necessary verification. The hearing officer shall order, where relevant and useful, an independent medical assessment or professional evaluation from a source mutually satisfactory to the household and the Department.
R6-12-1010	Subsection (B)(3) of this rule is ineffective because the Office of Appeals now allows a party who did not appear at the hearing to file a request to reopen the proceedings orally, in addition to in writing, no later than ten days after the hearing.
R6-12-1012	Subsection (A) of this rule is ineffective because the time frame for rendering a decision has changed from 90 days to 60 days, to align this time frame in TANF CA with those used in the NA program.
R6-12-1102	Subsection (A) of this rule is ineffective because the Department only pursues collection of an overpayment claim from a person who was an adult member of the assistance unit at the time the overpayment occurred and not from a person who was a minor child in the assistance unit at that time.
R6-12-1103	This rule is ineffective because the list of collection methods is incomplete.

R6-12-1202	Subsection (C) of this rule is ineffective because the list of items contained in the written notice of the right to waive the disqualification hearing is incomplete.
R6-12-1203	Subsection (B) of this rule is ineffective because the list of items contained in the notice of hearing is incomplete.
Article 13	The rules in this Article, R6-12-301 through R6-12-1306 are ineffective because the Department no longer operates the JOBSTART wage subsidy program.

4. **Are the rules consistent with other rules and statutes?** Yes No

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation
R6-12-308	This rule is inconsistent with A.R.S. § 46-292(I). The statute provides for the removal of the TANF CA benefit cap exclusion from children who are currently excluded from TANF CA under certain circumstances.
R6-12-309	This rule is inconsistent with A.R.S. § 46-101(7) which has been revised to include, as a caretaker relative, an unrelated adult who is an unlicensed kinship foster care provider when the child is in the legal custody of an Arizona tribal court or a tribal child welfare agency located in Arizona.
R6-12-316	This rule is inconsistent with A.R.S. § 46-300(D). This statute was revised to require a two-tiered graduated sanction process of a cash grant reduction of 50% for the first instance of noncompliance and a 100% cash grant reduction (termination of the grant) for the second and any subsequent instances of noncompliance with any of the requirements in A.R.S. § 46-300(A) or (B).
R6-12-318	References to a 36-month state time limit in R6-12-318 is inconsistent with A.R.S. § 46-294(A) which was revised to reduce the state time limit to 12 countable months.
R6-12-319	This rule is inconsistent with A.R.S. § 46-294 in that it does not include the provision contained in subsection (G) of the statute, which allows the department to provide an additional 12 months of TANF CA for assistance units that have

	reached either the 12-month state time limit or the 60-month federal time limit and specifies the criteria for an assistance unit to be TANF CA eligible for an additional 12 months.
R6-12-404	This rule is inconsistent with A.R.S. § 46-300.03 in that the rule requires that an assistance unit member must be receiving both TANF CA and NA benefits in order to establish an Individual Development Account (IDA). This is more restrictive than the statutory provision. Also, the allowable uses of funds in an IDA listed in subsection (J) of the rule is more restrictive than what is allowed in the statute.
R6-12-604	The two state law citations in this rule, A.R.S. § 8-546(A)(2) (definition of abuse) and A.R.S. § 8-546(A)(6) (definition of neglect) are inconsistent with current state law. These definitions, as used in the rule, are now located in A.R.S. § 8-201(2) and A.R.S. § 8-201(25) respectively. In addition, A.R.S. § 46-296(B) states, in part, that a minor parent is exempt from the TANF CA eligibility restrictions in that statute if the parent “is a legally emancipated person.” The circumstances for determining whether a minor parent applicant may be considered “emancipated” are located in R6-12-604(C)(2)(a-c) and are inconsistent with A.R.S. Title 12, Chapter 15 Emancipation of Minors.
R6-12-607	The cross-reference in this rule to R6-10-122 is inconsistent with the current Jobs Program rules in Title 6, Chapter 10. R6-10-125(D) is now the correct cross-reference and contains the policies and procedures under which the Jobs Program determines whether the TPEP assistance unit may qualify for a three month extension of TANF CA benefits.
R6-12-704	The “good cause” reasons in R6-12-704(B)(1), which cross-reference Jobs Program rules in R6-10-119(B) and R6-10-120(A) and (C) are inconsistent with the current rules in Title 6, Chapter 10. The correct Jobs Program “good cause” rule is now R6-10-123(F).
Article 8 - Payments	Article 8 is incomplete in that it is inconsistent with the provisions in A.R.S. §§ 46-297 and 46-297.01.

R6-12-1004	<p>Subsection (A) of this rule is inconsistent with and more restrictive than 45 CFR 205.10. When the appellant files a request for a hearing, 45 CFR 205.10 states that the Department shall not impose the adverse action for which the request for a hearing has been filed if such request is received “within the timely notice period”, unless the appellant specifically requests to not receive continued assistance pending a hearing decision. The notice period would be any date from the issuance of the notice and prior to the effective date of the adverse action as stated on the notice. Subsection (A) of this rule states that adverse action will only be stayed if a hearing is requested within ten days of the adverse action notice date.</p>
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5. Are the rules enforced as written?

Yes No

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency(s) proposal for resolving the issue.

Rule	Explanation
R6-12-104	<p>This rule is not enforced as written because manuals are no longer maintained in the FAA Local Office and are not available in paper format to be reviewed or copied. The FAA Policy manual is available to the public online via the Department’s website. The Department proposes to amend these rules to reflect this change.</p>
R6-12-201	<p>Subsection (D) of the rule is not enforced as written because it specifies that an application for TANF CA is automatically treated as an application for AHCCCS medical benefits. This provision is no longer current; AHCCCS medical benefits must be specifically requested by an applicant. The Department proposes to amend these rules to reflect this change.</p>
R6-12-203	<p>Subsection (C)(9) of the rule is not enforced as written because taking a photograph of the applicant for identification purposes is no longer required, per state law, as part of the TANF CA eligibility interview process. The Department proposes to amend these rules to remove this requirement.</p>

R6-12-204	Subsection (D) of the rule is not enforced as written because this determination is now made at the local office level. The Department proposes to repeal this rule.
R6-12-206	Subsections (B) and (D) of this rule are not enforced as written. The requirement in (B) to send a notice to the applicant at least seven days prior to a scheduled in-home TANF CA eligibility interview is no longer mandatory as the applicant and the Department may mutually agree on an interview date that is sooner than seven days from the application file date. Also, the Department no longer conducts unscheduled visits to gather information or to verify information previously provided by an applicant or recipient as prescribed in (D). The Department proposes to repeal this rule.
R6-12-209	Subsection (D) of this rule is not enforced as written because an application for TANF CA is not automatically treated as an application for AHCCCS medical benefits, per federal law. The Department proposes to amend these rules to remove reference to medical assistance eligibility.
R6-12-210	Subsection (A) of the rule is not enforced as written because there are now different time frames in which a case is subject to a TANF CA eligibility review, depending on the component of TANF CA in which TANF CA benefits are being provided, such as Kinship Care or Kinship Foster Care. Not all cases are reviewed every six months. The Department proposes to amend these rules to reflect which cases require review every six months and which require review every 12 months.
R6-12-211	Subsection (B)(3) of the rule is not enforced as written because Department practice is to allow continuance of TANF CA benefits when a request for a fair hearing is received at any time prior to the effective date of the termination and not only within ten days of the termination notice. The Department proposes to amend these rules to reflect this change.
R6-12-302	Subsection (A)(2) of the rule is not enforced as written because the time frame for reporting a change is now the 10 th day of the month following the month the change occurred, to align reporting requirements in TANF CA with those used in the NA program. Also, there are now two different change reporting requirements, and the changes that must be reported depend on which of the two reporting

	requirements the case has been assigned. The Department proposes to amend these rules to reflect this change.
R6-12-304	Subsection (C) of this rule is not enforced as written because it does not specify the circumstances in which a person may be absent from Arizona for more than 30 consecutive days and retain their Arizona residency status. The Department proposes to amend these rules to address this inconsistency.
R6-12-305	Subsection (B) of the rule is not enforced as written because the Department now completes verification of the immigration status of assistance unit members for whom TANF CA is requested solely by submitting the noncitizen's Alien Registration Number issued by the U.S. Citizenship and Immigration Services, or its predecessor the Immigration and Naturalization Services, to the Department of Homeland Security for verification via SAVE. The Department proposes to amend these rules to reflect current procedure for verifying an individuals immigration status.
R6-12-306	Subsection (A)(2) of this rule is not enforced as written because TANF CA eligibility for an 18 year old as a dependent child was expanded to include TANF CA eligibility for an 18 year old student who is an SSI recipient through the month the student turns 19, regardless of the expected date of the completion of the course of study. The Department proposes to amend these rules to reflect this change.
R6-12-308	Subsection (C) of this rule is not enforced as written because it does not include the changes that were implemented subsequent to statutory revisions to A.R.S. § 46-292 to remove the TANF CA benefit cap exclusion from children who are currently excluded from TANF CA, under certain circumstances. The Department proposes to amend these rules to reflect the statutory changes.
R6-12-309	Subsection (A)(6) is not enforced as written. A.R.S. § 46-101(7) was revised to include, as a caretaker relative, an unrelated adult who is an unlicensed kinship foster care provider when the child is in the legal custody of an Arizona tribal court or a tribal child welfare agency located in Arizona. The Department proposes to amend these rules to reflect these changes.

R6-12-310	Subsection (B)(1) of this rule is not enforced as written because it specifies that a parent needs to be absent from home for 30 days before qualifying as a “continued absence.” Department practice is to allow qualification as a “continued absence” when a parent merely expects to be absent from the home for 30 days. The Department proposes to amend these rules to reflect this change.
R6-12-311	Subsection (G) of this rule is not enforced as written because the rule does not include the requirement that an applicant comply with the DES Division of Child Support Enforcement before being considered eligible for TANF CA. The Department proposes to amend these rules to reflect this requirement.
R6-12-313	Subsection (A) of this rule is not enforced as written because the requirement that, as a condition of TANF CA eligibility for the assistance unit, all work-eligible individuals must complete a Jobs Program Preliminary Orientation (JPPO) is not included. Subsection (B) is not enforced as written as it does not include the expanded list of recipients who are exempt from Jobs Program participation that now includes all dependent children including 18 year old dependent children who meet the TANF CA student criteria, with the exception of minor parents. The Department proposes to amend these rules to include these requirements.
R6-12-314	This rule R6-12-314 is not enforced as written because it does not contain a subsection regarding the good cause reasons that exempt the parent or relative head of household from ensuring that a dependent child ages six through 15 years old is enrolled in and attending school or is home schooled. The rule also does not specify that noncompliance, without good cause, results in an application being denied. The Department proposes to amend these rules to explain that good cause includes when a child has completed high school through grade 10, a child is enrolled in a vocational or training program, a child is a lawful wage earner under certain circumstances, a child’s physical or mental condition is such that school is not in the child’s best interest, or other reasons.
R6-12-315	R6-12-315 is not enforced as written because it does not contain a subsection regarding the good cause reasons that exempt the parent or relative head of household from ensuring that a dependent child is immunized. The Department proposes to amend these rules to include an explanation that good cause means

	<p>either the parent or caretaker relative does not consent to immunization based on personal beliefs or that a health professional indicates that immunization would be detrimental to the child's health.</p>
R6-12-316	<p>Subsection (B) of this rule is not enforced as written because of a statutory change at A.R.S. § 46-300 from a three-tiered to a two-tiered graduated sanction process for noncompliance with the provisions in the Personal Responsibility Agreement. A cash grant reduction of 50% is imposed for the first instance of noncompliance and a 100% cash grant reduction (termination of the grant) is imposed for the second and any subsequent instances of noncompliance. The Department proposes to amend these rules to reflect the statutory changes.</p>
R6-12-318	<p>Any references to a 36-month state time limit in this rule is not enforced as written because Department policy has changed to comply with the statutory requirement in A.R.S. § 46-294(A) which reduced the state time limit to 12 countable months. The Department proposes to amend these rules to reflect the current 12-month time limit.</p>
R6-12-319	<p>Subsection (B)(5)(b)(i) of this rule is not enforced as written because this subsection requires that to be potentially eligible for a hardship extension due to educational needs, the member must have started participation in the educational or training program prior to the member receiving 30 countable months of TANF CA. Due to a change in the state time limit, the time frame for having started an educational/job training program is now six countable months. The Department proposes to amend these rules to reflect this change.</p>
R6-12-403	<p>Subsection (6) of this rule is not enforced as written because real property is now excluded when the owner is making a good faith effort to sell the property at a reasonable price. The assistance unit is no longer required to repay the Department from the sale of the property and the exclusion is no longer limited to six months. The Department proposes to amend these rules to reflect current practice.</p>
R6-12-404	<p>Subsections (A) and (J) in the rule are not enforced as written. Subsection (A) requires that an assistance unit member must be receiving both TANF CA and NA benefits in order to establish an Individual Development Account (IDA). This is</p>

	<p>more restrictive than the statutory provision in A.R.S. § 46-300.03. Also, the allowable uses of funds in an IDA listed in subsection (J) of the rule is more restrictive than what is allowed in the statute. The Department proposes to amend these rules to conform with the relevant statute.</p>
R6-12-501	<p>Subsection (B)(2) of the rule is not enforced as written. In this rule, a gross income amount for self-employed persons is calculated as “the sum of gross business receipts minus business expenses.” In alignment with deductions provided in the NA program, TANF CA now uses a Self Employment Income Standard Deduction. In addition to the TANF CA earned income disregards, self-employed family members may be eligible to receive a standard deduction of 40% of the countable gross self-employment income. The Department proposes to amend these rules to reflect current practice.</p>
R6-12-506	<p>Subsection (B) of this rule is not enforced as written because the list of reasons that an assistance unit may be exempt from the sponsor income and resource deeming requirement is incomplete. The Department proposes to amend these rules to add information regarding sponsor income and resource deeming requirements.</p>
R6-12-604	<p>Subsection (C)(2) is not enforced as written as it is no longer applicable. The circumstances for determining whether a minor parent applicant may be considered “emancipated” are located in R6-12-604(C)(2)(a-c). These circumstances were put into this rule prior to the enactment of the state statutes in A.R.S. Title 12, Chapter 15 <i>Emancipation of Minors</i>. In subsection (C)(3), the two state law citations A.R.S. §§ 8-546(A)(2) (definition of abuse) and 8-546(A)(6) (definition of neglect) are inconsistent with current state law. These definitions, as used in the rule, are now located in A.R.S. §§ 8-201(2) and 8-201(25), respectively. The Department proposes to amend these rules to eliminate the portions of the rule that have been made obsolete with the creation of A.R.S. Title 12, Chapter 15.</p>
R6-12-605	<p>Subsection (A) of the rule is not enforced as written. The rule specifies that deprivation of parental support exists when the primary wage earning parent is unemployed. Underemployment of the primary wage earning parent is now an</p>

	allowable deprivation factor, as the parent may be employed but their income is under the amount that would disqualify the family from receiving assistance. The Department proposes to amend these rules to reflect this change.
R6-12-607	Subsection (3) of this rule is not enforced as written. The cross reference in this rule to R6-10-122 is inconsistent with the current Jobs Program rules in Title 6, Chapter 10. R6-10-125(D) is now the correct cross reference and contains the policies and procedures under which the Jobs Program determines whether the TPEP assistance unit may qualify for a three month extension of TANF CA benefits. The Department proposes to amend these rules to reflect the correct citation.
R6-12-704	Subsection (B)(1) of the rule is not enforced as written. The “good cause” reasons in this section, which cross-reference Jobs Program rules in R6-10-119(B) and R6-10-120(A) and (C) are inconsistent with the current rules in Title 6, Chapter 10. The correct Jobs Program “good cause” rule is now R6-10-123(F). The Department proposes to amend these rules to remove the incorrect citations.
R6-12-801	Subsections (B) and (C) of the rule are not enforced as written. The rule states that TANF CA benefit payments shall be made in the form of a state warrant. All TANF CA benefit payments are now made electronically in the form of a deposit made into the recipient’s Electronic Benefit Transfer (EBT) account. Recipients are issued an EBT card which is used in the same manner as a bank debit card to access TANF CA benefits and make purchases at allowable retailers. The Department proposes to amend these rules to reflect the Department’s practice of making TANF CA benefits payments via EBT.
R6-12-808	This rule is not enforced as written. The rule requires the Department to issue the recipient an identification card or an EBT card at no cost. The Department no longer issues identification cards. Also, the Department now requires the recipient to pay for a replacement card under certain circumstances. The initial EBT card is issued at no cost to the recipient. The Department proposes to repeal this rule.
R6-12-901	Subsection (A) of the rule is not enforced as written. This rule requires an assistance unit to report all changes within ten days from the date the change becomes known. Changes must now be reported no later than the 10 th day of the

	<p>month following the month the change occurred to align the change reporting requirements in TANF CA with those used in the NA program. Federal NA regulations, found at 7 CFR 273.12, allow state agencies several options, including a “simplified change reporting option,” which the Department has chosen to implement in both NA and TANF CA. The Department proposes to amend these rules to reflect these changes.</p>
R6-12-903	<p>Subsection (A)(3) of the rule is not enforced as written. This rule specifies that a new member will be added to the assistance unit, when eligible, effective the date the Department receives the request to add the member. The Department now adds a new member effective the first day of the month following the month the change was reported and verified. The Department proposes to repeal this rule and consolidate all rules and processes regarding potential changes to TANF CA benefit amounts or TANF CA eligibility.</p>
R6-12-905	<p>This rule is not enforced as written. The rule specifies that an assistance unit will be ineligible on the first day of the same month in which certain changes occur. Because changes are not required to be reported until the tenth day of the month following the month the change occurred, the ineligibility date is now the first day of the first month following the date the department processes the change and determines ineligibility, allowing for timely notice of adverse action. The Department proposes to repeal this rule and consolidate all rules and processes regarding potential changes to TANF CA benefit amounts or TANF CA eligibility.</p>
R6-12-906	<p>This rule is not enforced as written. The rule specifies that an individual will be ineligible on the first day of the same month in which ineligibility occurred. Because changes are not required to be reported until the tenth day of the month following the month the change occurred, the ineligibility date is now the first day of the first month following the date the department processes the change and determines ineligibility, allowing for timely notice of adverse action. The Department proposes to repeal this rule and consolidate all rules and processes regarding potential changes to TANF CA benefit amounts or TANF CA eligibility.</p>
R6-12-907	<p>Subsection (C)(3) of the rule is not enforced as written because it is no longer applicable. This rule specifies that an adverse action notice for TANF CA will also</p>

	<p>include notification of “Any effect the intended action may have on the unit members’ AHCCCS medical eligibility.” separate adverse action notice is required for all AHCCCS adverse actions. The Department proposes to amend these rules to remove this subsection.</p>
R6-12-908	<p>This rule is not enforced as written because it is no longer applicable because the referral process has been updated to reflect current program requirements. One of the circumstances specified in the rule for the department to initiate an investigation by the Department’s Office of Special Investigations is when “An applicant or recipient refuses to sign a statement attesting to forgery of a signature on a cashed warrant.” Because all TANF CA benefits are now provided via the EBT method, warrants are no longer issued. The Department proposes to amend this rule.</p>
R6-12-1002	<p>Subsection (A) of the rule is not enforced as written. The rule specifies that “A person who wishes to appeal an adverse action shall file a written request for a fair hearing with a local FAA office, within 20 days of the adverse action notice date.” A request can now be made either orally or in writing. Also, the 20 day timeframe for requesting a fair hearing has been expanded to 30 days. The Department proposes to amend these rules to reflect these changes.</p>
R6-12-1004	<p>Subsection (A) of the rule is not enforced as written. The rule allows the Department to continue a recipient’s TANF CA benefits at their current level only when the fair hearing request is received within ten days of the notice of adverse action being sent. Department policy has changed per federal regulations to allow a continuation of TANF CA benefits at the current level when the fair hearing request is received at any time prior to the effective date of the adverse action or within ten days of the date of the adverse action notice. The Department proposes to amend these rules to reflect this change.</p>
R6-12-1005	<p>Subsection (D) of the rule is not enforced as written. This subsection specifies that “An appellant may request a change in hearing officer if the appellant so requests at least ten days prior to the hearing.” An affidavit for change of hearing officer can now be filed at least five days prior to the hearing. The Department proposes to amend these rules to reflect this change.</p>

R6-12-1006	Subsections (A) and (B) of the rule are not enforced as written. Subsection (A) requires the Office of Appeals to “schedule the hearing at the office location most convenient to the interested parties.” The Department now conducts hearings telephonically unless a party requests an in-person hearing in advance of the scheduled hearing date. Subsection (B) requires the Office of Appeals to “issue all interested parties a notice of the first hearing at least ten calendar days before the hearing.” This time frame has changed to at least 20 calendar days prior to the hearing. The Department proposes to amend these rules to reflect these changes.
R6-12-1007	Subsections (A) and (B) of the rule are not enforced as written. The Office of Appeals now allows one postponement of a hearing upon the appellant’s request at any time prior to the hearing without requiring good cause and may grant subsequent postponements when good cause exists. The Department proposes to amend these rules to reflect these changes.
R6-12-1008	Subsections (D) and (E) of the rule are not enforced as written because medical disability determinations are made at the local office level. The Department proposes to amend these rules to remove reference to a District Medical Consultant.
R6-12-1010	Subsection (B)(3) of this rule is not enforced as written because the Office of Appeals now allows a party who did not appear at the hearing to orally file a request to reopen the proceedings, in addition to in writing, no later than ten days after the hearing. The Department proposes to amend these rules to reflect this change.
R6-12-1012	Subsection (A) of the rule is not enforced as written. The rule states, in part, “No later than 90 days after the date the appellant files a request for appeal, the hearing officer shall render a written decision.” A decision is now required within 60 days. The 60-day time limit is extended for any delay necessary to accommodate hearing continuances or extensions, or postponements requested by a party. The Department proposes to amend these rules to reflect this change.
R6-12-1102	Subsection (A) of this rule is not enforced as written because the Department only pursues collection of an overpayment claim from a person who was an adult member of the assistance unit at the time the overpayment occurred and not from

	a person who was a minor child in the assistance unit at that time. The Department proposes to amend these rules to reflect this change.
R6-12-1103	Subsection (A) of this rule is not enforced as written because the list of collection methods is incomplete. The Department proposes to amend these rules to include all authorized collection methods.
R6-12-1202	Subsection (C) of this rule is not enforced as written because the list of items contained in the written notice of the right to waive the disqualification hearing is incomplete. The Department proposes to amend these rules to include a complete list.
R6-12-1203	Subsection (B) of this rule is not enforced as written because the list of items contained in the notice of hearing is incomplete. The Department proposes to amend these rules to include a complete list.
Article 13	The rules in this Article, R6-12-1301 through R6-12-1306 are not enforced as written because the Department no longer operates the JOBSTART wage subsidy program. The Department proposes to repeal this Article.

6. Are the rules clear, concise, and understandable? Yes No

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation
R6-12-203	This rule is not clear, concise, and understandable because the rule does not provide adequate information regarding what the Department reviews to determine if a person is eligible for TANF CA or how a person is informed of the Department's decision regarding a person's TANF CA eligibility. The Department proposes to amend this rule to clarify that the Department reviews all financial and non-financial information provided on the application and verifies any documents provided by an applicant to determine TANF CA eligibility, as well as provides information regarding how the Department informs an applicant about completing a TANF CA

	eligibility interview and the Department's decision on the applicant's TANF CA eligibility.
R6-12-304	This rule is not clear, concise, and understandable because the rule fails to include all members of an assistance unit as needing to be an Arizona resident to qualify for TANF CA and that the Department shall verify Arizona residency of each person in an assistance unit. The Department proposes to amend this rule by revising language to indicate that all members of an assistance unit shall be Arizona residents to qualify for TANF CA and clarify when a dependent child who is temporarily absent from an applicant's home is considered an Arizona resident.
R6-12-305	This rule is not clear, concise, and understandable because current language directs readers to information incorporated by reference and does not clearly state how the Department verifies an assistance member's citizenship status. The Department proposes to amend this rule by removing the incorporation of information by reference and clearly describing the process the Department uses to verify an assistance unit member's citizenship status.
R6-12-309	This rule is not clear, concise, and understandable because the rule does not clearly identify when stating a parent with whom a dependent child shall reside may be either a natural or adoptive parent. Additionally, there is language referencing the "fifth degree of kinship" that is confusing to the general public. The Department proposes to amend this rule by clarifying that a parent may either be a natural or adoptive parent and revising "fifth degree of kinship" to clarify that relation may be by blood, adoption, or marriage and clearly indicate relations include a dependent child's grandmother, grandfather, uncle, aunt, first cousin, first cousin once removed, nephew, niece, persons of preceding generations as denoted by prefixes "grand," "great," or "great-grand," and great-great-great grandparents.
R6-12-310	This rule is not clear, concise, and understandable because the rule references a parent's incapacity, which is too vague for the general public to understand in this context. The Department proposes to amend this rule by replacing the term "incapacity" with "physical or mental impairment" and include a definition for physical and mental impairment.

R6-12-315	This rule is not clear, concise, and understandable because the requirement of the Department to verify a child's immunizations does not clearly indicate how the Department does so. The Department proposes to amend this rule by including language that the Department shall verify a child's immunizations in accordance with the schedule of immunizations pursuant to A.R.S. § 36-672.
R6-12-702	This rule is not clear, concise, and understandable because the rule does not clearly state that an assistance unit's TANF CA eligibility requirement of residing in a needy family does not apply to a child-only case. The Department proposes to amend this rule by adding language to indicate that a child-only case does not have to meet the requirement of residing in a needy family.
R6-12-703	This rule is not clear, concise, and understandable because the language does not clearly convey the order in which the Department disregards listed earned income when determining a family's net monthly income. The Department proposes to amend this rule by reformatting the list of disregarded earned income into the order in which the Department disregards the earned income when determining a family's net monthly income and revising language regarding the qualifications for disregarding dependent care costs so that the procedures are more understandable.
R6-12-1102	This rule is not clear, concise, and understandable because the language does not clearly state from whom the Department seeks recovery of an overpayment. The Department proposes to amend this rule by stating that, in the event a caretaker relative is unavailable due to death or disappearance, the Department shall seek recovery from other members of the overpaid assistance unit who were adults at the time the overpayment occurred or an adult member's new assistance unit when the caretaker relative from the original assistance unit is no longer available for the stated reasons.
R6-12-1201	This rule is not clear, concise, and understandable because the language uses archaic language, such as "propound a falsity." The Department proposes to amend this rule by stating that an IPV consists of violating A.R.S. § 46-215 or any state or federal statute or regulation for clarity.

7. **Has the agency received written criticisms of the rules within the last five years?**

Yes No

If yes, please fill out the table below:

Commenter	Comment	Agency's Response
NA	NA	NA

8. **Economic, small business, and consumer impact comparison:**

Many of the rules in Chapter 12 were adopted without accompanying Economic Impact Statements. The Department prepared the following information to assist in an economic analysis of the current impact of these rules on Arizona.

Economic Analysis:

Cash Assistance is funded entirely with federal TANF monies. No General Fund dollars are appropriated to the Special Line Item (SLI), which is identified as Cash Assistance by the Legislature. Although TANF is a federal grant, it is appropriated at the state level. "Operating" refers to the money spent to operate or administer the program at the agency level, while "direct" refers to funding that is used directly for client services. "Incurred Expenses" include the costs paid or to be paid during the SFY. The current funding breakdown is as follows:

TANF Block Grant (SFY 2021)	Appropriated	Incurred Expenses
DBME Operating	\$14,119,100	\$13,897,366
Cash Assistance Direct	\$22,736,400	\$18,767,522

1. **Contractors**

DBME contracts with Fidelity National Information Services (FIS) for EBT services and Conduent State Healthcare for an outsourced call center.

2. Employee Data

There were approximately 153 full-time equivalent (FTE) evaluator, administrative, and support staff managing the intake process and case dispositions for the TANF CA program during SFY 2021.

Small Business Impact Analysis:

The impact of these rules on small businesses has been minimal because TANF CA benefits to recipients are provided through federal TANF monies.

Consumer Impact Analysis:

The TANF CA program provides temporary cash benefits and support services to low-income Arizona children and their families while parents seek employment that will allow them to obtain long-term self-sufficiency. TANF CA benefits are determined by need, and TANF CA benefits are granted on a monthly basis, or in some instances, as a one-time lump sum known as a Grant Diversion. The State Fiscal Year (SFY) 2021 application and recipient breakdown is as follows:

Cash Assistance Description	SFY 2021	Monthly Average
Initial Applications	47,629	3,969
Application Approvals	4,908	409
Application Denials	42,105	3,509

In SFY 2021, over 80% of the denied applications were denied because the applicant did not complete the required steps in the eligibility determination process (e.g. they did not complete the required interview or failed to verify their income), the applicant did not include a dependent child which is a core requirement of qualifying for TANF CA, or the applicant voluntarily withdrew their application. Another 10% of denials are attributable to an applicant not meeting financial eligibility requirements. During SFY 2021, there were 27,402 unduplicated TANF CA recipients comprised of 21,238 children and 6,164 adults.

Approximately 942 children per month were subject to the TANF CA benefit cap provisions of A.R.S. § 46-292(H) and therefore, those households did not receive an incremental increase in the cash grant otherwise applicable to eligible dependent children. The resulting cost avoidance was approximately \$592,008.

9. **Has the agency received any business competitiveness analyses of the rules?**

Yes No

10. **Has the agency completed the course of action indicated in the agency's previous five-year review report?**

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

In the previous Five-Year Review Report approved by the Council on February 7, 2017, the Department identified rules throughout the Chapter that were inconsistent with federal and state regulations and ineffective in meeting the objectives of the rules. The Department had received an exception under the regulatory moratorium on March 7, 2016 to proceed with developing a rulemaking identified as necessary in the previous Five-Year Review Report. The Department had proposed to submit a Notice of Final Rulemaking to GRRC in July 2017. However, due to the size and scope of the draft rules as well as legislative changes to the Cash Assistance program during that period, the draft rules have undergone several iterations. During this time, the Department has solicited robust stakeholder involvement in developing the rules and has also strived to resolve inconsistencies between the Cash Assistance and the Nutrition Assistance program to make both programs more user-friendly for clients. Additionally, progress on the publication of draft rules was delayed in 2020 due to the COVID-19 pandemic including multiple federal changes to TANF that came as a result of the pandemic. In 2021 the Department aligned the latest draft of the rules with the federal and state law changes and again engaged stakeholder input.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

Through analysis provided by the Department's program subject matter experts and Financial Services Administration, the Department believes that the rules impose the least burden and cost to persons regulated by these rules, including paperwork and other compliance costs,

necessary to achieve the underlying regulatory objectives. Program subject matter experts indicate that the amendments to the rules, as proposed in this report, are the most cost-effective way to bring the Department into compliance with state requirements and ensure that the rules reflect current program practice.

12. **Are the rules more stringent than corresponding federal laws?** Yes No

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of the federal law(s)?

The following rules contain provisions that are more restrictive than federal law applicable to the Temporary Assistance for Needy Families (TANF) program:

R6-12-318. Duration of Assistance. Federal law, 42 U.S.C. 608, provides that certain assistance units may not be provided TANF CA benefits, funded in whole or in part from the federal TANF block grant, for more than five years, except in state-defined hardship situations. State law at A.R.S. § 46-294 restricts TANF CA benefits received in the Arizona Cash Assistance program to no more than 12 months for every family except unlicensed foster care providers in a child only case, and except in hardship situations.

R6-12-308. Family Benefit Cap. State law at A.R.S. § 46-292 excludes an otherwise eligible child who is born during a parent's family benefit cap Period from participating in the program. This exclusion is not required in federal TANF law, but is also not prohibited.

R6-12-315. Immunization. State law at A.R.S. § 46-292 requires a child to be immunized in accordance with the schedule of immunizations pursuant to A.R.S. § 36-672. This requirement is not contained in federal TANF law, but is not prohibited.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The Department has determined that A.R.S. § 41-1037 does not apply to these rules, because the Department is not proposing a new rule or an amendment to an existing rule that requires the issuance of a regulatory permit, license or agency authorization.

14. Proposed course of action

If possible, identify a month and year by which the agency plans to complete the course of action.

The Department engaged stakeholders' participation while drafting the Notice of Proposed Rulemaking (NPR) for this Chapter in early 2021 and plans to file the NPR with the Secretary of State for publication in the Arizona Administrative Register in August 2022. This rulemaking will repeal, amend, and create new rules that address the inconsistencies and inefficiencies identified in this 5YRR and make the rules more clear, concise, and understandable.

Upon publication, the Department will conduct the statutory 30-day public comment period, which will be followed by an oral proceeding to gather feedback on the NPR. After the close of the record, the Department must allow enough time to adequately address the large number of comments DES anticipates receiving from its active and engaged stakeholders during the public comment period. Once public comments have been addressed, the Department will draft a Notice of Final Rulemaking (NFR) that will be routed for internal review and sent to the Governor's Office for approval in accordance with Executive Order 2021-02 prior to submitting the NFR to the Governor's Regulatory Review Council (GRRRC). The Department plans to submit the NFR to GRRRC in October 2022.

TITLE 6. ECONOMIC SECURITY**CHAPTER 12. DEPARTMENT OF ECONOMIC SECURITY
CASH ASSISTANCE PROGRAM**

Editor's Note: The Office prints all Chapters on white paper regardless of an exemption (Supp. 13-2).

Editor's Note: Article headings and Sections of this Chapter were amended, renumbered, repealed, and adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Chapter 300, § 74(A). The Chapter heading was also changed under this exemption. Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on these rules. Under Laws 1997, Ch. 300, § 74(B), the Department is required to institute the formal rulemaking process on these Sections on or before December 31, 1997. Because these rules are exempt from the regular rulemaking process, the Chapter is being printed on blue paper.

6 A.A.C. 12, consisting of Article 1, Sections R6-12-101 through R6-12-105; Article 2, Sections R6-12-201 through R6-12-111; Article 3, Sections R6-12-301 through R6-12-317; Article 4, Sections R6-12-401 through R6-12-406; Article 5, Sections R6-12-501 through R6-12-508; Article 6, Sections R6-12-601 through R6-12-617; Article 7, Sections R6-12-701 through 706; Article 8, Sections R6-12-801 through R6-12-807; Article 9, Sections R6-12-901 through R6-12-908; Article 10, Sections R6-12-1001 through R6-12-1015; Article 11, Sections R6-12-1101 through R6-12-1103; Article 12, Sections R6-12-1201 through R6-12-1206; and Article 13, Sections R6-12-1301 through R6-12-1307, adopted effective November 9, 1995 (Supp. 95-4).

ARTICLE 1. GENERAL PROVISIONS

Section

R6-12-101.	Definitions
R6-12-102.	Confidentiality
R6-12-103.	Case Records
R6-12-104.	Manuals
R6-12-105.	Repealed

ARTICLE 2. APPLICATION PROCESS AND PROCEDURES

Section

R6-12-201.	Application
R6-12-202.	Request for Benefits; Composition of the Assistance Unit
R6-12-203.	Initial Eligibility Interview
R6-12-204.	Disability Determination
R6-12-205.	Verification of Eligibility Information
R6-12-206.	Home Visits
R6-12-207.	Withdrawal of Application
R6-12-208.	Death of an Applicant
R6-12-209.	Processing the Application; Denials; Approval
R6-12-210.	Six-month Review
R6-12-211.	Reinstatement of Benefits

ARTICLE 3. NON-FINANCIAL ELIGIBILITY CRITERIA

Section

R6-12-301.	Non-financial Eligibility Criteria
R6-12-302.	Applicant and Recipient Responsibility
R6-12-303.	Application for Other Potential Benefits
R6-12-304.	Residency
R6-12-305.	Citizenship and Alienage
R6-12-306.	Eligible Persons
R6-12-307.	Social Security Number
R6-12-308.	Family Benefit Cap
R6-12-309.	Relationship
R6-12-310.	Deprivation
R6-12-311.	Assignment of Support Rights; Cooperation
R6-12-312.	Good Cause for Non-cooperation with Child Support Enforcement
R6-12-313.	Participation in JOBS; Exemptions; Good Cause Exceptions
R6-12-314.	School Attendance
R6-12-315.	Immunization
R6-12-316.	Sanctions for Noncompliance

R6-12-317.	Voluntary Quit/Reduction in Work Effort
R6-12-318.	Duration of Assistance – 36-month Time Limit
R6-12-319.	Extension of Time Limited Assistance
R6-12-320.	Duration of Assistance – Federal 60-month Time Limit
R6-12-321.	Hardship Verification Requirements

ARTICLE 4. FINANCIAL ELIGIBILITY: RESOURCES

Section

R6-12-401.	Treatment of Resources; Limitations
R6-12-402.	Treatment of Resources by Ownership Status; Availability
R6-12-403.	Treatment of Resources; Exclusions
R6-12-404.	Individual Development Accounts
R6-12-405.	Resource Transfers; Limitations
R6-12-406.	Resource Verification

ARTICLE 5. FINANCIAL ELIGIBILITY: INCOME

Section

R6-12-501.	Treatment of Income; In General
R6-12-502.	Income Available to the Assistance Unit
R6-12-503.	Income Exclusions
R6-12-504.	Special Income Provisions: Child Support, Alimony, or Spousal Maintenance
R6-12-505.	Special Income Provisions; Nonrecurring Lump Sum Income
R6-12-506.	Special Income Provisions: Sponsored Noncitizens
R6-12-507.	Determining Monthly Income
R6-12-508.	Methods to Determine Projected Monthly Income
R6-12-509.	Income Verification

ARTICLE 6. SPECIAL CA CIRCUMSTANCES

Section

R6-12-601.	Caretaker Relative of SSI or Foster Child
R6-12-602.	Strikers
R6-12-603.	Dependents of Foster Children
R6-12-604.	Minor Parents
R6-12-605.	Unemployed Parents in a Two-parent Household (TPEP)
R6-12-606.	TPEP: Education and Employment Requirements; Good Cause for Nonparticipation
R6-12-607.	TPEP: Duration
R6-12-608.	Expired
R6-12-609.	Expired

R6-12-610.	Expired
R6-12-611.	Expired
R6-12-612.	Expired
R6-12-613.	Renumbered
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ARTICLE 1. GENERAL PROVISIONS

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-101. Definitions

The following definitions apply to this Chapter:

1. "Acceptable medical source" means a registered nurse practitioner or a licensed physician, including a medical or osteopathic doctor; licensed psychologist; licensed optometrist; and licensed podiatrist, as applicable for the particular medical impairment.
2. "Adequate notice" means a notice which explains the action the Department intends to take, the reason for the action, the specific authority for the action, the recipient's appeal rights, and right to benefits pending appeal, and which is mailed before the effective date of the action.
3. "Adequate and timely notice" means a written notice which contains the information required for an adequate notice and is sent within the time-frame provided for a timely notice.
4. "Adverse action" means one of the Department actions described in R6-12-1001(A), including action to termi-

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- nate or reduce a benefit or assistance grant, or change the manner or form in which benefits are paid.
5. "AHCCCS" or "Arizona Health Care Cost Containment System" means a system established pursuant to A.R.S. § 36-2901 et seq. which consists of contracts with providers for the provision of hospitalization and medical care coverage to members.
 6. "AHCCCSA" or "The Arizona Health Care Cost Containment System Administration" means the Arizona state government agency which administers the AHCCCS program.
 7. "Appellant" means an applicant or recipient of assistance who is appealing an adverse action by the Department.
 8. "Applicant" means a person who has directly, or through an authorized representative or responsible person, filed an application for CA with the Department.
 9. "Assistance unit" means those members of a needy family, or a child only case, that meet the non-financial eligibility criteria for Cash Assistance and whose needs, income, resources, and other circumstances are considered as a whole to determine a Cash Assistance benefit amount.
 10. "Available income" means income that is actually available to the family or the assistance unit, and income in which the family or the assistance unit has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance. When an assistance unit includes a dependent child who resides with a parent or a minor sibling, the Department shall consider the income of the parent and minor sibling as available income to the assistance unit.
 11. "Available resources" means resources that are actually available to the assistance unit, and resources in which the assistance unit has a legal interest. Resources include a liquidated sum in which the assistance unit has the legal ability to make such sum available for support and maintenance. When an assistance unit includes a dependent child who resides with a parent or a minor sibling, the Department shall consider the resources of the parent and minor sibling as available resources to the assistance unit.
 12. "Benefit month" means the calendar month for which benefits are paid based upon the assistance unit's projected income and anticipated circumstances for that same month.
 13. "Benefit" or "cash benefit" means a monetary amount that the Department pays to an assistance unit for a particular benefit month.
 14. "Bona fide funeral agreement" means a prepaid plan that specifically covers only funeral-related expenses as evidenced by a written contract.
 15. "Burial plot" means a space reserved in a cemetery, crypt, vault, or mausoleum for the remains of a deceased person.
 16. "CA" means Cash Assistance, a program administered by the Department that provides assistance to needy families with dependent children and to child only cases under 42 U.S.C. 601 et seq.
 17. "Calendar quarter" means one of the four consecutive three-month periods of a calendar year beginning with either January 1, April 1, July 1, or October 1.
 18. "Calendar year" means a period of 12 consecutive months beginning with January 1 and ending with December 31.
 19. "Caretaker relative" means a parent or a non-parent relative (Non-parent Caretaker Relative or NPCR), whether related by blood or adoption, who maintains a family setting for a dependent child and who exercises responsibility for the day-to-day physical care, guidance, and support of that child.
 20. "Child only case" means a case in which the eligible dependent child is in the legal custody of the Department and placed in foster care as defined in A.R.S. § 8-501, with an unrelated adult, or a nonparent relative who is not receiving Cash Assistance. A.R.S. § 46-101(7).
 21. "Child welfare agency" means any agency or institution as defined at A.R.S. § 8-501(A)(1).
 22. "Collateral contact" means an individual, agency, or organization the Department contacts to confirm information provided by the applicant or recipient.
 23. "Countable income" means income from every source minus income excluded under R6-12-503.
 24. "Countable payment" means a cash benefit paid to or for an assistance unit in the Arizona CA program on or after October 1, 2002, but does not include cash benefits that are not countable toward the 36-month time limit under R6-12-318(E).
 25. "Crime" means any unlawful act against a head of household, the spouse of the head of household, or any member of an assistance unit that creates a hardship.
 26. "Current federal poverty level" means the federal Department of Health and Human Services poverty guidelines published annually in the *Federal Register*.
 27. "Day" means a calendar day unless otherwise specified.
 28. "Department" means the Arizona Department of Economic Security.
 29. "Dependent child" means a child as defined at A.R.S. § 46-101(8).
 30. "Disregards" means those income deductions that the Department applies to the family's or the assistance unit's gross earned income to determine eligibility and benefit amount.
 31. "District Medical Consultant" means a licensed physician whom the Department employs to review medical records for the purpose of determining physical or mental incapacity.
 32. "Earned income" means any monetary gain to the family or the assistance unit as defined in 45 CFR 233.20(a)(6)(iii) through (viii) (October 1994) which is incorporated by reference and on file with the Office of the Secretary of State and not including any later amendments or editions, and in Article 5 of this Chapter.
 33. "Eligibility determination date" means the date the Department makes the decision described in R6-12-706 and issues the eligibility decision notice.
 34. "Encumbrance" means a legal debt.
 35. "Equity value" means fair market value minus encumbrances.
 36. "FAA" or "Family Assistance Administration" means the administration within the Department's Division of Benefits and Medical Eligibility with responsibility for providing financial and food stamp assistance to eligible persons and determining medical eligibility.
 37. "Fair consideration" means an amount which reasonably represents the fair market value of transferred property.
 38. "Fair market value" means the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell, and both having reasonable knowledge of the relevant facts.
 39. "Family" means the following individuals living in the same home with:
 - a. A head of household caretaker relative:

- i. A dependent child,
 - ii. Parent or parents of the dependent child,
 - iii. Spouse of the parent or parents of the dependent child,
 - iv. The head of household caretaker relative,
 - v. The spouse of the head of household caretaker relative,
 - vi. Minor siblings of the dependent child,
 - vii. Minor children of the head of household caretaker relative, and
 - viii. Minor children of the spouse of the head of household caretaker relative, or
- b. A minor parent requesting CA under R6-12-608:
- i. The minor parent or parents,
 - ii. The minor parent's child,
 - iii. The minor parent's adult caretaker relative,
 - iv. The spouse of the minor parent's adult caretaker relative,
 - v. Minor parent's minor siblings or step-siblings,
 - vi. Minor children of the adult caretaker relative, and
 - vii. Minor children of the spouse of adult caretaker relative.
40. "Foster care maintenance payment" means a monetary amount which the Department pays to a foster parent for the expenses of a child in foster care.
41. "Foster child" means a child placed in a foster home or a child welfare agency.
42. "Gross Income" means countable income available to a family and an assistance unit for the purpose of computing the net income amount that is used to determine the income eligibility of a family and the cash benefit amount for an assistance unit.
43. "Hardship" means a situation that causes suffering or distress through the deprivation or loss of basic needs. The hardship must prevent an adult assistance unit member, the caretaker relative head of household, the spouse of the caretaker relative head of household, or the minor parent head of household from working or engaging in work activities to a degree that such person is prevented from financially supporting the eligible dependent child in the assistance unit, independent of CA.
44. "*Head of household*" means a dependent child's parent or the spouse of the parent, or the dependent child's nonparent relative or spouse of the nonparent relative, who receives Cash Assistance for him (or her)self and on behalf of the dependent child or only on behalf of the dependent child. A.R.S. § 46-101(13).
45. "Homebound" means a person who is confined to the home because of physical or mental incapacity.
46. "Homeless" means all assistance unit members meet either of the following criteria:
- a. They do not have a fixed or regular nighttime residence.
 - b. They have as their primary nighttime residence one of the following:
 - i. A supervised shelter designed to provide temporary shelter to homeless persons;
 - ii. A half-way house or similar institution that provides temporary residence;
 - iii. A rent-free accommodation in the residence of another person for not more than 90 days; or
 - iv. A place not designed, or ordinarily used, for sleeping. This includes the following:
 - (1) Car,
 - (2) Bus station,
 - (3) Hallway,
 - (4) Park, or
 - (5) Sidewalk.
47. "Homestead property" means a home owned and occupied by an applicant or recipient, or which is co-owned and occupied by a separated or divorced spouse of an applicant or recipient.
48. "Income" means earned and unearned income available to a family or an assistance unit.
49. "JOBS" or "Job Opportunities and Basic Skills Training Program" means the program authorized by 42 U.S.C. 681 - 687 and A.R.S. § 46-299, which assists CA recipients to prepare for, obtain, and retain employment.
50. "Job Corps" means the program authorized by 29 U.S.C. 1691 et seq. which provides education, training, intensive counseling, and related assistance to economically disadvantaged young men and women.
51. "JTPA" or "Job Training Partnership Act" means the program authorized by 29 U.S.C. 1501 et seq. which prepares youth and unskilled adults for entry into the labor force and affords special job training.
52. "Lawful Permanent Resident" means a noncitizen who has been granted authorization by the United States Citizen and Immigration Service to live and work in the United States on a permanent basis.
53. "Liquid asset" means cash or another financial instrument which is readily convertible to cash.
54. "Local office" means a FAA office which is designated as the office in which CA applications and other documents are filed with the Department and in which eligibility and benefit amounts are determined.
55. "Lump sum income" means a single payment of earned or unearned income, such as retroactive monthly benefits, non-recurring pay adjustments or bonuses, inheritances, lottery winnings, or personal injury and workers' compensation awards.
56. "Mailing date," when used in reference to a document sent first class, postage prepaid, through the United States mail, means the date:
 - a. Shown on the postmark;
 - b. Shown on the postage meter mark of the envelope, if there is no postmark; or
 - c. Entered on the document as the date of its completion, if there is no legible postmark or postage meter mark.
57. "Need standard" means the money value the state assigns to the basic and special needs deemed essential for an assistance unit.
58. "Needy family" means the same as A.R.S. § 46-101(16).
59. "Net income" means gross income, minus the monthly earned income disregards under R6-12-703. Net income is used to determine the income eligibility of a family and a cash benefit amount for an assistance unit.
60. "*Non-parent relative*" means a dependent child's grandfather; grandmother; brother; sister; stepfather; stepmother; stepbrother; stepsister; uncle, aunt, niece, nephew, or cousin and includes a permanent guardian who is appointed pursuant to A.R.S. § 8-872. A.R.S. § 46-101(17).
61. "Noncitizen" means a person who is not a United States citizen.
62. "Noncitizen sponsor," which is sometimes referred to as a "sponsor," means an organization which, or a person who, has executed an affidavit of support or similar agreement on behalf of a noncitizen who is not the child

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- or spouse of the sponsor, as a condition of the noncitizen's entry into the United States.
63. "Notice date" means the date which appears as the official date of issuance on a document or official written notice the Department sends or gives to an applicant or recipient.
64. "OSI" or "Office of Special Investigations" means the Department office to which FAA refers cases for investigation of certain eligibility information, investigation and preparation of fraud charges, coordination and cooperation with law enforcement agencies, and other similar functions.
65. "Overpayment" means a financial assistance payment received by or for an assistance unit for a benefit month and which exceeds the amount to which the unit was lawfully entitled.
66. "Parent" means the lawful mother or father of a dependent child and includes only a birth or adoptive parent and excludes a stepparent.
67. "Participating in a strike" means engaging in any activity as defined at 29 U.S.C. 142(2), as amended through June 23, 1947, which is incorporated by reference and on file with the Office of the Secretary of State and not including any later amendments or editions.
68. "Party" means the Department and the applicant or recipient.
69. "Payment standard" means the amount of money from which net income is subtracted to calculate the monthly benefit amount.
70. "Physical or mental incapacity" means a physical or mental impairment which substantially precludes a parent from providing for the support or care of the parent's child.
71. "PI" means the Primary Informant, who is the individual who signs the Application for Assistance; in TPEP assistance units the PI is the PWEP.
72. "PRA" means the Personal Responsibility Agreement, which is a document listing the obligations of a household that applies for and receives CA.
73. "Projected income" means an estimate of income that a family or an assistance unit reasonably expects to receive in a specific month, the actual amount of which is unknown but which is estimated from available and reliable information.
74. "Prospective eligibility" means an eligibility determination for a benefit month based on income and other circumstances as they actually exist, and are anticipated to exist, in that same month.
75. "Putative father" means a male person whom a birth mother has named as father of her child, but whose paternity has not been established as a matter of law.
76. "Prospective budgeting" means the computation of a benefit amount for a particular benefit month based on the Department's projected income and circumstances as they actually exist and are anticipated to exist for that same month.
77. "PRWORA" means the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193).
78. "PWEP" or "Primary wage earning parent" means the parent in a two-parent family who earned the greater amount of income in the 24-month period immediately preceding the month in which an application for benefits is filed.
79. "Request for hearing" means a clear written expression by an applicant or recipient, or such person's representative, indicating a desire to present the case or issue to a higher authority.
80. "Resources" means real and personal property available to an assistance unit.
81. "Review" means a review of all factors affecting an assistance unit's eligibility and benefit amount.
82. "Spendthrift restriction" means a legal restriction on the use of a resource which prevents a payee or beneficiary from alienating the resource.
83. "Sponsored noncitizen" means a noncitizen whose entry into the United States was sponsored by a person who, or an organization which, executed an affidavit of support or similar agreement on behalf of the noncitizen alien, who is not a child or spouse of the sponsor.
84. "Student" means a person who is attending a school, college, or university, or who is enrolled in a course of vocational or technical training designed to prepare the trainee for gainful employment, and includes a participant in Job Corps.
85. "Suitable work" means work in a recognized occupation for which a person is reasonably qualified.
86. "Support" means child support, alimony, spousal maintenance, or medical support.
87. "Supportive Services unit" means an assistance unit which is eligible for all benefits, except a monthly cash amount, that a CA assistance unit receives.
88. "SVES" means the State Verification and Exchange System which is a system through which the Department exchanges income and benefit information with the Internal Revenue Service, Social Security Administration, State Wage, and Unemployment Insurance Benefit data files.
89. "TANF" means Temporary Assistance for Needy Families, which is a program administered by the Department to provide assistance to needy families with dependent children and child only cases under 42 U.S.C. 601 et seq.
90. "Timely notice" means a notice which the Department mails at least 10 days before the date on which the action described in the notice will occur or take effect or, in circumstances of probable fraud, at least five calendar days in advance of the date such action is effective.
91. "Title IV-A of the Social Security Act" means 42 U.S.C. 601 - 617, the statutes establishing the CA program.
92. "Title IV-E of the Social Security Act" means 42 U.S.C. 670 - 679, the statutes establishing the foster care and adoption assistance programs.
93. "TPEP" or "Two-parent Employment Program" means the CA program that provides assistance for dependent children residing in a needy family who are deprived of parental support because the primary wage-earning parent is unemployed.
94. "Underpayment" means a monthly benefit payment which is less than the amount for which the assistance unit is eligible, or the failure to issue a benefit payment when such payment should have been issued.
95. "Vendor payment" means a payment that a person or organization who is not a member of the family or the assistance unit makes to a third-party vendor to cover family or assistance unit expenses.
96. "Violence" means battery or extreme cruelty inflicted on a head of household or any member of an assistance unit. Battery or extreme cruelty includes any of the following:
- Physical acts that threatened or resulted in physical injury;
 - Threats of, or attempts at, physical or sexual abuse;
 - Sexual activity involving a child;

- d. Being forced as the caretaker of a child to engage in non-consensual sexual acts or activities;
 - e. Mental or emotional abuse; and
 - f. Neglect or deprivation of basic necessities such as food or medical care.
97. "Voluntary Quit/Reduction in Work Effort" is an action to willingly quit a job or reduce work effort without good cause.
98. "Warrant" means a payment instrument drawn on the Arizona State Treasury authorizing payment of a particular sum of money to an CA recipient.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-102. Confidentiality

- A.** Personally identifiable information.
1. All personally identifiable information concerning an applicant, recipient, or member of a family in the possession of the Department is confidential and not subject to public inspection, except as otherwise specified in A.R.S. § 41-1959 and this Section.
 2. Personally identifiable information includes:
 - a. Name, address, and telephone number;
 - b. Social Security number and date of birth;
 - c. Unique identifying numbers such as a driver's license number;
 - d. Photographs;
 - e. Information related to social and economic conditions or circumstances;
 - f. Medical data, including diagnosis and past history of disease or disability; and
 - g. Any other information which is reasonably likely to permit another person to readily identify the subject of the information.
- B.** Release of information to applicants and recipients.
1. An applicant or recipient may review the contents of his or her own eligibility file at any time during the Department's regular business hours, provided that a Department employee is present during the review.
 2. A dependent child may review a case file in which the child is included as a recipient, only with the written permission of the child's parent, or legal guardian or custodian.
 3. The Department may withhold medical information which, if released, may cause physical or mental harm to the person requesting the information, until the Department contacts the person's physician and obtains an opinion that the Department can safely release the information.
- C.** Release of information to authorized persons and representatives. An applicant or recipient may permit the release of information from the applicant or recipient's eligibility file to

another person or representative by executing a release form containing the following information:

1. The specific information the Department is authorized to release;
 2. The name of the person to whom the Department may release information;
 3. The duration of the release, if limited; and
 4. Signature and date.
- D.** Release to persons and agencies for official purposes.
1. An official purpose is one directly related to the administration of a public assistance program and includes:
 - a. Establishing eligibility;
 - b. Determining the amount of an assistance grant;
 - c. Providing services to applicants and recipients, including child support enforcement services;
 - d. Investigating or prosecuting civil or criminal proceedings related to an assistance program; and
 - e. Evaluating, analyzing, overseeing, and auditing program operations.
 2. The Department may release confidential information to the following persons and agencies to the extent required for official purposes:
 - a. Department employees;
 - b. Employees of the Social Security Administration;
 - c. Public assistance agencies of any other state;
 - d. Persons connected with the administration of child support enforcement activities;
 - e. Arizona Attorney General's Office;
 - f. Persons connected with the administration of federal or federally assisted programs which provide assistance, in cash or in-kind, or services directly to individuals on the basis of need;
 - g. Government auditors when the audits are conducted in connection with the administration of any assistance program by a governmental entity which is authorized by law to conduct such audits;
 - h. AHCCCSA, for eligibility purposes;
 - i. Law enforcement officials for an investigation, prosecution, or civil or criminal proceedings conducted by or on behalf of the Department or a federal public assistance agency in connection with the administration of a public assistance program; and
 - j. The Internal Revenue Service for the purpose of identifying improperly claimed tax exemptions by the absent parent of a child supported by CA.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

R6-12-103. Case Record

- A.** The Department shall maintain a case record for every applicant for or recipient of assistance.
- B.** Except as otherwise provided in subsections (C) and (D) below, the Department shall retain the case record for a period of 3 years after the last date on which the applicant received an adverse determination of eligibility or the recipient last received a benefit payment.
- C.** The Department shall retain a case record which contains an unpaid overpayment until:
1. The overpayment is paid in full, or
 2. The assistance unit is no longer obligated to repay the overpayment.

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- D. The Department shall retain a case record which includes a person determined to have committed an intentional program violation pursuant to Article 12 until:
1. The overpayment is paid in full, and
 2. The disqualification sanction is satisfied.
- E. The case record shall contain all documentation collected or prepared by the Department in evaluating and determining eligibility and benefit amount.
1. The legible name and address of the person requesting assistance; and
 2. The signature, under penalty of perjury, of the applicant or the applicant's authorized representative, or, if the applicant is incompetent or incapacitated, someone legally authorized to act on behalf of the applicant.
- C. In addition to the identifiable information described in subsection (B), a completed application shall contain:
1. The names of all persons living in the applicant's dwelling and the relationship of such persons to the applicant,
 2. A request to receive cash benefits which complies with the requirements of R6-12-202, and
 3. All other financial and non-financial eligibility information requested on the application form.
- D. An application for CA is automatically treated as an application for AHCCCS medical benefits.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-104. Manuals

Each FAA office shall maintain and keep available for public inspection and copying during regular business hours, a copy of the CA program manual.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-105. Repealed**Historical Note**

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section repealed by final rulemaking at 16 A.A.R. 815, effective April 22, 2010 (Supp. 10-2).

ARTICLE 2. APPLICATION PROCESS AND PROCEDURES

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-201. Application

- A. Any person may apply for CA by filing, either in person or by mail, a Department-approved application form with any FAA office.
- B. The application file date is the date any FAA office receives an identifiable application. An identifiable application is 1 which contains, at a minimum, the following information:

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-202. Request for Benefits; Composition of the Assistance Unit

- A. An applicant may receive CA for any eligible dependent child, and the parents, siblings, and nonparent relatives of the eligible dependent child residing in the applicant's home who meet the CA financial and nonfinancial eligibility criteria.
- B. A parent or sibling in a family with an eligible dependent child:
 1. Shall be part of the assistance unit with the dependent child when the parent or sibling:
 - a. Requests CA, and
 - b. Meets all nonfinancial CA eligibility criteria, or
 2. Shall not be part of the assistance unit if the parent or sibling does not meet the requirements of subsection (B)(1), but the Department shall consider their income and resources available to the assistance unit for the purpose of determining the amount of the cash benefit.
- C. An applicant who is the non-parent caretaker relative (NPCR) of a dependent child and who meets the requirements of R6-12-306(A)(4) may also ask to be included in the cash benefit.
- D. When one NPCR cares for step-siblings or children who lack any sibling relationship, the NPCR and the children shall be included in the same cash benefit.
- E. Notwithstanding any other provision of this Chapter, no person shall receive CA in more than one assistance unit in Arizona in any calendar month.
- F. If a person is required to be included in more than one assistance unit, the Department shall consolidate the assistance units.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp.

97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: *The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.*

R6-12-203. Initial Eligibility Interview

- A.** Upon receipt of an identifiable application, the Department shall schedule an initial eligibility interview for the applicant at a location which assures a reasonable amount of privacy. Upon request, the Department shall conduct the interview at the residence of a person who is homebound.
- B.** The applicant shall attend the interview. A person of the applicant's choosing may also attend the interview.
- C.** During the interview, a Department representative shall:
 1. Assist the applicant in completing the application form;
 2. Witness the signature of the applicant or the applicant's authorized representative;
 3. Discuss how the applicant and the other assistance unit members previously met their needs, and why they now need financial assistance;
 4. Provide the applicant with written information explaining:
 - a. The terms, conditions, and obligations of the CA program, including the requirement that the applicant obtain and provide a Social Security number to the Department;
 - b. Any additional verification information as prescribed in R6-12-205(A) which the applicant must provide for the Department to conclude the eligibility evaluation;
 - c. The Department's practice of exchanging eligibility and income information through the State Verification and Exchange System (SVES);
 - d. The coverage and scope of the CA program, and related services which may be available to the applicant, including child care benefits;
 - e. The applicant's rights, including the right to appeal adverse action;
 - f. The AHCCCS enrollment process;
 - g. The requirement to report all changes within 10 calendar days from the date the change becomes known;
 - h. The family planning services available through AHCCCS health plans;
 5. Review the penalties for perjury and fraud, as printed on the application;
 6. Explain to the applicant:
 - a. Who shall be included in the family for the purpose of determining whether the assistance unit resides in a needy family,
 - b. Which family members may be included in the assistance unit,
 - c. Which family member's income and resources shall be considered available to the assistance unit, and
 - d. Which family member the applicant may include as an optional member of the assistance unit.
 7. Review any verification information already provided;
 8. Explain the applicant's duties to:

- a. Cooperate with the Division of Child Support Enforcement (DCSE) in establishing paternity and enforcing support obligations, unless the applicant can show good cause for not doing so;
 - b. Transmit to the Department any support payments the applicant receives after the date the applicant is approved to receive CA; and
 - c. Participate in the Job Opportunities and Basic Skills Training (JOBS) program, unless the applicant or recipient is determined to be exempt from such participation;
9. Photograph the applicant for identification purposes;
 10. Review all ongoing reporting requirements, and the potential sanctions for failure to make timely reports, including loss of disregards; and
 11. Inform the applicant of the opportunity to set aside funds in an individual development account as prescribed in R6-12-404 for educational or training purposes.
- D.** When the applicant misses a scheduled appointment for an interview, the Department shall schedule a second interview for later that same day, or for another day, only if the applicant so requests before close of business on the day of the missed appointment.
 - E.** The Department shall deny the application when the applicant fails to request a second appointment as provided in subsection (D) or when the applicant misses a second scheduled appointment.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: *The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.*

R6-12-204. Disability Determination

- A.** When an assistance unit is requesting CA due to the mental or physical incapacity of a parent, as provided in R6-12-310(G), the Department shall verify the existence of the disability.
- B.** The assistance unit shall demonstrate incapacity of a parent by providing a medical statement from a licensed physician. The statement shall include:
 1. A diagnosis of the person,
 2. A finding that the person has a physical or mental condition which prevents the person from working, and
 3. An opinion concerning the duration of unemployment or a date for re-evaluation of unemployment.
- C.** The local FAA office shall find disability, without further medical verification, when the applicant provides evidence that:
 1. The Social Security Administration (SSA) has determined that the person is eligible for Retirement, Survivors, Disability Insurance (RSDI) benefits due to blindness or disability;
 2. The SSA has determined that the person is eligible for Supplemental Security Income (SSI) due to blindness or disability;
 3. The Veteran's Administration has determined that the person has at least a 100% disability;

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4. The person's physician has released the person from the hospital and imposed work restrictions for a specified recuperation period;
 5. The person's employer or physician has required the person to terminate employment due to the onset of a disability and the physician has specified a recuperation period;
 6. The person's physician has determined that the person is capable of employment only in a sheltered workshop, for a specified period of time, and the person is so employed; or
 7. A prior certification of disability is in the person's case record and is still valid to cover the period in which assistance is requested and will be received.
- D.** The District Medical Consultant shall determine incapacity for all persons not covered under subsections (B) or (C).

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-205. Verification of Eligibility Information

- A.** The Department shall obtain independent verification or corroboration of information provided by the applicant, recipient, or family member when required by law, or when necessary to determine eligibility or benefit level.
- B.** The Department may verify or corroborate information by any reasonable means including:
 1. Contacting third parties such as employers;
 2. Making home visits as provided in R6-12-206;
 3. Asking the applicant, recipient, or family member to provide written documentation, such as billing statements or pay stubs; and
 4. Conducting a computer data match through SVES.
- C.** The applicant, recipient, or family member has the primary responsibility for providing all required verification. The Department shall offer to assist an applicant, recipient, or family member who has difficulty in obtaining the verification and requests help.
- D.** An applicant, recipient, or family member shall provide the Department with all requested verification within 10 calendar days from the notice date of a written request for such information. When an applicant, recipient, or family member does not timely comply with a request for information, the Department shall deny the application as provided in R6-12-209(B).
- E.** The application form shall contain a notice to advise the applicant that the Department may contact third parties for information. The applicant's signature on an application is deemed consent to such contact.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

R6-12-206. Home Visits

- A.** The Department shall schedule a home visit:
 1. When it reasonably believes that such a visit will avoid an eligibility determination error, or
 2. To conduct an initial interview or an eligibility review when a homebound applicant or recipient so requests.
- B.** The Department shall mail the applicant or recipient written notice of a scheduled home visit at least 7 days before the date of the visit.
- C.** The Department may deny or terminate benefits if the applicant or recipient is not home for a scheduled visit for:
 1. An initial interview and has not timely rescheduled the visit pursuant to R6-12-203(D), or
 2. A 6-month review interview and has not timely rescheduled the visit pursuant to R6-12-210(D).
- D.** The Department may conduct unscheduled visits to gather information or to verify information previously provided by an applicant or recipient. The Department shall not deny an application or terminate assistance if the applicant or recipient is not home for an unscheduled visit.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-207. Withdrawal of Application

- A.** An applicant may withdraw an application at any time before the Department completes an eligibility determination by requesting a withdrawal from the Department either orally or in writing.
- B.** If an applicant orally asks to withdraw an application the Department shall:
 1. Document the names of persons and type of benefits or services the applicant wishes to withdraw, and
 2. Deny the application and notify the applicant.
- C.** A withdrawal is effective as of the date of application.
- D.** When an application is withdrawn, an applicant must file a new application to restart the application process.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-12-208. Death of an Applicant

- A.** If an applicant dies while the application is pending, the Department shall deny the application and inform the person responsible for the dependent child that a new application may be filed.
- B.** If the new application is filed within 45 days from the date of the original application, and the child is found eligible, the Department shall pay benefits for the child from the date of the original application. If eligible, the new applicant shall receive benefits from the date of the new application.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

R6-12-209. Processing the Application; Denials; Approval

- A. The Department shall complete the eligibility determination within 45 calendar days of the application file date, unless:
1. The application is withdrawn,
 2. The application is rendered moot because the applicant has died or cannot be located, or
 3. There is a delay resulting from a Department request for additional verification information as provided in R6-12-205(D).
- B. The Department shall deny an application when the applicant fails to:
1. Complete the application and an eligibility interview, as described in R6-12-203;
 2. Submit all required verification information within 10 days of the notice date of a written request for such verification; or
 3. Cooperate during the application process as required by R6-12-302.
- C. When an assistance unit satisfies all eligibility criteria, the Department shall compute a benefit amount, approve the application, and send the applicant an approval notice. The approval notice shall include the amount of assistance and an explanation of the assistance unit's appeal rights.
- D. The Department shall process an application for the purpose of determining medical assistance eligibility pursuant to R9-22-101 *et seq.*

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-210. Six-month Review

- A. The Department shall complete a review of all eligibility factors for each assistance unit at least once every six months, beginning with the sixth month following the first month of CA eligibility.
- B. At least 30 days prior to the six-month review date, the Department shall mail the recipient a notice advising of the need for a review. In response to such notice, the recipient shall file a request for a six-month review and interview by the date specified on the notice.
- C. The Department shall schedule and conduct a review interview in the same manner as an initial interview.
- D. When the recipient misses a scheduled appointment for a six-month review interview, the Department shall schedule a second interview if the recipient so requests within 10 days of the missed appointment.
- E. The Department shall terminate benefits when the recipient fails to request a second appointment as prescribed in subsection (D), or when the recipient misses a second scheduled appointment without good cause. Good cause shall include the following circumstances:
1. Lack of transportation on the day of the appointment,
 2. Illness, or
 3. Serious injury or accident involving an assistance unit member.
- F. The Department shall verify the income of the needy family and the assistance unit's resources and income and any eligibility factors that have changed or are subject to change. The

Department may verify other factors if Department experience suggests the need for additional verification.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-211. Reinstatement of Benefits

- A. If the Department has terminated payment of benefits to an assistance unit, the Department shall not reinstate benefits unless the recipient files a new application and has a new interview.
- B. Notwithstanding subsection (A), the Department shall reinstate benefits within 10 calendar days when:
1. Termination was due to Department error;
 2. The Department receives a court order or administrative hearing decision mandating reinstatement; or
 3. The recipient files a request for fair hearing as provided in R6-12-1002 within 10 days of the notice date of the termination notice, unless the request is for continuance of benefits past the 36-month limit in R6-12-318, the 60-month limit in R6-12-320, or the six-month limit in R6-12-611.
- C. When the Department reinstates benefits to a recipient who missed a six-month review due to the termination of benefits, the Department shall conduct the review at the earliest opportunity following reinstatement.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

ARTICLE 3. NON-FINANCIAL ELIGIBILITY CRITERIA

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-301. Non-financial Eligibility Criteria

To qualify for CA, a person shall satisfy all applicable criteria set forth in this Article.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-302. Applicant and Recipient Responsibility

- A.** An applicant for or recipient of assistance shall cooperate with the Department as a condition of initial and continuing eligibility. The applicant or recipient shall:
1. Give the Department complete and truthful information;
 2. Inform the Department of all changes in income, assets, or other circumstances of the assistance unit affecting eligibility or the amount of the assistance payment within 10 days from the date the change becomes known; and
 3. Comply with all the Department's procedural requirements.
- B.** The Department may deny an application for assistance, reduce or terminate benefits, or change the manner of payment, if the applicant or recipient fails or refuses to cooperate without good cause. However, the Department shall not impose such sanctions for failure to comply with a procedural requirement about which the Department has not advised the applicant or recipient in writing.
- C.** As a condition of eligibility, except in a child only case, the Department shall require the parent or NPCR to sign a Personal Responsibility Agreement when the parent or NPCR applies for benefits for a dependent child.
- D.** The Department shall inform the parent or NPCR that the signature acknowledges that:
1. The parent or NPCR is aware of and agrees to the statements in the Personal Responsibility Agreement regarding:
 - a. Preparing for and accepting employment to achieve self-sufficiency;
 - b. Ensuring school attendance by all school-age children;
 - c. Maintaining current immunizations for all dependent children; and
 - d. Cooperating with all rules and requirements of the Family Assistance, JOBS, and Child Care Administrations and of the Division of Child Support Enforcement.
 2. The parent or NPCR agrees to the statement of personal responsibility on behalf of all other current and future members of the assistance unit.
- E.** The Department shall inform the parent or NPCR at the interview that failure to sign the Personal Responsibility Agreement will result in denial of CA benefits.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

R6-12-303. Application for Other Potential Benefits

As a condition of eligibility, an assistance unit member and any person whose income is considered available to the assistance unit shall apply for all other cash benefits for which the person may be eligible, except SSI.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-304. Residency

- A.** To qualify for CA, a person shall be an Arizona resident.
- B.** An Arizona resident is a person who:
1. Voluntarily resides and intends to make a permanent home in Arizona,
 2. Lives in Arizona at the time of making application, and
 3. Is not receiving public assistance from another state.
- C.** A person terminates Arizona residency by:
1. Leaving Arizona for more than 30 consecutive days, or
 2. Leaving Arizona with the intent to live elsewhere.
- D.** The dependent child of a caretaker relative who is an Arizona resident is deemed an Arizona resident.
- E.** The Department shall verify Arizona residency.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-305. Citizenship and Alienage

- A.** To qualify for CA, an assistance unit member shall be a United States citizen or a noncitizen legal alien who satisfies the requirements of PRWORA Section 431 and who meets eligibility requirements of PRWORA Section 402, not including any later amendments or editions, which are incorporated by reference and are available for inspection at the Department of Economic Security, 1789 West Jefferson, Phoenix, Arizona, and the Office of the Secretary of State, 1700 West Washington, Phoenix, Arizona.
- B.** The Department shall verify legal alienage of assistance unit members for whom CA is requested by obtaining a person's alien registration documentation, or other proof of immigration registration, from the U.S. Immigration and Naturalization Service (INS), or by submitting a person's alien registration number and other related information to the INS.
- C.** A sponsor's income and resources shall not be included when determining income eligibility for a family or a cash benefit amount for the assistance unit when a lawful permanent resident noncitizen member of an assistance unit and any lawful permanent resident noncitizen whose income is considered available to the assistance unit verifies 40 quarters of employment history.

- D. An ineligible noncitizen may serve as payee for the eligible members of an assistance unit, but the Department shall exclude the needs of the ineligible noncitizen from the assistance grant.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-306. Eligible Persons

- A. To qualify for CA, an otherwise eligible person shall be:
1. A dependent child under 18 years of age;
 2. A dependent child age 18 and, as provided in R6-12-314, who is a full time student in a secondary school, or the equivalent level of vocational or technical training school, and is reasonably expected to complete such education or training before turning age 19;
 3. The parent of an eligible CA child; or
 4. A non-parent caretaker relative of an eligible CA child when:
 - a. The parent of the dependent child:
 - i. Does not live in the NPCR's home,
 - ii. Lives with the NPCR but is also a dependent child, or
 - iii. Lives with the NPCR but cannot function as a parent due to a physical or mental impairment;
 - b. The NPCR provides the dependent child with physical care, support, guidance, and control; and
 - c. The dependent child resides with the NPCR.
- B. If otherwise eligible, the CA assistance unit shall include the following persons who are related to a dependent child for whom the applicant requests assistance:
1. Any natural or adoptive parent, and
 2. Any natural or adopted brother or sister.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was renumbered and amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-307. Social Security Number

- A. To qualify for CA, an assistance unit member shall furnish an Social Security number (SSN). If a member of an assistance unit lacks an SSN, the Department shall assist the person in applying for an SSN through procedures established between

the Department and the United States Social Security Administration (SSA).

- B. The Department shall obtain verification of Social Security numbers through contact with the SSA.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Former Section renumbered to R7-12-314; new Section R6-12-307 renumbered from R6-12-314 and amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).
Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-308. Family Benefit Cap

- A. The Department shall not provide CA to a child except as provided in subsection (C), born during a month when:
1. The parent or non-parent caretaker relative is receiving CA or supportive services, or
 2. The child is born to a parent who is ineligible for CA benefits due to noncompliance or failure to meet an eligibility requirement.
- B. A child born during any period of time specified in subsection (A) is ineligible for CA for a 60-consecutive-calendar-month period.
- C. An assistance unit may receive CA benefits for a child that would otherwise be excluded under subsection (A) if:
1. The child is born within 10 calendar months of an initial CA eligibility determination;
 2. The parent has not received CA or supportive services for a minimum of 12 consecutive months, and the child is born:
 - a. No earlier than the 22nd month after the parent left CA, and
 - b. No later than the end of the 10th month after the parent returns to CA;
 3. The child is the firstborn of a dependent child who is included in a CA or supportive services assistance unit; or
 4. The child is born as a result of an act of sexual assault or incest and the applicant or recipient meets the following requirements:
 - a. The applicant or recipient shall file a written statement with the Department to certify that a child was conceived as a result of sexual assault or incest and shall provide supporting verification.
 - b. Acceptable verification includes:
 - i. Medical or law enforcement records in cases of sexual assault or incest, or
 - ii. Birth certificate or Bureau of Vital Statistics Records in cases of incest.
 - c. The Department shall accept the written statement of the applicant or recipient as verification of sexual assault or incest when the applicant or recipient is unable to provide evidence to support the claim of sexual assault or incest.
 - d. The FAA shall report allegations of sexual assault or incest to the Office of Special Investigations and, if the parent is a minor, to Child Protective Services.

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The Department shall not disclose the name, address, and any information concerning the sexual assault or incest to any person except those persons who require the information to investigate the allegations.

- D.** An assistance unit or family that includes a child who is ineligible due to the provisions of this Section may earn income up to the incremental benefit increase the assistance unit would otherwise receive for the ineligible child without any adverse affect on the amount of countable income that is used to determine income eligibility or the cash benefit amount. The Department shall disregard such income.
1. The disregard shall equal the difference between the benefit amount with the needs of the ineligible child included in the benefit computation and the benefit amount with the needs of the ineligible child excluded from the benefit computation.
 2. The Department shall apply the disregard after all other earned income disregards specified at R6-12-703 are first deducted.
- E.** The Department shall not include a child who is ineligible for CA due to the provisions of this Section in the assistance unit's standard of need and shall not count the income and resources of the ineligible child available to the assistance unit.
- F.** A child who is ineligible for CA due solely to the provisions of this Section may receive the following services, if otherwise eligible:
1. AHCCCS,
 2. JOBS,
 3. Child care, and
 4. Any other program or service for which CA recipients categorically qualify.
- G.** A parent or NPCR may receive CA for himself or herself when the only dependent child in the home is ineligible for assistance due to the provisions of this Section.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-309. Relationship

- A.** To qualify for CA, a dependent child shall reside with at least one of the following specified relatives:
1. A parent;
 2. A stepmother, stepfather, stepbrother, or stepsister;
 3. A person who is within the fifth degree of kinship to the dependent child, including: grandmother, grandfather, brother, sister, uncle, aunt, first cousin, nephew, niece, persons of preceding generations as denoted by prefixes "grand," "great," or "great-great," great-great-great grandparents, and first cousins once removed;
 4. A spouse of any person named in the above groups, even if the marriage has been terminated by death;
 5. A legal permanent guardian who is appointed pursuant to A.R.S. § 8-872; or

6. An unrelated adult only when the child is in the legal custody of the Department and placed in a foster home or with the unrelated adult.
- B.** The Department shall not determine a child or NPCR ineligible solely for any of the following reasons:
1. The dependent child is under the jurisdiction of a court;
 2. An agency or individual unrelated to the child has legal custody of the child;
 3. The dependent child, or the child's parent or NPCR, is temporarily absent from the child's home because:
 - a. The child is making a court-ordered visit to a non-custodial parent for a period not to exceed three consecutive months;
 - b. The child is visiting a parent who has a legal order awarding joint custody of the child, and the child resides with the parent who is part of the child's assistance unit for the entire calendar month;
 - c. The child is living in a Department-licensed shelter which does not receive funding under Title IV-A or IV-E of the Social Security Act, and the child is expected to return to the home within 30 days of issuance of the first benefit payment;
 - d. During the month for which benefits are sought, the child is entering or leaving foster care funded by other than Title IV-E of the Social Security Act;
 - e. The child is temporarily hospitalized;
 - f. The child is visiting friends or other relatives for a period not to exceed three consecutive months; or
 - g. The child is attending school but returns home at least once a year.
- C.** The Department shall verify the requisite degree of relationship between the child and the child's parent or NPCR.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-310. Deprivation

- A.** No child shall receive CA unless the child is deprived of parental support or care due to the continued absence, death, incapacity, or unemployment of the child's parent.
- B.** A child suffers deprivation by continued absence when the following 3 conditions are met:
1. The child's natural or adoptive parent is out of the home for a minimum of 30 continuous days;
 2. The absence interrupts or terminates the parent's ability to provide maintenance, physical care, or guidance to the child; and
 3. The duration of the absence prevents the child from relying on the absent parent for support or care.
- C.** When the conditions listed in subsection (B) are met, the situations listed in this subsection may constitute deprivation by continued absence.
1. A parent is absent due to involuntary hospitalization, incarceration, or deportation.

2. A parent is a convicted offender who is living in the home while serving a sentence of unpaid public or community service; however, such parent shall not be considered part of the assistance unit for computation of the grant. The Department shall consider the parent to be out of the home for the purpose of deprivation.
 3. A single parent has adopted a child.
 4. The child's mother and putative father both dispute paternity, and there is no documentation to substantiate paternity.
 5. The parents have joint legal or physical custody of the child, but the child resides with 1 parent more than 50% of the time.
- D.** When a child satisfies the conditions set forth in subsection (B), the following circumstances shall not automatically preclude a finding of deprivation:
1. A stepparent, substitute parent, parental co-habitant, or person other than the child's parent resides in the child's home;
 2. The child's home is considered unsuitable because of neglect, abuse, or exploitation;
 3. The parent or NPCR refuses to cooperate with the Department regarding child support enforcement or collection activities;
 4. The absent parent visits the child; or
 5. The mother and father of the child have some form of ongoing contact or relationship.
- E.** The circumstances listed in this subsection do not constitute deprivation by continued absence.
1. The parent is voluntarily absent to visit friends or relatives, to seek employment, to maintain a job, to attend school or training, so long as the parent in the home and the absent parent do not regard themselves as separated.
 2. The parent is absent solely to serve active military duty.
 3. The parents maintain separate dwellings but consider themselves part of a single home or family unit.
 4. One parent is deliberately absent from home in order to qualify the remaining family members for benefits.
- F.** A child is deprived if either parent of the child is deceased and the child has not been adopted. The applicant or recipient shall provide the Department with documentation verifying a death.
- G.** A child is deprived if either parent has a physical or mental defect, illness, or impairment that:
1. Substantially decreases or eliminates the parent's ability to support or care for the child, and
 2. Is expected to last for a minimum of 30 continuous days.
- H.** A child is deprived when the primary wage earning parent is unemployed if the assistance unit meets all the requirements set forth in R6-12-609.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-311. Assignment of Support Rights; Cooperation

- A.** To qualify for CA, an applicant shall assign to the Department all rights to a support obligation from any other person the applicant or recipient may have in his or her own behalf or in behalf of any other family member for whom the applicant or recipient is applying for or receiving CA, including any unpaid support obligation or support debt which has accrued at the time the assignment is made.
- B.** A refusal to execute such an assignment is a refusal to complete the application and shall result in denial of the CA application.
- C.** An applicant or recipient shall cooperate with the Department to obtain support owing to the applicant or recipient, unless there is good cause for noncooperation, as described in R6-12-312.
- D.** After being approved for CA, the recipient shall transmit all monetary support received to the Department.
- E.** At the time of the initial interview and at all review interviews, the Department shall explain:
1. The applicant's duty of cooperation,
 2. Good cause and how to establish it,
 3. The duty to send the Department any support the assistance unit members receive, and
 4. The consequences for breach of the duties set forth in this Section.
- F.** Cooperation shall include the actions listed in this subsection.
1. Identifying and locating the parent of a child for whom CA is requested.
 2. Establishing the paternity of a child born out-of-wedlock, for whom CA is requested.
 - a. The applicant shall sign and complete an affidavit of paternity.
 - b. The mother and father of a child may voluntarily acknowledge paternity in a signed, notarized statement.
 3. Obtaining support payments, or other payments or property due the applicant or recipient for the benefit of the child.
 4. Appearing at a child support enforcement office when requested, to provide oral or written information or documentary evidence known to, possessed by, or reasonably obtainable by the applicant or recipient.
 5. Appearing as a witness at a judicial or administrative hearing or proceeding when requested.
 6. Providing information, or attesting to the lack of information, when requested.
 7. Paying to the Department any support payments received from the absent parent after the assignment of rights pursuant to subsection (A) has been made.
- G.** If the applicant or recipient fails to cooperate as required by subsection (F) without good cause, the Department shall impose the penalties provided under R6-12-316.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for

review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-312. Good Cause for Non-cooperation with Child Support Enforcement

- A.** An applicant or recipient may establish good cause for non-cooperation with the Department. Good cause shall exist when:
1. Cooperation is reasonably likely to result in physical or emotional harm to the dependent child, parent in the home, or the NPCR, based on the factors identified in subsection (B);
 2. Legal proceedings for adoption of the dependent child are pending before a court;
 3. A public or private adoption entity is counseling the applicant regarding release of the dependent child for adoption, and such counseling has occurred for less than 3 months; or
 4. The dependent child was conceived as a result of incest or rape.
- B.** As used in subsection (A)(1):
1. Physical harm means an impairment of the human body of a serious nature.
 2. Emotional harm means an impairment that substantially affects the individual's ability to function.
- C.** In determining whether emotional harm will result for the purpose of subsection (A)(1), the Department shall consider:
1. The emotional state and psychological history of the person likely to suffer emotional harm,
 2. The degree of cooperation required,
 3. The extent of the individual's involvement in any cooperative efforts, and
 4. The intensity and probable duration of the emotional impairment.
- D.** An applicant or recipient shall provide evidence to verify good cause within 20 days of filing a claim of good cause, or upon approval of the application, whichever last occurs. If the applicant or recipient can establish difficulty in obtaining verification, the Department may extend this time limit for up to 30 days or longer.
- E.** Acceptable verification shall be documentation which establishes the claim of good cause by a preponderance of evidence and may include:
1. Birth certificate or Bureau of Vital Statistics Records in cases of incest;
 2. Medical or law enforcement records in cases of sexual assault or incest;
 3. Court records or other legal documents in cases of pending adoptions;
 4. A written statement from a private or public adoption entity in cases of adoption counseling;
 5. Court, medical, criminal, Child Protective Services, psychological, social services, or law enforcement records, in cases of physical or emotional harm; and
 6. Sworn statements from friends, neighbors, clergy, or other persons with personal knowledge of circumstances that would substantiate a claim of good cause.
- F.** If the applicant or recipient is unable to provide the verification specified in subsection (E) above, the applicant or recipient shall furnish information which permits the Department's Office of Special Investigations to investigate the good cause circumstances.
- G.** The Department shall not deny, delay, or discontinue assistance pending a determination of good cause.
- H.** The Department shall determine whether or not good cause exists within 45 days from the date the applicant or recipient

makes the good cause claim. The Department may extend this time limit if additional time is required to verify the claim.

- I.** If the Department finds that good cause does not exist, the applicant or recipient shall cooperate with the requirements of R6-12-311(F) within 10 days following the date the Department notifies the applicant or recipient of the good cause decision.
- J.** The Department shall redetermine a claim of good cause;
1. At each six-month review, and
 2. When circumstances change such that good cause no longer exists.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-313. Participation in JOBS; Exemptions; Good Cause Exceptions

- A.** As a condition of eligibility, a recipient of CA shall participate in the Job Opportunities and Basic Skills Training Program (JOBS) as prescribed in A.A.C. R6-10-101 through R6-10-121, unless FAA determines that the person is exempt.
- B.** The following persons are exempt from participation:
1. A child who is under age 16, except for a custodial parent or pregnant girl age 13 through age 15 who lacks a high school diploma, or its equivalent, and is not enrolled in high school or an equivalent course of instruction;
 2. A child who is age 16 or age 17, or age 18 if reasonably expected to complete school before reaching age 19, and a full-time student at an elementary, secondary, vocational or technical school, so long as the educational or training program was not assigned as a JOBS activity;
 3. A person who is currently employed at least 30 hours per week in unsubsidized employment which pays at least the federal minimum wage and which is expected to last at least 30 days; any interruption in such employment shall not exceed 10 days; and
 4. A Native American tribal member who resides in an area covered by a Tribal JOBS program.
- C.** Exempt status shall terminate when the condition giving rise to the exemption terminates.
- D.** If a person fails or refuses to participate in JOBS without good cause, the Department shall impose the penalties specified in R6-12-316.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was renumbered and amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State

for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-314. School Attendance

- A. As used in R6-12-306(A)(2), full-time school attendance means:
1. For high school, attendance which the school defines as full time;
 2. For a trade or technical school involving shop practice, 30 hours per week; and
 3. For a trade or technical school involving no shop practice, 25 hours per week.
- B. The Department shall verify school attendance through school records establishing full-time status and, for 18-year olds, expected date of graduation.
- C. The Department shall require each parent or NPCR to verify either full-time school attendance by the child or full-time home schooling of the child when the parent or NPCR applies for or receives CA on behalf of a dependent child.
- D. Acceptable verification shall include:
1. The parent or NPCR's written statement,
 2. A statement from the school, or
 3. A statement from the County Department of Education.
- E. If a parent or NPCR fails to verify compliance with the school attendance requirements in this subsection, the Department shall impose the penalties specified in R6-12-316.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Former Section R6-12-314 renumbered to R7-12-307;
new Section R7-12-314 renumbered from R7-12-307 and
amended effective July 31, 1997, under an exemption
from the provisions of A.R.S. Title 41, Chapter 6 (Supp.
97-3).

Editor's Note: The following Section was renumbered and a new Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-315. Immunization

- A. The Department shall require each parent or NPCR to verify that the child is immunized, when the parent or NPCR applies for or receives CA on behalf of a dependent child.
- B. The Department shall require this verification at the initial interview and at each review. Acceptable verification shall include:
1. The parent or NPCR's written statement; or
 2. A written statement from a physician, hospital, or clinic.
- C. When the parent or NPCR is unable to verify the child's immunizations at the initial interview, the Department shall inform the parent or NPCR that verification of the child's immunization will be required at the next review.
- D. When a parent or NPCR is unable to verify the child's immunization at the review, the Department shall impose the progressive sanction penalties as specified in R6-12-316.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Section R6-12-315 renumbered to R6-12-318; new
Section R6-12-315 adopted effective July 31, 1997, under

an exemption from the provisions of A.R.S. Title 41,
Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was renumbered and a new Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-316. Sanctions for Noncompliance

- A. The Department shall notify the assistance unit of benefit reduction or case closure when:
1. Benefits will be reduced or the case closed because of noncompliance with the requirements of R6-12-311, R6-12-312, R6-12-313(C), and R6-12-314; and
 2. The assistance unit's benefits are not currently reduced because of sanctions.
- B. The notice shall include the following information:
1. A brief statement of the progressive sanction policy as follows:
 - a. For the first sanction, the Department will reduce cash benefits by 25% for at least one month;
 - b. Unless all members are in compliance by the end of the sanction month, the Department will impose another sanction.
 - c. For the second sanction, the Department will reduce cash benefits by 50% for at least one month.
 - d. For the third and subsequent sanctions, the Department will close the case and it must remain closed for at least one month;
 2. The month the sanction will be effective; and
 3. The name and telephone number of the person to contact for information on what the noncompliant member must do to comply.
- C. The Department shall impose the sanction effective for the first possible benefit month, allowing for 10-day notice of adverse action.
- D. The Department shall not impose the above penalties on TPEP assistance units but shall follow the steps below:
1. The Department shall notify the TPEP assistance unit of benefit withholding or case closure when:
 - a. Benefits will be withheld or the case closed because of noncompliance with the requirements of R6-12-311, R6-12-312, R6-12-313(C), and R6-12-314; and
 - b. The assistance unit's benefits are not currently being withheld.
 2. The Department shall notify the Assistance unit that:
 - a. The TPEP benefit checks will be withheld until the noncompliant person has completed a new work cycle in compliance;
 - b. The name and telephone number of the person to contact for information on how to comply;
 - c. That when three checks have been withheld in any six-month period, the Department will close the TPEP case.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Section R6-12-316 renumbered to R6-12-319; new
Section R6-12-316 adopted effective July 31, 1997, under
an exemption from the provisions of A.R.S. Title 41,
Chapter 6 (Supp. 97-3). Amended by exempt rulemaking
at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following new Section was renumbered and a new Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-317. Voluntary Quit/Reduction in Work Effort

- A.** The Department shall disqualify the member of the assistance unit or the assistance unit as described in subsections (B) and (C) when a member of an assistance unit, or the parent of a dependent child whose income is considered available to the assistance unit, within 60 days prior to the date of the application or any time thereafter, voluntarily and without good cause:
1. Terminates employment from a job in which the individual was:
 - a. Employed at least 20 hours a week,
 - b. Earning weekly income equal to the then current minimum wage multiplied by 20;
 2. Reduces the number of hours worked each week from 30 or more to less than 30; or
 3. Participates in a strike against the government, when the member is an employee of the local, state, or federal government.
- B.** When the member is the PI of the assistance unit, the Department shall close the case. The assistance unit of which the member remains the PI is ineligible for CA benefits for the minimum period specified in subsection (D) or until the assistance unit reapplies, whichever is longer.
- C.** When the member is not the PI of the assistance unit, the Department in determining eligibility and benefit level for the assistance unit for the minimum period specified in subsection (D) or until the assistance unit reapplies, whichever is longer, shall:
1. Exclude the needs of the member; and
 2. Include the otherwise countable income, resources, and expenses of the member.
- D.** The minimum disqualification periods are:
1. For the first offense, one month;
 2. For the second offense, three months; and
 3. For the third and subsequent offenses, six months.
- E.** The Voluntary Quit/Reduction in Work Effort disqualification provisions shall apply to all members of the assistance unit who are not exempt from JOBS participation, as provided in R6-12-313. A member who is exempt from participation in JOBS because of employment is not exempt from the Voluntary Quit/Reduction of Work Effort provisions due to JOBS employment.
- F.** Good cause for voluntarily quitting a job or reducing the number of hours worked includes:
1. Circumstances beyond the member's control, such as illness of another assistance unit member requiring the presence of the member, unavailability of transportation, unanticipated emergency, unsuitability of work, or the lack of adequate child care for individuals responsible for the care of children under 12 years old;
 2. The member's inability to write or speak English;
 3. Discrimination by an employer based on age, race, sex, color, handicap, religious beliefs, national origin, or political beliefs;
 4. Work demands or conditions that render continued employment unreasonable, such as working without being paid on schedule;
 5. Resignation by a member under age 60 who is recognized by the employer as retired;
 6. Employment which becomes unsuitable by not meeting the suitability of work criteria listed in subsection (F)(9) after the acceptance of employment;
 7. Acceptance of new employment of comparable hours and salary to the job which was quit, which, through no fault of the member, subsequently:
 - a. Does not materialize,
 - b. Results in a lay off,
 - c. Results in employment of less than 20 hours a week, or
 - d. Results in weekly earnings of less than the federal minimum wage multiplied by 20 hours;
 8. Leaving a job in connection with patterns of employment in which workers frequently move from one employer to another such as migrant farm labor or construction work;
 9. Employment that is unsuitable. Employment is unsuitable when the following conditions apply:
 - a. The wage offered is less than the higher of:
 - i. The federal minimum wage or the training wage, when applicable, if the employment is covered by federal regulations; or
 - ii. Eighty percent of the federal minimum wage when the employment is not covered by federal regulations;
 - b. The employment offered is on a piece-rate basis, and the average hourly yield which the employee can reasonably be expected to earn is less than the applicable hourly wage as specified above;
 - c. As a condition of employment, the employee is required to join, resign from, or refrain from joining any legitimate labor organization;
 - d. The work offered is at a site subject to strike or lock-out, unless the strike has been enjoined under the Taft-Hartley Act (Section 208 of the Labor Management Relations Act, (29 U.S.C. 178)) or an injunction issued under section 10 of the Railway Labor Act (45 U.S.C. 160). A striker who belongs to a union may not refuse work solely because the job offered is a nonunion job;
 10. An employment opportunity is unsuitable when an individual can demonstrate, or the Department finds that:
 - a. The degree of risk to the individual's health and safety is unreasonable;
 - b. The individual is physically or mentally incapable of performing the assigned tasks of employment as documented by medical evidence or reliable information obtained from other sources;
 - c. The distance of employment from the member's place of residence is unreasonable, with respect to the expected wage and the time and cost of commuting;
 - i. Employment is unsuitable if the commuting time exceeds two hours per day, exclusive of time required to transport a child to and from a child care facility.
 - ii. Employment is unsuitable when the distance prohibits walking, and neither public nor private transportation is available.
 - d. The working hours or type of employment interferes with the individual's religious observances, convictions, or beliefs.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Section R6-12-317 renumbered to R6-12-320; new
Section R6-12-317 adopted effective July 31, 1997, under
an exemption from the provisions of A.R.S. Title 41,
Chapter 6 (Supp. 97-3). Amended by exempt rulemaking
at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following new Section was renumbered and amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-318. Duration of Assistance – 36-month Time Limit

- A.** The Department shall not authorize cash benefits for a needy family, except in case of hardship, when any of the following apply:
1. The needy family includes a head of household or the spouse of the head of household who has received 36 countable months of cash benefits in the Arizona CA program for himself or herself.
 2. The needy family includes an ineligible parent or the spouse of the ineligible parent who has received 36 countable months of cash benefits in the Arizona CA program for an eligible dependent child.
 3. The needy family includes an adult non-parent relative head of household or the spouse of the non-parent relative head of household who has received 36 countable months of cash benefits in the Arizona CA program for an eligible dependent child.
- B.** Time limited assistance shall not apply to a child only case.
- C.** The Department shall count each payment month, regardless of the source of funding for the program, until a limit of 36 countable months is reached. The 36 countable months are not required to be consecutive.
- D.** The Department shall begin counting the 36 months beginning with the first countable payment received in the Arizona CA program on or after October 1, 2002.
- E.** The Department shall not count the following months toward the 36-month time limit:
1. A month in which CA was received in a child only case;
 2. A month in which CA was received by an assistance unit while residing on an Indian reservation that has a 50% or higher unemployment rate;
 3. A month in which the CA payment amount was less than a full benefit month payment due to the date of an initial application;
 4. A month in which the head of household or the spouse of the head of household or an ineligible parent or the spouse of the ineligible parent received CA as a minor child who was not the head of household or the spouse of the head of household;
 5. Any month in which the assistance unit receives a payment in the CA Grant Diversion option. This includes each of the months for which the Grant Diversion payment is intended to cover;
 6. Any month in which the assistance unit was totally ineligible for a cash benefit payment due to an overpayment of benefits that must be repaid to the Department;
- F.** Under no circumstances, except as provided in R6-12-319, shall the Department authorize CA beyond the federal 60-month time limit under R6-12-320.

Historical Note

New Section renumbered from R6-12-315 and amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).
Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following new Section was renumbered and amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-319. Extension of Time Limited Assistance

- A.** The Department shall authorize cash benefits to an assistance unit that is ineligible due to the time limited restrictions in R6-12-318 or R6-12-320 when:
1. An assistance unit or the caretaker relative head of household who receives CA only for an eligible dependent child, requests an extension due to hardship;
 2. The assistance unit meets all financial and non-financial eligibility criteria; and
 3. The assistance unit or the caretaker relative head of household verifies that at least one of the hardship reasons in this Section exists. The claimed hardship shall be valid only when the hardship circumstances prevent the adult assistance unit member, the minor parent head of household, the caretaker relative head of household, or the spouse of the caretaker relative head of household from working or engaging in work activities to a degree that such person is prevented from financially supporting the eligible dependent child in the assistance unit, independent of CA.
- B.** Hardship may exist in any of the following situations:
1. An adult assistance unit member, a minor parent head of household, the caretaker relative head of household, or the spouse of the caretaker relative head of household has a physical or mental impairment that is expected to continue for more than 30 days and that prevents that person from working or engaging in work activities.
 2. An adult assistance unit member, a minor parent head of household, the caretaker relative head of household, or the spouse of the caretaker relative head of household is required to be a full-time caregiver, as verified by an acceptable medical source, and all of the following apply:
 - a. The caregiver is providing services to one of the following disabled family members:
 - i. A dependent child or a disabled adult child,
 - ii. A parent, or
 - iii. A spouse or domestic partner.
 - b. The caregiver does not receive respite care for more than 20 hours each week,
 - c. No other person is available to be the full-time caregiver to the disabled family member, and
 - d. The disabled family member does not attend school or vocational rehabilitation for more than 20 hours each week.
 3. An assistance unit member or any member of the needy family is a victim of one of the following that prevents an adult assistance unit member, the minor parent head of household, a caretaker relative head of household, or the spouse of the caretaker relative head of household from working or engaging in work activities:

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- a. Violence,
 - b. Crime, or
 - c. Domestic violence.
4. The assistance unit or the needy family is homeless.
 5. An adult assistance unit member, a minor parent head of household, the caretaker relative head of household, or the spouse of the caretaker relative head of household is participating full-time in one of the activities listed in subsection (B)(5)(a), is complying with the requirements listed in subsection (B)(5)(b), and is unable to complete the activity without continuing to receive CA.
 - a. Activities:
 - i. A postsecondary education program offered by a university, college, or community college, that will result in an associate's or bachelor's degree;
 - ii. A program offered by a vocational, technical, or recognized school that will result in a diploma or certificate for a job skill directly related to obtaining self-supporting employment in a recognized occupation;
 - iii. A job training or employment activity assigned by the JOBS Program as part of the member's employability plan.
 - b. Requirements:
 - i. The member must have started participation in the educational or training program prior to the member receiving 30 countable months of CA.
 - ii. The member shall demonstrate successful progress toward completion of the educational or training program. Successful progress includes meeting a reasonable time limit for completion of the educational or training program.
 - iii. The member shall consistently sustain a passing grade or acceptable grade point average, as determined by the educational or training program.
 6. An adult assistance unit member, a minor parent head of household, the caretaker relative head of household, or the spouse of the caretaker relative head of household is prevented from working or engaging in work activities due to either of the following:
 - a. Childcare is unavailable or unaffordable, or
 - b. Transportation is not readily available or affordable.
 7. The adult assistance unit member or the caretaker relative head of household is both of the following:
 - a. A non-parent caretaker relative to the minor dependent child receiving CA, and
 - b. Age 60 or older.
 8. When the assistance unit or the caretaker relative head of household claims that hardship exists for a reason other than one contained in this Section, the Department shall assess the situation and determine whether the claim of hardship is valid based on verification provided by the assistance unit or the caretaker relative head of household and may grant an extension based on those circumstances.

Historical Note

New Section renumbered from R6-12-316 and amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: *The following new Section was renumbered and amended under an exemption from the provisions of A.R.S.*

Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-320. Duration of Assistance – Federal 60-month Time Limit

- A. The Department shall not authorize cash benefits to the assistance unit when the head of household or the spouse of the head of household has received 60 countable months of cash benefits for himself or herself, funded in whole or in part by the Temporary Assistance for Needy Families block grant in Arizona or any other state or United States territory or from a tribal Temporary Assistance for Needy Families CA program, unless the assistance unit is eligible for a hardship extension under R6-12-319.
- B. The Department shall count each payment month until a limit of 60 months is reached. The 60 countable months are not required to be consecutive.
- C. The Department shall begin counting the 60 months beginning with the first payment received on or after October 1, 2002.
- D. The Department shall not include the following months toward the 60-month time limit:
 1. Any month before October 1, 2002 in which the recipient received CA in Arizona or in any other state;
 2. Any month before October 1, 2002, in which the recipient received CA in a tribal TANF program in any state other than Arizona;
 3. Any month before October 1, 2002, in which the recipient received CA in an Arizona tribal TANF program when that month was not countable toward the 60-month time limit in that tribal TANF program;
 4. Any month in which the recipient resides on an Indian reservation that has a 50% or higher unemployment rate based on the Bureau of Indian Affairs (B.I.A.) Market Information Report;
 5. A month when the assistance unit is eligible but receives no CA payment because the benefit is less than \$10;
 6. A month when the assistance unit is ineligible due to an overpayment;
 7. Any month in which the assistance unit receives a payment in the Grant Diversion option. This includes each of the months for which the Grant Diversion payment is intended to cover.

Historical Note

New Section renumbered from R6-12-317 and amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section repealed; new Section made by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

R6-12-321. Hardship Verification Requirements

- A. Hardship due to a physical or mental impairment.
 1. An adult assistance unit member, a minor parent head of household, the caretaker relative head of household, or the spouse of the caretaker relative head of household that claims hardship as specified in R6-12-319(B)(1) shall provide one of the following items:
 - a. A signed statement from a treatment provider or acceptable medical source;
 - b. Disability verification from the Veterans Administration;

- c. Vocational Rehabilitation documents, examinations, or evaluations signed by a treatment provider.
 2. The verification items specified in subsection (A)(1) shall include all of the following information:
 - a. A statement indicating that the individual's physical or mental condition prevents working or engaging in work activities,
 - b. The duration of the disability,
 - c. A prognosis of recovery, and
 - d. The signature of the treatment provider or acceptable medical source.
 3. When the assistance unit member is a current JOBS program participant whose participation is deferred due to disability, no further verification of disability is required.
- B. Hardship due to being a full-time caregiver.**
 1. An adult assistance unit member, a minor parent head of household, the caretaker relative head of household, or the spouse of the caretaker relative head of household who claims hardship as specified in R6-12-319(B)(2) shall provide a signed statement from a treatment provider, verifying the member is needed as a full-time caregiver of their disabled child, parent, spouse, or domestic partner.
 2. An adult assistance unit member, minor parent head of household, caretaker relative head of household, or spouse of the caretaker relative head of household who receives respite care services shall provide verification of these services from the respite care provider. The verification shall indicate the number of hours per week that the person receives these services.
 3. When a disabled individual is attending school, the individual shall provide verification from the school or vocational rehabilitation program of the number of hours per week the individual is in attendance.
- C. Hardship due to violence, crime, or domestic violence.**
 1. An adult assistance unit member, a minor parent head of household, the caretaker relative head of household, or the spouse of the caretaker relative head of household who claims hardship as specified in R6-12-319(B)(3) shall provide verification from at least one of the following sources:
 - a. Court records;
 - b. Police reports;
 - c. Law Enforcement records;
 - d. Restraining Orders or Orders of Protection against the perpetrator or abuser;
 - e. Statements by attorneys or other legal professionals providing services to the victim of abuse or violence;
 - f. Child Protective Services records;
 - g. Written statements by medical professionals including physicians, psychologists, psychiatrists, counselors, or other treatment providers;
 - h. Written statements by domestic violence shelter staff;
 - i. Statements by clergy;
 - j. Statements by a third person with knowledge of the abuse or violence, such as a friend or relative to whom the member or assistance unit has fled to escape or avoid abuse or violence;
 - k. Receipt of Victims of Crime Act (VCA) benefits.
 2. Any other evidence that supports the claim that the assistance unit member or family member is a victim of abuse or violence.
3. When the assistance unit member is a current JOBS program participant and is deferred from participating due to domestic violence, no further verification is required.
- D. Hardship due to Homelessness.** An adult assistance unit member, a minor parent head of household, or the caretaker relative head of household who claims hardship as specified in R6-12-319(B)(4) shall provide verification from at least one of the following sources:
 1. A written statement by staff at a shelter, halfway house, or similar facility that provides temporary residence to homeless individuals or families verifying that the assistance unit, minor parent head of household, or caretaker relative head of household is a resident of the facility;
 2. A written statement by the assistance unit member, minor parent head of household, or caretaker relative head of household that includes a description of where the household is residing when it does not have a fixed or regular nighttime residence;
 3. A written statement by the assistance unit member, minor parent head of household, or caretaker relative head of household when the household is temporarily living with others. The statement must indicate that the residential situation is temporary and the date the assistance unit, minor parent head of household, or caretaker relative head of household expects to have its own residence;
 4. Any other verification that reasonably supports the assistance unit member's, minor parent head of household's, or caretaker relative's head of household's claim of homelessness.
- E. Hardship due to Educational or Training Program Completion.** An adult assistance unit member, minor parent head of household, caretaker relative head of household, or spouse of a caretaker relative head of household who claims hardship as specified in R6-12-319(B)(5) shall provide the following verification:
 1. A statement from the educational or training program that includes the following:
 - a. The enrollment status of the individual,
 - b. The date that the individual began participation in the program and the anticipated completion date, and
 - c. Verification that the individual is making satisfactory progress toward completion of the program.
 2. A statement from the assistance unit member or caretaker relative head of household that explains the need for additional CA benefits in order for the individual to successfully complete the Educational or Training program.
- F. Hardship due to Childcare or Transportation being Unavailable or Unaffordable.**
 1. An adult assistance unit member, a minor parent head of household, the caretaker relative head of household, or the spouse of the caretaker relative head of household who claims hardship as specified in R6-12-319(B)(6)(a) shall provide the following items:
 - a. A statement by the assistance unit member or caretaker relative head of household explaining the reasons the individual has been unable to find or afford childcare, including the availability of affordable childcare in their area; and
 - b. Documents that demonstrate the individual's efforts to find or afford childcare.
 2. An adult assistance unit member, a minor parent head of household, the caretaker relative head of household or the spouse of the caretaker relative head of household who claims hardship as specified in R6-12-319(B)(6)(b) shall provide a statement explaining the reasons that transpor-

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tation is not readily available or affordable, including the availability of affordable public and private transportation in their area.

- G.** Hardship due to other reasons. An adult assistance unit member, a minor parent head of household, the caretaker relative head of household or the spouse of the caretaker relative head of household who claims hardship as specified in R6-12-319(B)(8) shall provide a statement that explains the hardship circumstance and the need for additional CA benefits. The individual shall provide any documentary verification of the hardship circumstance that is requested by the Department in order to determine the need for additional CA benefits.

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

ARTICLE 4. FINANCIAL ELIGIBILITY: RESOURCES

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-401. Treatment of Resources; Limitations

- A.** In determining eligibility for a cash benefit, the Department shall include all resources available to the assistance unit, unless excluded by applicable law.
- B.** An assistance unit is ineligible for CA for any month in which the unit's resources exceed \$2,000, after application of all available exclusions.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4)
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-402. Treatment of Resources by Ownership Status; Availability

- A.** The Department shall consider the resources belonging to an assistance unit member available to the assistance unit.
- B.** The Department shall consider the resources of the following individuals available to the assistance unit:
1. A dependent child's parent and minor sibling, when residing with a dependent child in an assistance unit, even when the parent or minor sibling:
 - a. Has not requested CA;
 - b. Is ineligible for CA for failure to comply with an eligibility requirement; or
 - c. Is ineligible for CA due to disqualification for Intentional Program Violation, as provided in Article 12;

2. A stepparent, when residing with a dependent child in an assistance unit and the dependent child's parent, who makes resources available to the assistance unit or the dependent child's parent.

- C.** The Department shall consider the resources belonging to the sponsor of a noncitizen, as provided in R6-12-506, available to the assistance unit.

- D.** The Department shall consider the resources of the persons listed in this subsection unavailable to the assistance unit.

1. A non-parent relative who is not included in the assistance unit;
2. An SSI recipient, as to resources held as sole and separate property, or counted in the determination of SSI eligibility;
3. A dependent child for whom deprivation does not exist;
4. A dependent child who is not included in the assistance unit due to receipt of adoption assistance or foster care payments under Title IV-E of the Social Security Act or who is ineligible for CA due to the family benefit cap.

- E.** The Department shall consider ownership in determining availability of the resources to the assistance unit.

1. The sole and separate property of one spouse is deemed unavailable to the other spouse, unless the owner spouse makes the property available to the other spouse.
2. Jointly owned resources, with ownership records containing the words "and" or "and/or" between the owners' names, are deemed available when all owners can be located and consent to disposal of the resource, except that such consent is not required if all owners are members of the assistance unit.
3. Jointly owned resources, with ownership records containing the word "or" between the owners' names, are deemed available in full to each owner. When more than one owner is a member of an assistance unit, the equity value of the resource is counted only once.

- F.** The Department shall consider the following resources unavailable to the assistance unit and to any other person whose resources are considered available to the assistance unit:

1. Property subject to a spendthrift restriction. Such property may include:
 - a. Irrevocable trust funds that are prohibited by a court from being disbursed to the beneficiary who is an assistance unit member or to any other person whose resources are considered available to the assistance unit. When such funds may be disbursed by court order, the beneficiary or appropriate assistance unit member shall petition the court for disbursement of the funds;
 - b. Accounts established by the Social Security Administration, Veteran's Administration, or some other entity, which mandate that the funds in the account be used for the benefit of a person not residing with the assistance unit.
2. Resources being disputed in divorce proceedings or in probate matters.
3. Real property situated on a Native American reservation.
4. Resources belonging to a member of the needy family except as to those family members listed in subsections (A), (B), and (C).

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

R6-12-403. Treatment of Resources; Exclusions

The Department shall exclude the equity value of the resources listed below, as provided in this Section. These resource exclusions shall also apply to a person whose resources are considered available to an assistance unit.

1. The usual residence of the assistance unit members;
2. One burial plot for each member of the assistance unit;
3. Household furnishings used by the assistance unit members in their usual place of residence, and personal effects essential to day-to-day living;
4. Up to \$1500 of the value of one bona fide funeral agreement, for each member of the assistance unit. The funeral agreement or burial plan must cover only funeral-related expenses, as evidenced by a written contract;
5. The value of all motor vehicles, including recreational vehicles.
6. When an assistance unit member owns real property, other than the usual residence described in subsection (A)(1) above, and is making a good faith effort to dispose of it, the equity value shall be excluded for six months, subject to the conditions listed in this subsection;
 - a. The assistance unit member shall sign an agreement to:
 - i. Dispose of the property; and
 - ii. Repay the Department, from the net proceeds of disposal, the amount of any assistance the unit receives during the period of time the unit would otherwise have been ineligible because the property value exceeded resource limitations;
 - b. The amount repaid shall not exceed the net proceeds of disposal;
 - c. If the assistance unit member does not dispose of the property within six months, the Department shall write an overpayment and the assistance unit shall repay any assistance received during that period;
7. A financial account that is used only for a self-employment business;
8. Funds in the following types of retirement accounts or retirement plans, established by employers in accordance with federal Internal Revenue Services regulations:
 - a. A 401A or 401K plan,
 - b. A 457 or 457(b) plan,
 - c. A Federal Employees Thrift Savings Plan,
 - d. An Irrevocable Annuity plan,
 - e. A KEOGH plan that involves a contract with a person who is not an assistance unit member,
 - f. A Section 403(a) or 403(b) plan,
 - g. A Section 408 or 408A plan,
 - h. A Section 501(c)(18) or 501(g)(18) plan;
9. Funds in the following educational savings accounts operated by a state or educational institution in accordance with federal Internal Revenue Services regulations:
 - a. A 529 account,
 - b. A 530 account;
10. Educational grants issued under programs administered by the U.S. Commissioner of Education, when the assistance is made available for school attendance costs, including the following:
 - a. BEOG\PELL, SEOG and NDSL grants;
 - b. Work Study programs;
 - c. Assistance provided by the Carl D. Perkins Vocational and Applied Technology Education Act;
11. Any grant, scholarship, educational loan, or other award that is not administered by the U.S. Commissioner of

Education, when such assistance covers the costs of items not included in the CA need standard;

12. The cash value of a grazing permit issued by a tribal or other governmental authority, when the land used for the grazing permit is adjoining a permit holder's homestead;
13. Any amount up to \$2000 received from the following American Indian claims or funds:
 - a. Alaska Native Claims Settlement Act payments received under the Sac and Fox Indian claims agreement as specified in Public Law 92-203, Section 21(a);
 - b. Per capita payments from judgment funds awarded by the Indian Claims Commission of the U.S. Court of Federal Claims as specified in Public Law 97-458 for the Colorado River Indians;
 - c. Individual Indian's interests in trust or restricted lands and payments from these interests as specified in Public Law 103-66. Interests include the Indian's right to or legal share of the trust or restricted land and any income accrued;
 - d. The Indian Gaming Industry per capita disbursement funds placed in an inaccessible trust by the tribe as specified in Public Law 98-64;
 - e. Payments made to members of Indian tribes in settlement for land as specified in Public Law 100-580;
14. Money loaned to the assistance unit from any source and for any purpose;
15. Funds received from the Navajo Nation Needy Children's Fund;
16. Payments made by the Federal Emergency Management Agency (FEMA) or Federal Disaster Relief Act for any of the following:
 - a. Federal major disaster;
 - b. Natural catastrophe;
 - c. Emergency assistance;
 - d. Comparable disaster assistance provided by states, local governments, and disaster assistance organizations;
17. When self-employment from farming is terminated, farm property, including land, equipment and supplies shall be excluded as a resource for 12 months. This period of exclusion begins on the date the self employment from farming stops;
18. Funds available from sources of excluded income contained in R6-12-503(8), (13), (15), (22), (38), (39), (40), (41), (42), and (43);
19. Any other resource specifically excluded by state or federal law.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-404. Individual Development Accounts

- A. An individual development account (IDA) is a special savings account which allows a recipient of both CA and Food Stamp

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- Program benefits to accumulate funds to achieve educational or training goals.
- B.** Financial institutions licensed by the Arizona State Banking Department shall administer IDAs.
1. IDAs shall earn the same interest rate as is offered to other bank customers for like accounts.
 2. A financial institution may prescribe such terms and conditions relating to IDAs as are permissible under the laws of this state and federal banking law.
- C.** A member of an assistance unit that receives both CA and food stamp benefits may establish an IDA.
1. No assistance unit shall hold more than 1 IDA.
 2. A person found to have committed an intentional program violation or fraud related to the CA, food stamp, or AHCCCS programs shall not hold an IDA.
- D.** An assistance unit member who establishes an IDA shall sign a document authorizing the financial institution to release account information to the Department.
- E.** The following persons can make deposits into an IDA:
1. The account holder;
 2. A member of the account holder's assistance unit;
 3. A person who is not a member of the account holder's assistance unit; or
 4. A non-profit organization with a recognized tax exempt status under 26 U.S.C. 501(c)(3) or A.R.S. § 43-1201. A non-profit organization making deposits into an IDA:
 - a. Shall designate that such funds are intended solely for educational or training purposes, and
 - b. May set other terms and conditions regarding the withdrawal or use of the funds.
- F.** An applicant for assistance shall not place countable income or resources into an IDA for the purpose of qualifying for CA or Food Stamp Program benefits. Any money so deposited counts as a resource.
- G.** The Department shall exclude from the resource limitation set forth at R6-12-401(B) the balance held in an IDA which at any 1 time is \$9,000 or less, except that any cumulative deposits over the life of an IDA which exceed \$12,000 shall count against the resource limitation.
- H.** The Department shall disregard as countable income:
1. Fifty percent of any earned income of the assistance unit which is deposited into an IDA, except that the Department shall not disregard more than \$100 per month of earned income; and
 2. All interest earned on an IDA.
- I.** An assistance unit which holds an IDA shall:
1. Report to the Department all income which is deposited into an IDA or withdrawn from an IDA; and
 2. Submit account statements to the Department at each eligibility redetermination.
- J.** A recipient of both CA and food stamp benefits may withdraw funds from an IDA for:
1. Educational costs at an accredited institution of higher education; or
 2. Training costs for an accredited, licensed, or certified training program.
- K.** As used in subsection (J), above:
1. Educational and training costs are limited to:
 - a. Tuition and other mandatory fees charged to all students, or to all students within a certain curriculum;
 - b. Books;
 - c. Transportation; and
 - d. Miscellaneous personal expenses necessary to pursue education or training.
 2. An institution of higher education means a public or private educational institution defined at A.R.S. § 23-618.02.
3. A training program means a course of study offered by a vocational, technical, or recognized proprietary school which will result in a diploma or certificate for a job skill which is directly related to obtaining useful employment in a recognized occupation.
- L.** Withdrawals from an IDA for purposes other than those described in subsection (K) shall count as income to the assistance unit in the month of withdrawal, unless the money was previously counted as income to the assistance unit at the time of receipt.
- M.** If there is a break in CA or food stamp benefits of at least 1 full month, upon reapplication the Department shall consider any remaining monies in an IDA as countable resources and shall not disregard any future deposits into an IDA.
- N.** The Department's Office of Special Investigations shall investigate allegations of fraud or abuse involving IDAs, including situations where there is evidence or reason to believe that a deposit to an IDA was made from:
1. Income which was available to the assistance unit but was not reported to the Department;
 2. Individual contributions which should have been counted as income or child support; or
 3. Proceeds from illegal activities.
- O.** The Department shall not disregard as income or resources any deposit made into an IDA from income sources described in subsection (N), or any deposit which is otherwise contrary to the provisions of this Section. The Department shall establish any resulting overpayment.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-405. Resource Transfers; Limitations

- A.** An assistance unit member or the parent of a dependent child in the assistance unit shall not transfer a resource with the intent to qualify or attempt to qualify for CA within one year prior to application or while receiving assistance, unless fair consideration was received.
- B.** Except as otherwise provided in this Section, when an assistance unit member or the parent of a dependent child in the assistance unit does not receive fair consideration for a transferred resource (an improper transfer), the assistance unit shall be ineligible for CA.
1. The period of ineligibility shall begin in the month in which the transaction occurred.
 2. The Department shall compute the duration of ineligibility by subtracting the consideration actually received, from the equity value of the transferred resource, and dividing that sum by the monthly need standard for the assistance unit. The resulting number shall be the number of months the unit is ineligible.
- C.** An improper transfer shall not affect eligibility when the equity value of the transferred resource, plus the value of the unit's other available resources, does not exceed the resource limitation.

- D. The improper transfer of homestead property shall not affect eligibility if the property was transferred because the person cannot continue residing in the home for health reasons, as determined by a competent medical authority.
- E. If an assistance unit member or the parent of a dependent child in the assistance unit disposes of homestead property, the Department shall count, as a resource, all proceeds of the sale not reinvested in homestead property, when the assistance unit member:
1. Invests the proceeds in a resource other than homestead property,
 2. Advises the Department that such proceeds will not be reinvested in other homestead property, or
 3. Fails to purchase new homestead property within 90 days of the date of sale.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

R6-12-406. Resource Verification

The Department shall verify all resources before determining an assistance unit's eligibility for a cash grant and benefit amount.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

ARTICLE 5. FINANCIAL ELIGIBILITY: INCOME

R6-12-501. Treatment of Income; In General

- A. In determining the income eligibility of the family and benefit amount for the assistance unit, the Department shall treat all income in accordance with the provisions of this Article.
- B. "Gross income" shall include the following, when actually received by the family in order to determine whether the family is needy, or by the assistance unit in order to determine a cash benefit amount:
1. Earned income from public or private employment, including in-kind income, before deductions;
 2. For self-employed persons, the sum of gross business receipts minus business expenses; and
 3. Unearned income, such as benefits or assistance grants, minus any deductions to repay prior overpayments or attorneys' fees.
 4. Minus those types of income excluded under R6-12-503.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-502. Income Available to the Assistance Unit

- A. The Department shall consider the income of an assistance unit member available to the assistance unit for the purpose of determining a cash benefit amount.
- B. The Department shall consider the income of a parent and minor sibling of a dependent child in an assistance unit as available to the assistance unit for the purpose of determining a cash benefit amount when those persons reside with the dependent child. The income shall be considered available even when the parent or minor sibling:
1. Has not requested CA;
 2. Is ineligible for CA for failure to comply with an eligibility requirement; or
 3. Is ineligible for CA due to disqualification for Intentional Program Violation, as provided in Article 12;
- C. The Department shall consider the income belonging to the sponsor of a noncitizen, as provided in R6-12-506, available to the assistance unit for the purpose of determining a cash benefit amount.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-503. Income Exclusions

The Department shall not count the types of income listed in this Section when determining the income of a family and the income of an assistance unit. These income exclusions shall also apply to a parent or minor sibling of a dependent child in an assistance unit when the parent or minor sibling resides with the assistance unit but is not an assistance unit member, and the income type listed in this Section belongs to the parent or minor sibling.

1. Loans;
2. The following types of assistance provided for educational purposes:
 - a. Bureau of Indian Affairs (B.I.A.) Allowances for Educational Expenses paid to the participant from Title XIII that directly relates to school expenses;
 - b. Grants, scholarships, and loans, as provided by Title IV or Title XIII of the Higher Education Act;
 - c. Guaranteed loans, and other loans, not funded by the Title IV or Title XIII of the Higher Education Act;
 - d. Student loans (SGL) that are funded solely by a state and are not federally guaranteed;
 - e. Income paid to the member as a Tribal Loan for educational purposes under Title XIII of the Indian Higher Education Program;
 - f. The Montgomery GI bill Chapter 30 and other income paid to the member by the Veteran's Administration for educational purposes;
 - g. Educational income (earnings and living allowances) from Workforce Investment Act related Summer Component Programs and Job Corps;
 - h. Earnings received from participation in college work study programs funded by Title IV of the Higher

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- Education Act or Title XIII of the Indian Higher Education Program.
3. Income tax refunds, including any earned income tax credit;
 4. Non-recurring cash gifts which do not exceed \$30, per person in any calendar quarter;
 5. Cash contributions from other agencies or organizations so long as the contributions are not intended to cover items which CA is intended to cover, specifically:
 - a. Food;
 - b. Shelter, including only rent or mortgage payments;
 - c. Utilities;
 - d. Household supplies, including bedding, towels, laundry, cleaning, and paper supplies;
 - e. Public transportation fares for personal use;
 - f. Basic clothing or diapers; or
 - g. Personal care and hygiene items, such as soap, toothpaste, shaving cream, and deodorant;
 6. The face value of Nutrition Assistance benefits;
 7. The value of governmental rent and housing subsidies;
 8. The value of energy assistance that is provided:
 - a. Either in cash or in kind by a government agency or municipal utility, or
 - b. In kind by a private non-profit organization;
 9. Vendor payments;
 10. Vocational rehabilitation program payments made as reimbursements for training-related expenses, subsistence and maintenance allowances, and incentive payments which are not intended as wages;
 11. All income, both earned and unearned, received from programs and services authorized by the Workforce Investment Act, including earnings received from on-the-job training programs;
 12. Reimbursements for JOBS Program training-related expenses, including Fair Labor Standards Act supplements and Unpaid Work Experience supplements;
 13. Payments from any fund established in connection with settling liability claims concerning Agent Orange death or disabilities as specified in Public Law 101-102;
 14. Burial benefits which are dispersed solely for burial expenses;
 15. Disaster assistance provided by the Federal Disaster Relief Act, or comparable assistance provided by state or local governments, or disaster assistance organizations;
 16. Foster care payments;
 17. Radiation exposure compensation payments;
 18. Income received from VISTA which does not exceed the state or federal minimum wage;
 19. Benefits from the Special Supplemental Food Program for Women, Infants, and Children (WIC);
 20. Reimbursements for work-related expenses that do not exceed the actual expense amount;
 21. Earned income of minor family members and dependent children who are students enrolled and attending school at least halftime as defined by the institution;
 22. Income received from the Americorp Network Program;
 23. Earned Income Tax Credit payments received as a monthly advance with the member's regular wages;
 24. Child care payments made to a member as a result of Title IV-A of the Social Security Act, when the payment is a reimbursement. The exclusion applies even when the payment exceeds actual child care expenses as specified in Public Law 100-485;
 25. Payments from the Child Care Food Program made to a member who is self-employed as a child care provider;
 26. The earned or unearned income of an SSI recipient;
 27. Subsidy payments provided by the Department's Guardianship Subsidy Program for children who are placed in the care of a Legal Permanent Guardian;
 28. Adoption Subsidy payments made by a federal, state, or local governmental entity;
 29. Dividends, interest, and royalty payments left on deposit or converted into additional securities;
 30. Federal Relocation Assistance payments made to a member to relocate because their property was acquired by a federal or federally assisted program;
 31. Stipends received by grandparents in the Foster Grandparent Program for past or future expenses;
 32. Money given to the family or the assistance unit from a roommate for rent or other shelter expenses that does not exceed the family's or assistance unit's rent or shelter expense obligation;
 33. Allowances, income, and reimbursements received in the Summer Component Program;
 34. The amount designated as attorney fees that is deducted from a member's Workman's Compensation payment;
 35. 50% of earned income, up to a maximum of \$100, deposited into an Individual Development Account (IDA) per month;
 36. Combat zone pay received while serving in the military in a combat zone;
 37. Income received while participating in a program authorized by Title I and II of the Domestic Volunteer Services Act of 1973 including the following:
 - a. University Year for Action,
 - b. Urban Crime Prevention Program,
 - c. Retired Senior Volunteer Program,
 - d. Foster Grandparents Program,
 - e. Senior Companion Program;
 38. Funds made available to a member on a gift card;
 39. A one-time reimbursement of up to \$300 and any monthly payments provided by the Department's Grandparent Kinship Care Support Service program and disbursed by an Area Council on Aging contracted service provider;
 40. Hemophilia Relief Fund Settlement payments made to hemophiliacs infected with HIV as a result of class action lawsuits;
 41. TANF Survey Incentive Payments made by Mathematica, Inc. or other consulting firms as an incentive for participating in a survey to collect statistical information;
 42. Funds received from a Public Housing Authority and deposited in a Public Housing Family Self Sufficiency (FSS) escrow account, and any of these funds received prior to completion of the FSS program;
 43. Payments made directly to a member to fund an account for the fulfillment of a Plan for Achieving Self Support (PASS) under Title XVI of the Social Security Act;
 44. Any other income specifically excluded by applicable state or federal law.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R.

1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: *The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in*

the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-504. Special Income Provisions: Child Support, Alimony, or Spousal Maintenance

- A. The Department shall count child support, alimony, or spousal maintenance, received by a member of the family or the assistance unit or a parent or minor sibling of a dependent child in an assistance unit, before the initial eligibility determination date, as income in the month received.
- B. After the eligibility determination date, and if the application is approved, the Department shall count current child support, alimony, or spousal maintenance received on behalf of an assistance unit member as income to determine the cash benefit amount, when the following conditions are met:
1. Current child support, alimony, or spousal maintenance is received by the Department's Division of Child Support Enforcement (DCSE), on behalf of an assistance unit member, a person whose income is considered available to the assistance unit, or a private collection agency; and
 2. DCSE has passed the support money on to the assistance unit or a person whose income is considered available to the assistance unit.
- C. After the eligibility approval date, if an assistance unit member or a parent or minor sibling whose income is considered available to the assistance unit receives child support, alimony, spousal maintenance, or medical support after assigning to the Department the right to such support, and the member fails to turn over the support to the Department, the Department shall:
1. Count the support received by the assistance unit, as provided above in subsection (A); and
 2. Sanction the assistance unit as provided in R6-12-316.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

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R6-12-505. Special Income Provisions: Nonrecurring Lump Sum Income

When an assistance unit member or a person whose income is considered available to the assistance unit receives a nonrecurring lump sum payment, the Department shall consider the lump sum payment as a resource in accordance with Article 4.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

R6-12-506. Special Income Provisions: Sponsored Noncitizens

- A. For purposes of determining whether a sponsor's income and resources shall be used when determining the countable income for an assistance unit that includes a sponsored noncitizen member or for a sponsored noncitizen person whose income is considered available to the assistance unit, the following requirements apply:
1. The sponsored noncitizen member shall:
 - a. Be a Lawful Permanent Resident who meets the eligible noncitizen criteria; and
 - b. Have applied for or been granted Lawful Permanent Resident status on or after December 19, 1997.
 2. The sponsor shall:
 - a. Be an individual and not an organization or group; and
 - b. Have signed an Affidavit of Support (United States Citizen and Immigration Services Form I-864 or I-864A) on behalf of the sponsored noncitizen member on or after December 19, 1997.
 3. When the sponsor's spouse resides with the sponsor, and has also signed the Affidavit of Support (United States Citizen and Immigration Services Form I-864 or I-864A) on behalf of the sponsored noncitizen member on or after December 19, 1997, the income and resources of the spouse shall also be included for any purpose in this Chapter that requires the income and resources of the sponsor.
- B. The assistance unit shall be exempt from the sponsor income and resource deeming requirement when any of the following apply:
1. The sponsored noncitizen is credited with at least 40 countable quarters of employment as provided in 8 U.S.C. 1183(a).
 2. The sponsored noncitizen is a victim of domestic violence or extreme cruelty by a member of the family.
 3. The sponsored noncitizen is a victim of a severe form of trafficking.
 4. The sponsored noncitizen becomes a naturalized United States citizen.
 5. The sponsored noncitizen is age 17 or younger.
 6. The sponsor is deceased.
- C. When the assistance unit is not exempt from the sponsor income and resource deeming requirement, the Department shall determine whether the assistance unit is indigent. To determine indigent status, the Department shall determine the countable income of the assistance unit and a cash grant.
1. When determining the amount of unearned income that shall be included in its calculation, the Department shall include:
 - a. The actual amount of cash contributions received from the sponsor;
 - b. The cash value of food, clothing, shelter, and utilities provided by the sponsor; and
 - c. The cash value of vendor payments made by the sponsor.
 2. When the countable income is at least 1¢ less than 36% of the 1992 federal poverty level for the assistance unit size, the assistance unit is considered indigent.
 3. When the assistance unit is determined to be indigent, the sponsor's income and resource deeming requirement shall not apply. The Department shall use only the actual amount of cash contributions received from the sponsor as countable income available to the assistance unit when determining a cash grant amount.

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- D.** When the assistance unit is not exempt from the sponsor income and resource deeming requirement and is not indigent, the Department shall count the income of the sponsor as follows:
1. Determine the countable gross monthly income of the sponsor:
 - a. Calculate a monthly gross earned income amount and deduct 20 percent from that amount,
 - b. Calculate a monthly gross unearned income amount, and
 - c. Add the amounts in subsections (D)(1)(a) and (b).
 2. Calculate the number of persons living in the home who the sponsor claims or could claim as a dependent for federal income tax purposes, including the sponsor and the spouse of the sponsor.
 3. Deduct an amount equal to 100% of the federal poverty level adjusted for the family size in subsection (D)(2) from the countable gross monthly income calculated in subsection (D)(1)(c).
 4. When the sponsor has signed more than one Affidavit of Support (United States Citizen and Immigration Services Form I-864 or I-864A) forms, divide the amount calculated in subsections(D)(1) through (3) by the number of I-864 or I-864A forms that have been signed by the sponsor.
 5. After deducting the amount prescribed in subsection (D)(3) from the gross income calculated in subsection (D)(1)(c) and dividing that amount by the number of Affidavits of Support executed by the sponsor, the Department shall include the remaining income amount as countable unearned income available to the assistance unit.
- E.** When the assistance unit is not exempt from the sponsor income and resource deeming requirement and is not indigent, the Department shall consider the resources of the sponsor as available to the assistance unit. When calculating the value of the sponsor's resources, the Department shall:
1. Apply all rules and procedures to the sponsor's resources in the same manner as is applied to the assistance unit, and
 2. Deduct \$1500 from the calculated value of the sponsor's resources. The resulting amount shall be added to the value of the assistance unit's resources when determining whether the assistance unit meets the resource limitations.
- F.** When an assistance unit includes both a sponsored noncitizen and other members, and the provisions of this Section render the assistance unit ineligible, the Department shall:
1. Disqualify the sponsored noncitizen and determine eligibility of the other members of the assistance unit without considering the income and resources of the sponsor, and
 2. Compute a cash benefit amount with the needs of the sponsored noncitizen member excluded from the computation.
- G.** Verification and Cooperation
1. The Department shall assist the assistance unit in obtaining any verification of the sponsor's income, resources, or other information.
 2. When the sponsor verification is not obtainable, the Department shall exempt the assistance unit from the sponsor income and resource deeming requirement and complete the eligibility determination.
 3. When the assistance unit refuses to provide information needed to determine the income and resources of the sponsor:
 - a. All sponsored noncitizens in the assistance unit shall be ineligible for assistance.
 - b. The other members of the assistance unit may be eligible if they meet all other eligibility factors.
- H.** In addition to the change reporting requirements contained in Article 8 of this Chapter, the assistance unit shall be required to report the following:
1. A change in sponsor or a change in the residence of the sponsor's spouse when the spouse is no longer residing with the sponsor.
 2. A change in the employment of the sponsor.
 3. The death of the sponsor.
- I.** Overpayments. The sponsor and the noncitizen are jointly liable for any overpayment caused by the provision of incorrect or incomplete information, unless the sponsor had good cause that would make the noncitizen solely liable. Good cause includes:
1. The Department failed to inform the assistance unit or the sponsor that the information was necessary, or
 2. Extenuating personal circumstances prevented the sponsor from providing necessary information.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Former R6-12-506 renumbered to R6-12-507; new Section made by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-507. Determining Monthly Income

- A.** For each family and assistance unit, the Department shall calculate monthly income using the methods described in R6-12-508.
- B.** The projected income shall include income that the family and assistance unit, or a person whose income is considered available to the assistance unit, has received and reasonably expects to receive in a benefit month, and shall be based on the Department's reasonable expectation and knowledge of the current, past, and future circumstances of the family, assistance unit, or person whose income is considered available to the assistance unit.
- C.** The Department shall include in its calculation all gross income from every source available to the family and assistance unit unless specifically excluded in this Article, by the federal Social Security Act or other applicable state or federal law.
- D.** The Department shall convert income received more frequently than monthly into a monthly amount as follows:
1. Multiply weekly amounts by 4.3,
 2. Multiply bi-weekly amounts by 2.15,
 3. Multiply semi-monthly amounts by two.
- E.** The Department shall determine a new calculation of projected income:
1. At each review for the needy family and the assistance unit, and
 2. When there is a change in countable income of an assistance unit member or a person whose income is considered available to the assistance unit.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-12-507 renumbered to R6-12-508; new R6-12-507 renumbered from R6-12-506 and amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

R6-12-508. Methods to Determine Projected Monthly Income

- A.** The Department shall determine projected monthly income for a family and an assistance unit by the methods described in this Section.
- B.** Averaging income.
1. When using this method, the Department shall add together income from a representative number of weeks or months and then divide the resulting sum by the same number of weeks or months.
 2. The Department shall average income for a family, to determine income eligibility, and an assistance unit, to determine a cash benefit amount, who receives income:
 - a. Irregularly; or
 - b. Regularly, but from sources or in amounts which vary.
- C.** Prorating income.
1. When using this method, the Department shall average income over the period of time the income is intended to cover.
 2. The Department shall prorate income for a family, to determine income eligibility, and an assistance unit, to determine a cash benefit amount, who receives income that is intended to cover a fixed period of time. When a person receives income pursuant to a fixed-term employment contract:
 - a. Income shall be counted in the month received, if received monthly or more often, throughout all months of the contract;
 - b. Income shall be prorated over the number of months in the contract if payment is received before or during the time work is performed, but not as specified in subsection (C)(2)(a);
 - c. Income shall be prorated over the number of months in the contract if payment is received upon completion of the work;
 - d. For CA cases which fall within subsection (C)(2)(c), applicable earned income disregards shall apply as if the prorated amounts were received in each month of the contract. The resulting amounts for each month shall then be totaled and counted in the month received as a lump sum pursuant to R6-12-504(C).
- D.** Actual income.
1. When using this method, the Department shall use the actual amount of income received in a month and shall not convert the income to a monthly amount pursuant to R6-12-506(D).
 2. The Department shall use actual income for a family, to determine income eligibility, and an assistance unit, to determine a cash benefit amount, who:
 - a. Receives or reasonably expects to receive less than a full month's income from a new source,
 - b. Has lost a source of income, or
 - c. Is paid daily.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Former R6-12-508 renumbered to R6-12-509; new R6-

12-508 renumbered from R6-12-507 and amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

R6-12-509. Income Verification

The Department shall verify all income before determining eligibility and cash benefit amount.

Historical Note

New Section R6-12-509 renumbered from R6-12-508 and amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Article heading was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit this change to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this change.

ARTICLE 6. SPECIAL CA CIRCUMSTANCES

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-601. Caretaker Relative of SSI or Foster Child

- A.** A parent or NPCR with only a SSI recipient child, or a child who is receiving federal, state, or local foster care maintenance payments, may be eligible for CA upon meeting the eligibility criteria specified in this Chapter, except as otherwise provided in this Section.
- B.** The Department shall consider the SSI recipient child, or foster care recipient child, as an assistance unit member for purposes of qualifying the unit for CA based on need.
- C.** If the assistance unit qualifies for CA pursuant to subsection (B), the Department shall not count the needs, resources, and income of the SSI recipient child, or foster care recipient child, when determining the benefit amount.
- D.** Notwithstanding the provisions of R6-12-311, the parent or NPCR of a SSI recipient child, or a foster care recipient child, need not assign to the Department any rights to child support but shall assign any right to receive alimony or spousal maintenance.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section repealed; new R6-12-601 renumbered from R6-12-602 by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2). Section heading corrected at request of the Department, Office File No. M10-246, filed June 29, 2010 (Supp. 12-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not sub-

mit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-602. Strikers

The Department shall determine CA income eligibility for the family, and a benefit amount for the assistance unit during a strike period for an assistance unit member, a person whose income is considered available to the assistance unit, or a family member on strike using the striker's prestrike monthly income.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-12-602 renumbered to R6-12-601; new R6-12-602 renumbered from R6-12-604 and amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-603. Dependents of Foster Children

- A. The dependent child of an ineligible foster child residing in a needy family may be eligible for CA.
- B. To determine a cash benefit amount, the Department shall count all income and resources of the foster child and the dependent child, other than the foster care payment, as otherwise provided in this Chapter.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section repealed; new R6-12-603 renumbered from R6-12-606 and amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-604. Minor Parents

- A. A minor parent means a person who:
 1. Is less than 18 years of age,
 2. Has never married, and
 3. Is the natural parent of a dependent child living in the same household.
- B. An assistance unit headed by a minor parent is not eligible for CA, except as provided in subsection (C).
- C. A minor parent may receive assistance when:
 1. The minor parent has no living or locatable:
 - a. Parent,
 - b. Legal custodian who is related to the minor parent to the degree specified at R6-12-309(A), or

- c. Legal guardian.
2. The minor parent is legally emancipated.
 - a. A minor parent is emancipated if the minor parent's parent, adult specified relative as defined in R6-12-309(A), or legal guardian has relinquished all control and authority over the minor parent, and no longer provides financial support to the minor parent.
 - b. A minor parent shall qualify as an emancipated person if the minor parent:
 - i. Has lived apart from the parent, adult specified relative, or legal guardian for at least one year before the application for CA;
 - ii. Has demonstrated financial independence from the parent, adult specified relative, or legal guardian for at least one year before the application for CA; and
 - iii. Has not received CA benefits for each of the 12 consecutive months immediately preceding the month the minor parent applies for CA.
 - c. The minor parent shall provide evidence to establish emancipation. Acceptable verification may include:
 - i. Rent receipts or other living arrangement statements which establish independent living apart from the parent, adult specified relative, or legal guardian;
 - ii. Income statements or income tax records which establish financial independence from the parent, adult specified relative, or legal guardian; or
 - iii. Written statements from a parent, relative, or guardian which establish the independent status of the minor parent.
3. The physical or emotional health or safety of the minor parent, or the minor parent's child, would be at risk if the minor parent and the minor parent's child resided in the home of the minor parent's parent, legal custodian who is related to the minor parent to the degree specified in R6-12-309(A), or legal guardian.
 - a. The minor parent shall file a written statement of abuse or neglect with the Department.
 - i. Abuse means any behavior defined at A.R.S. § 8-546(A)(2).
 - ii. Neglect means any behavior defined at A.R.S. § 8-546(A)(6).
 - b. The written statement shall include the following information regarding the allegations of abuse or neglect:
 - i. The name of the victim;
 - ii. The name of the perpetrator;
 - iii. The dates of the alleged abuse or neglect;
 - iv. The nature of the alleged abuse or neglect; and
 - v. Whether or not other children living in the home are subject to the abuse or neglect.
 - c. The FAA shall report all allegations of abuse or neglect to Child Protective Services.
 - d. The FAA shall accept the minor parent's written statement of abuse or neglect as sufficient evidence that the health or safety of the minor parent, or minor parent's child, would be at risk pending the outcome of a Child Protective Services assessment, unless evidence to the contrary exists.
 - e. If Child Protective Services determines the allegation of abuse or neglect is valid, the minor parent and the minor parent's child may receive CA if otherwise eligible under this Chapter.

- f. If Child Protective Services is unable to confirm or refute the allegation of abuse or neglect, the minor parent shall remain eligible based on the minor parent's written statement.
- g. If Child Protective Services determines the allegation of abuse or neglect is invalid:
 - i. The Department shall inform the minor parent of the determination and allow the minor parent 60 days to return to the home of the parent, custodian, or legal guardian;
 - ii. The Department shall terminate CA effective the first month following expiration of the 60-day period; and
 - iii. No overpayment shall result for assistance paid based on the minor parent's written statement of alleged abuse or neglect.
- 4. The minor parent lives in a needy family that includes one of the following:
 - a. The minor parent's parent,
 - b. An adult non-parent caretaker relative, or
 - c. The minor parent's legal guardian.
- 5. When the minor parent lives with a parent or adult non-parent caretaker relative who has CA eligible children, the Department shall combine all eligible children into one assistance unit. The parent, non-parent caretaker relative, or legal guardian shall serve as the payee.
- D. A minor parent who does not live with a parent, adult non-parent caretaker relative, or legal guardian must meet the needy family income eligibility requirements.
- E. A minor parent, and the minor parent's child, who are ineligible for CA solely due to the provisions of this Section, may receive the following services, if otherwise eligible:
 - 1. AHCCCS,
 - 2. JOBS,
 - 3. Child Care, and
 - 4. Any other program or service for which CA recipients categorically qualify.
- F. The provisions of this Section shall not apply to a parent who is under 18 years of age ("an underage parent") and who is married or has been married.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-12-604 renumbered to R6-12-602; new R6-12-604 renumbered from R6-12-608 and amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-605. Unemployed Parents in a Two-parent Household (TPEP)

- A. An assistance unit with a needy child deprived of parental support because the primary wage-earning parent (PWEP) is unemployed shall receive CA through the Two-parent Employment Program (TPEP) if the assistance unit meets the eligibility criteria listed in R6-12-609, R6-12-610, R6-12-611, and all other applicable CA eligibility criteria.

- B. The child's mother and father shall both reside with the child.
- C. Neither parent shall have a physical or mental defect, illness, or impairment that:
 - 1. Substantially decreases or eliminates the parent's ability to support or care for the child, and
 - 2. Is expected to last for a minimum of 30 continuous days.
- D. The PWEP shall not refuse a bona fide offer of employment or training for employment without good cause, within 30 days prior to application. Good cause for refusal is limited to the following circumstances:
 - 1. The offered wage was less than minimum wage;
 - 2. The parent lacked the physical or mental ability to do the work;
 - 3. The parent's lack of public or private transportation prevented the parent from reporting to the job;
 - 4. The parent lacked suitable day care;
 - 5. The parent was personally providing care for a child under the age of 2 at the time of the refusal;
 - 6. The working conditions would involve undue risk to the parent's health or safety;
 - 7. The work lacked workers' compensation protection;
 - 8. The commuting time to and from work would normally exceed two hours, round trip;
 - 9. The parent could not accept the job due to illness of the parent or another family member;
 - 10. The offered position was vacant due to a labor strike or lockout;
 - 11. The parent was incarcerated or making a required court appearance;
 - 12. Inclement weather prevented the parent from accepting the job or reporting for work; or
 - 13. The parent was laid off but is expected to return to the prior place of employment within 30 days of the date of the job offer.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section repealed; new R6-12-605 renumbered from R6-12-609 and amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-606. TPEP: Education and Employment Requirements; Good Cause for Nonparticipation

Each TPEP parent shall participate in an education, training, or employment activity, unless such the parent is exempt because the parent:

- 1. Is under 18 and is:
 - a. 13-15 years old, pregnant or an unwed custodial parent, lacking a high school diploma/GED, and attending full time a secondary, vocational, or technical school or high school equivalency course; or
 - b. 16 or 17 (or 18 when reasonably expected to complete school before reaching 19), the custodial parent of a minor child, and attending full time a secondary, vocational, or technical school or a high school equivalency course;

2. Is an enrolled tribal member residing within the tribe's specified Tribal JOBS geographic area;
3. Is working an average of 30 hours or more per week in unsubsidized employment which pays at least minimum wage and shall last at least 30 days.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-12-606 renumbered to R6-12-603; new R6-12-606 renumbered from R6-12-610 by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-607. TPEP: Duration

No assistance unit may receive TPEP benefits for longer than six months in a 12-month period, except that a TPEP unit may be granted a three-month extension when the JOBS administration requests the extension based on a JOBS determination that there is good cause for the extension. The good cause reasons for JOBS to request an extension are:

1. A parent is enrolled in a vocational educational training program which was approved by JOBS and which can be completed within the three-month extension period,
2. A parent has a bona fide offer of employment that is to begin within the three-month extension period,
3. One parent did not participate in JOBS for one or more months during the six-month period and the JOBS Administration has determined good cause existed as prescribed in R6-10-122, or
4. A parent is in an unpaid work experience activity and JOBS expects the parent to be hired within the three-month extension period.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section repealed; new R6-12-607 renumbered from R6-12-611 by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-608. Expired**Historical Note**

Adopted effective November 9, 1995 (Supp. 95-4).

Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp.

97-3). Former R6-12-608 renumbered to R6-12-604; new R6-12-608 renumbered from R6-12-612 by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2). Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 975, effective March 30, 2012 (Supp. 12-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-609. Expired**Historical Note**

Adopted effective November 9, 1995 (Supp. 95-4).

Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-12-609 renumbered to R6-12-605; new R6-12-609 renumbered from R6-12-613 by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2). Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 975, effective March 30, 2012 (Supp. 12-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-610. Expired**Historical Note**

Adopted effective November 9, 1995 (Supp. 95-4).

Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-12-610 renumbered to R6-12-606; new R6-12-610 renumbered from R6-12-615 and amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2). Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 975, effective March 30, 2012 (Supp. 12-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-611. Expired**Historical Note**

Adopted effective November 9, 1995 (Supp. 95-4).

Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-12-611 renumbered to R6-12-607; new R6-12-611 renumbered from R6-12-616 by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010

(Supp. 10-2). Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 975, effective March 30, 2012 (Supp. 12-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-612. Expired

Historical Note

Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-12-612 renumbered to R6-12-608; new R6-12-612 renumbered from R6-12-617 and amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2). Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 975, effective March 30, 2012 (Supp. 12-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-613. Renumbered

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-12-613 renumbered to R6-12-609 by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-614. Repealed

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section repealed by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

R6-12-615. Renumbered

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Former R6-12-615 renumbered to R6-12-610 by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

R6-12-616. Renumbered

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Former R6-12-616 renumbered to R6-12-611 by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-617. Renumbered

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-12-617 renumbered to R6-12-612 by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

ARTICLE 7. DETERMINING ELIGIBILITY AND BENEFIT PAYMENT AMOUNT

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-701. Income Limitations for a Family

- A. A family whose net monthly income does not exceed the income limitations in subsection (C) or (D) shall be considered a needy family for purposes of determining income eligibility for an assistance unit.
- B. To determine income eligibility, the Department shall calculate the net monthly income of the family using the methods listed in R6-12-508.
- C. When the net monthly income of the family exceeds 100% of the federal poverty level for the number of persons in the family, the assistance unit is ineligible for CA.
- D. When the net monthly income of a family in which the head of household is a non-parent caretaker relative who is requesting CA only for a dependent child exceeds 130% of the federal poverty level for the number of persons in the family, the assistance unit is ineligible for CA.
- E. The income limitations in subsections (C) and (D) shall not apply to a child only case.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section repealed; new Section made by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pur-

suant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-702. Eligibility for an Assistance Unit

- A.** The Department shall determine eligibility for a specific benefit month based on its best estimate of all non-financial, resource, and financial criteria that exist, and are expected to exist, for that month.
- B.** An assistance unit is eligible for CA when the Department finds that the unit:
1. Satisfies the nonfinancial eligibility criteria described in this Chapter,
 2. Does not exceed the resource limits described in Article 4, and
 3. Resides in a needy family.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-703. Earned Income Disregards

For the purpose of determining the net monthly income of a family as provided in R6-12-701(C) and (D) for eligibility purposes, and for an assistance unit to determine a benefit amount, the Department shall deduct the following earned income disregards:

1. A \$90 work expense allowance for each employed person in the family to determine income eligibility, and for employed assistance unit members or an employed parent of a dependent child whose income and resources are considered available to the assistance unit, to determine a cash benefit amount;
2. For each wage earning member of the family, to determine income eligibility; and for each assistance unit, or employed parent of a dependent child whose income and resources are considered available to the assistance unit, to determine a cash benefit amount: 30% of any earned income not already disregarded; and
3. The billed expenses for the care of each dependent child or incapacitated adult member of the family, to determine income eligibility, and of the assistance unit, to determine a cash benefit amount.
 - a. The monthly amount of earned income disregarded as a billed expense for the care of a dependent shall not exceed:
 - i. \$200 for a child under the age of 2 years, and
 - ii. \$175 for a child age 2 or older and for an incapacitated adult.
 - b. Acceptable verification shall include:

- i. A written statement from the individual or business providing the care for the amount billed; or
- ii. Collateral contact, when documents are not available.

4. For an assistance unit with a child who is excluded from the assistance unit pursuant to R6-12-308, an amount equal to the difference between the benefit amount with the needs of the ineligible child included in the computation and the benefit amount with the needs of the ineligible child excluded from the computation.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

R6-12-704. Disqualification from Earnings Disregards; Good Cause

- A.** The Department shall not apply the earned income disregards set forth at R6-12-703(1) through (3) to the earned income of an assistance unit member, or an employed parent of a dependent child whose income and resources are considered available to the assistance unit, when the assistance unit member or parent, without good cause:
1. Terminates employment or reduces the hours of employment within the 30 days preceding the benefit month;
 2. Refuses to accept a bona fide offer of employment offered through JOBS, or by any other employer, within the 30 days preceding the benefit month; or
 3. Fails to make a timely report of income pursuant to R6-12-901.
- B.** Good cause.
1. For circumstances applicable to subsections (A)(1) or (2), good cause is limited to:
 - a. The circumstances described at A.A.C. R6-10-119(B); or
 - b. The circumstances described at A.A.C. R6-10-120(A) and (C), if the person is a TPEP parent.
 2. For circumstances applicable to subsection (A)(3), good cause is limited to the following:
 - a. The assistance unit reports and verifies that sickness, accident, or other hardship prevented the unit from reporting timely; or
 - b. The mailing date of the change report is timely as prescribed in R6-12-901.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-705. Determining Benefit Payment Amount

- A.** The Department shall determine the amount of the cash benefit by subtracting the monthly net income of the assistance unit, from 36% of the 1992 federal poverty level for the number of

persons in the assistance unit, and rounding down the resulting figure to the next whole dollar in any of the following circumstances:

1. The assistance unit or parent of a dependent child whose income and resources are considered available to the assistance unit pays, or is obligated to pay, all or part of the shelter costs for the place in which assistance unit members reside. Shelter costs include:
 - a. Rent,
 - b. Mortgage,
 - c. Property taxes,
 - d. Mobile home space or taxes,
 - e. Homeowner association fees and taxes, or
 - f. The household shelter cost obligation is in foreclosure action and the mortgage company will accept back payments;
 2. The assistance unit members reside in subsidized public housing;
 3. A member of the assistance unit or parent of a dependent child whose income and resources are considered available to the assistance unit works in exchange for rent;
 4. The assistance unit is composed only of a dependent child for whom benefits were requested by a non-parent caretaker relative head of household; or
 5. Assistance is paid in a child only case.
- B.** For all circumstances not covered under subsections (A)(1) through (5), including those when shelter costs are paid for three consecutive months or longer by a person who is not a member of the assistance unit, or by a parent of a dependent child whose income and resources are considered available to the assistance unit, the Department shall determine the amount of the assistance grant by subtracting the monthly net income of the assistance unit from 23% of the 1992 federal poverty level for the number of persons in the assistance unit, and rounding down the resulting figure to the next whole dollar.
- C.** If the benefit amount is less than \$10, the Department shall not pay benefits; the assistance unit remains eligible for CA for all other purposes.
- D.** The Department shall pay benefits for the month of application only from the filing date of the application. The benefit amount is prorated based on the number of days remaining in the month after the date of application.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

R6-12-706. Notice of Eligibility Determination

- A.** If the Department finds that the unit satisfies all eligibility criteria as specified in this Chapter, the Department shall approve the assistance grant and send notice of approval to the applicant.
- B.** If the Department finds that the unit does not satisfy 1 or more of the eligibility criteria specified in this Chapter, the Department shall send a denial notice to the applicant's last known address. The notice shall describe the action taken, the specific authority for the action, and the individual's right to request a hearing to challenge the action.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

ARTICLE 8. PAYMENTS

R6-12-801. Benefit Payments

- A.** The Department shall pay benefits to an eligible assistance unit only during a month for which the unit is eligible for a payment.
- B.** The Department shall make benefit payments in the form of a state warrant, payable directly to the eligible recipient, or to a protective payee, emergency payee, legal guardian, or vendor.
- C.** The warrant shall bear a statement which shall require the payee to confirm continuing eligibility for benefits when endorsing the warrant for payment.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

R6-12-802. Expired

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 975, effective March 30, 2012 (Supp. 12-2).

R6-12-803. Supplemental Payments

- A.** The Department shall correct underpayments by issuing the assistance unit a supplemental payment, regardless of whether the individual who was underpaid is eligible on the date the supplemental payment is issued.
- B.** The Department shall not count such supplemental payments as a resource or as income.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

R6-12-804. Expired

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 975, effective March 30, 2012 (Supp. 12-2).

R6-12-805. Expired

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Section expired under A.R.S. § 41-1056(E) at 18 A.A.R. 975, effective March 30, 2012 (Supp. 12-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-806. Protective Payee

- A.** The Department shall pay benefits to a protective payee who is not a member of the assistance unit:
 1. On behalf of all unit members when a state or tribal protective service agency notifies FAA that the recipient is mismanaging or misappropriating benefits; or
 2. On behalf of all unit members other than the designated recipient when the recipient is disqualified for IPV or fraud.
- B.** The Department, with the assistance of the recipient, shall select a protective payee, who may be any adult other than the following:
 1. The Department's director,
 2. A Department eligibility interviewer,

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3. An employee in the Department's Office of Special Investigations,
 4. A Department employee who handles fiscal processes related to the CA program, and
 5. A vendor of goods or services who deals directly with the recipient.
- C.** Except in cases of mismanagement, the Department shall continue paying benefits to the recipient if the Department cannot locate a suitable payee, after exhausting reasonable efforts to do so.
- D.** Protective payments shall terminate:
1. In cases of mismanagement, upon a determination by the protective services agency that such payments are no longer required to avoid further mismanagement; and
 2. In all other cases, when the recipient cooperates with the requirement that caused the onset of protective payments.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-12-807. Emergency Payee

- A.** The Department may pay benefits to a person acting as representative for, or on behalf of, a caretaker relative who was receiving benefits for a dependent child, when the relative:
1. Dies,
 2. Abandons or deserts the child,
 3. Is incarcerated, or
 4. Is committed to a hospital for the mentally ill.
- B.** The Department can make payments to the emergency payee for 90 days, or until a case plan is developed for the dependent child, whichever first occurs.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

Editor's Note: The following Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-808. Identification Card

Upon request by a recipient, the Department shall issue the recipient an identification card or an electronic benefit transfer card at no cost. The Department shall keep a photograph of the recipient in the recipient's file after issuing an identification card or an electronic benefit transfer card.

Historical Note

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

ARTICLE 9. CHANGES; ADVERSE ACTION**R6-12-901. Reporting Changes**

- A.** As a condition of eligibility, the assistance unit shall advise the Department of all changes in income, resources, or other circumstances which may affect eligibility or benefit amount, within 10 days from the date the change becomes known.
- B.** A change report is considered timely if the mailing date is the tenth day from the date the change becomes known.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

R6-12-902. Withdrawing a Member from the Assistance Unit

- A.** A caretaker relative may request that an assistance unit member be removed from the unit by filing, with the Department, a written request which shall identify the member to be withdrawn, the reason for the request, and the date the request is effective.
- B.** The Department shall acknowledge receipt of a withdrawal request and advise the unit in writing within 10 days of receipt of the withdrawal request of the effect of the request, as specified below.
- C.** If the request does not identify a specific member, the Department shall apply the request to the entire assistance unit and terminate benefits.
- D.** If the person being withdrawn is a mandatory member of the assistance unit, the Department shall deem the entire assistance unit ineligible and terminate benefits.
- E.** If the person being withdrawn is not a mandatory member of the assistance unit, the Department shall redetermine eligibility and benefits in accordance with the provisions of this Chapter.
- F.** If the request does not specify an effective date, the Department shall take appropriate action effective the 1st month after the month in which the Department receives the request.
- G.** Department action taken in response to a request for withdrawal of a member does not require a notice of adverse action but does require adequate notice and is appealable.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-903. Determining Benefits When Adding or Removing a Member

- A.** When the Department receives a request to add a member to the assistance unit, or is required to add a mandatory member, the Department shall redetermine eligibility including the added member.
1. If the new member renders the unit ineligible and is not a mandatory member, the Department shall advise the unit of the consequences and permit the unit to withdraw its request to include the new member.
 2. If the new member renders the unit ineligible and is a mandatory member, the unit is ineligible. The Department shall provide adequate and timely notice.
 3. If the unit remains eligible, the Department shall add the new member, effective the date the Department receives the request to add the member, and shall include the new member's income in the budget.
- B.** In the month a new member is added, the assistance unit may be eligible for an additional benefit amount or liable for an overpayment. To determine the unit's entitlement or liability, the Department shall:
1. Recalculate the unit's benefit amount with the new member, as provided in R6-12-704;
 2. Subtract the current benefit amount (without the new member) from the new benefit amount; and

3. Take the resulting amount;
 - a. If above 0, prorate it, as provided in R6-12-704(C), to determine the benefit amount due the unit;
 - b. If 0, pay no benefit; or
 - c. If below 0;
 - i. Write an overpayment for the month of application, if the member is mandatory; or
 - ii. If the member is not mandatory, allow the unit to add the member the following month, so as to avoid an overpayment for the current month.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-12-904. Benefit Reduction or Termination

- A. Any change in any factor which the Department considers when determining eligibility or benefit amount may result in reduction or termination of benefits, consistent with the provisions of this Chapter.
- B. The Department shall terminate benefits if the assistance unit fails to complete the 6-month review required by R6-12-210.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-905. Ineligibility Date for an Assistance Unit

An assistance unit's ineligibility begins at the time described below:

1. On the first day of the same month in which any of the following events occurs:
 - a. Acquisition of resources in excess of the resource limitations specified in Article 4,
 - b. Receipt of lump sum income as set forth in R6-12-505, or
 - c. A new assistance unit member or a person whose income and resources are considered available to the assistance unit moves into the home and renders the assistance unit ineligible for a cash benefit.
2. On the first day of the first month benefits can be terminated following timely notice of adverse action for failure to comply with a six-month eligibility review.
3. On the first day of the first month in which the assistance unit is not eligible on the date CA benefits are paid when the unit is rendered ineligible for reasons not specified in subsections (1) or (2).

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 16 A.A.R. 1141, effective July 1, 2010 (Supp. 10-2).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of

proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-906. Ineligibility Date for an Individual Member of an Assistance Unit

Ineligibility for an individual member of an assistance unit begins on the 1st day of the 1st month in which the member is not eligible on the date CA benefits are paid when the member is rendered ineligible for any reason.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-907. Notice of Adverse Action

- A. When the Department plans to take adverse action against an assistance unit, the Department shall provide the unit with adequate and timely notice, except as provided in subsection (C).
- B. The Department shall mail such notice, 1st class, postage pre-paid, to the last known residential address for the unit, or other designated address for the unit as allowed pursuant to R6-12-802(A).
- C. In addition to the information listed in R6-12-101(1), the notice shall contain the following information:
 1. The date the adverse action is effective;
 2. The names of the eligible and ineligible persons in the unit, if changed by the intended action; and
 3. Any effect the intended action may have on the unit members' AHCCCS medical eligibility.
- D. The Department may dispense with timely notice but shall provide adequate notice of adverse action when:
 1. A recipient or payee dies and no emergency payee is available;
 2. A recipient makes a written request for termination;
 3. A recipient is ineligible due to incarceration, hospitalization, or institutionalization in a skilled nursing care or intermediate care facility;
 4. The recipient's address is unknown;
 5. The Department has verified that the recipient has been accepted for assistance in another state;
 6. A CA child is legally removed from home or voluntarily placed in foster care by the child's parent or legal guardian; or
 7. The recipient furnishes information which results in reduction or termination of assistance and indicates in writing an understanding of the consequences that may result from furnishing such information.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-908. Referral for Investigation

FAA shall refer a case to OSI for investigation when:

1. An applicant or recipient refuses to cooperate as required pursuant to R6-12-302;
2. An applicant or recipient refuses to sign a statement attesting to forgery of a signature on a cashed warrant;
3. The Department has valid reason to suspect that an act has been committed for the purpose of deception, misrepresentation, or concealment of information relevant to a determination of eligibility or the form or amount of a benefit payment; or
4. The FAA suspects the commission of theft or fraud related to CA or any conduct listed in A.R.S. § 46-215.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

ARTICLE 10. APPEALS

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-1001. Entitlement to a Hearing

- A. An applicant for or recipient of CA is entitled to a hearing to contest the following Department actions:
 1. Denial of the right to apply for assistance;
 2. Complete or partial denial of an application for assistance or for supplemental benefits;
 3. Failure to make an eligibility determination on an application within 45 days of the application date;
 4. Suspension, termination, reduction, or withholding of benefits except as provided in subsection (B).
 5. The existence or amount of an overpayment attributed to the unit or the terms of a plan to repay the overpayment;
 6. Changing the manner or form of payment including naming a protective payee to receive the benefit payment; or
 7. Denial or termination of child care benefits.
- B. Applicants and recipients are not entitled to a hearing to challenge benefit adjustments made automatically as a result of changes in federal or state law, unless the Department has incorrectly applied such law to the individual seeking the hearing.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-12-1002. Request for Hearing; Form; Time Limits

- A. A person who wishes to appeal an adverse action shall file a written request for a fair hearing with a local FAA office, within 20 days of the adverse action notice date.
- B. A request for a hearing is deemed filed:
 1. On the date it is mailed, if transmittal via the United States Postal Service or its successor. The mailing date is as follows:
 - a. As shown by the postmark;
 - b. As shown by the postage meter mark of the envelope in which it is received, if there is no postmark; or
 - c. The date entered on the document as the date of its completion, if there is no postmark, or no postage meter mark, or if the mark is illegible.
 2. On the date actually received by the Department, if not sent through the mail as provided in subsection (B)(1).
- C. The submission of any document shall be considered timely if the appellant proves that delay in submission was due to Department error or misinformation, or to delay caused by the U.S. Postal Service or its successor.
- D. Any document mailed by the Department shall be considered as having been given to the addressee on the date it is mailed to the addressee's last known address. The date mailed shall be presumed to be the date shown on the document, unless otherwise indicated by the facts. Computation of time shall be made in accordance with Rule 6(a) of the Rules of Civil Procedure.
- E. The Office of Appeals shall deny any request that is not timely filed. A party may request an appeal on the timeliness of an appeal.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-1003. Hearing Requests; Preparation and Processing

- A. The Department shall advise the appellant of any free legal services available to assist the appellant in completing the request for appeal. If the appellant so requests, the Department shall assist the appellant in preparing the request.
- B. Within 2 working days of receiving a request for appeal, the local FAA office shall notify the Office of Appeals of the hearing request.
- C. Within 10 days of receiving a request for appeal, the local FAA office shall prepare and forward to the Office of Appeals a prehearing summary which shall include:
 1. The appellant's name (and case name, if different);
 2. The appellant's SSN (or case number, if different);
 3. The local office responsible for the appellant's case;
 4. A brief summary of the facts surrounding, and the grounds supporting, the adverse action;
 5. Citations to the specific provisions of the Department's CA manual which support the Department's action; and
 6. The decision notice and any other documents relating to the appeal.
- D. The local office shall mail the appellant a copy of the summary.
- E. Upon receipt of a hearing request, the Office of Appeals shall schedule the hearing as prescribed in R6-12-1006.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption
from the provisions of A.R.S. Title 41, Chapter 6 (Supp.
97-3).

R6-12-1004. Stay of Adverse Action Pending Appeal; Exceptions

- A.** If an appellant files a request for appeal within 10 calendar days of the adverse action notice date, the Department shall stay imposition of the adverse action and continue benefits at the current level unless:
1. The appellant specifically waives continuation of current benefits;
 2. The appeal results from a change in federal or state law which mandates an automatic grant adjustment for all classes of recipients and does not involve a misapplication of the law;
 3. The appellant is requesting continuation of TPEP benefits for longer than 6 months within a 12-month period; or
 4. The appellant is requesting continuation of benefits for longer than 24 months within any consecutive 60-month period.
- B.** The adverse action shall be stayed until receipt of an official written decision in favor of the Department, except in the following circumstances:
1. At the hearing and on the record, the hearing officer finds that: the sole issue involves application of law, and the Department properly applied the law and computed the benefits due the appellant;
 2. A change in eligibility or benefit amount occurs for reasons other than those being appealed, and the assistance unit receives and fails to timely appeal a notice of adverse action concerning such change;
 3. Federal or state law mandates an automatic grant adjustment for classes of recipients;
 4. The appellant withdraws the request for hearing; or
 5. The appellant fails to appear for a scheduled hearing without prior notice to the Office of Appeals, and the hearing officer does not rule in favor of the appellant based upon the record.
- C.** Upon receipt of decision in favor of the Department, the Department shall write an overpayment for the amount of any benefits the unit received in excess of the correct benefit amount, while the stay was in effect.
- D.** If the appellant files a request for appeal more than 10 days after, but within 20 days of, the adverse action notice date, the Department may take the adverse action while the appeal is pending. If the Office of Appeals then rules in favor of the appellant, the Department shall issue a supplemental payment to the appellant to cure any underpayment within 10 days from the date of the hearing decision.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

R6-12-1005. Hearing Officer; Qualifications; Duties; Subpoenas

- A.** An impartial hearing officer in the Department's Office of Appeals shall conduct all hearings.
- B.** The hearing officer shall:
1. Administer oaths and affirmations;
 2. Regulate and conduct the hearing in an orderly and dignified manner, which avoids undue repetition and affords due process to all participants;
 3. Ensure that all relevant issues are considered;
 4. Exclude irrelevant evidence from the record;

5. Request, receive, and incorporate into the record all relevant evidence;
 6. Order, when relevant and useful to a resolution of the issue in a case, an independent medical assessment or professional evaluation from a source mutually satisfactory to the appellant and the Department;
 7. Upon compliance with the requirements of subsection (C), subpoena witnesses or documents needed for the hearing;
 8. Open, conduct, and close the hearing;
 9. Rule on the admissibility of evidence at a hearing;
 10. Direct the order of proof at the hearing;
 11. For good cause shown, and upon the request of an interested party, or on the hearing officer's own motion, take such action as the hearing officer deems necessary to the proper disposition of an appeal, including, without limitation, the following:
 - a. Recuse or disqualify himself from the case;
 - b. Continue the hearing to a future time or date;
 - c. Prior to entry of a final decision, reopen the hearing to take additional evidence;
 - d. Deny or dismiss the appeal or request for hearing in accordance with the provisions of this Article;
 - e. Exclude non-party witnesses from the hearing room; and
 12. Issue a written decision deciding the appeal.
- C. Subpoenas.**
1. A party who wishes to subpoena a witness, document, or other physical evidence shall make a written request which shall describe:
 - a. The case name and number;
 - b. The party requesting the subpoena;
 - c. The name and address of any person to be subpoenaed, with a description of the subject matter of the witness's anticipated testimony; and
 - d. A description of any documents or physical evidence to be subpoenaed, and the name and address of the custodian of the document or physical evidence.
 2. The party requesting the subpoena shall make the request at least 5 work days before the scheduled hearing date.
 3. The hearing officer shall deny the request if the witness's proposed testimony is not relevant to the issues in the hearing.
 4. The Office of Appeals shall prepare all subpoenas and serve them by certified mail, return receipt requested.
- D.** An appellant may request a change in hearing officer if the appellant so requests at least 10 days prior to the hearing. The appellant is limited to 1 request.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

R6-12-1006. Hearings: Location; Notice; Time

- A.** The Office of Appeals shall schedule the hearing at the office location most convenient to the interested parties.
- B.** The Office of Appeals shall issue all interested parties a notice of the first hearing at least 10 calendar days before the hearing. The appellant may waive the 10-day notice period or request a continuance.
- C.** The notice of hearing shall be in writing and shall include the following information:
1. The date, time, and place of the hearing;
 2. The name of the hearing officer;
 3. The issues involved in the case;
 4. A statement listing the appellant's rights, as follows:
 - a. To appear in person or by telephone;

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- b. To have a representative present the case;
- c. To copy, at a reasonable time prior to the hearing or during the hearing, any documents in the appellant's case file which are relevant to the issues being heard, and all documents the Department may use at the hearing;
- d. To obtain assistance from the local FAA office to prepare for the hearing; and
- e. To obtain, from the local FAA office, information on available community legal resources who may be able to represent the appellant.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended by final rulemaking at 16 A.A.R. 815, effective April 22, 2010 (Supp. 10-2).

R6-12-1007. Rescheduling the Hearing

- A. An appellant may request a continuance of the hearing by calling or writing the Office of Appeals and providing good cause as to why the hearing should be postponed.
- B. The Office of Appeals must receive the request at least 5 work days before the scheduled hearing date and may deny an untimely request or a request which fails to establish good cause.
- C. When a hearing is rescheduled, the Office of Appeals shall provide appropriate notice to all interested parties.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

R6-12-1008. Hearings Concerning Disability Determinations

- A. A person who appeals an adverse determination of disability may ask to receive another medical examination before the hearing.
- B. Upon receipt of such a request, the FAA local office shall schedule the examination with a licensed physician, psychologist, or psychiatrist. If the appellant does not designate a particular examiner, the Department may choose.
- C. At any time prior to issuing a decision, the hearing officer may ask the District Medical Consultant to schedule the appellant for a special diagnostic evaluation by a specialist.
- D. Upon receipt of a report on the special evaluation, the hearing officer may, but is not required to, have the District Medical Consultant evaluate the report and render an opinion on the appellant's disability and employability.
- E. The hearing officer may consider, but is not bound by, the Medical Consultant's opinion, which shall qualify as an expert medical opinion.
- F. In deciding the appeal of a disability determination, the hearing officer shall consider:
 - 1. All medical, social, and vocational reports which are relevant to the issue of disability; and
 - 2. The appellant's testimony as to the appellant's physical and medical condition or symptomatology.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

R6-12-1009. Group Hearings

The Department may conduct a single group hearing on individual requests for a hearing, under the following circumstances:

- 1. The sole issue in each case is interpretation of the same question of federal or state law or policy,
- 2. Each appellant may present or have an authorized representative present his or her own case,
- 3. Any appellant may withdraw from the group hearing and obtain an individual hearing.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

R6-12-1010. Withdrawal of Appeal; Default

- A. An appellant may voluntarily withdraw an appeal at any time prior to the scheduled hearing by signing a written statement expressing the intent to withdraw. The Department shall make a withdrawal form available for this purpose.
- B. An appellant may involuntarily withdraw an appeal by failing to appear at the scheduled hearing.
 - 1. Except as provided in subsection (C), the hearing officer may enter a default decision dismissing the appeal if the appellant fails to appear at a scheduled hearing.
 - 2. When the appellee fails to appear at the hearing, the hearing officer may rule summarily on the available record or may adjourn the hearing to a later date and time.
 - 3. If, within 10 days of the scheduled hearing date at which the appellant failed to appear, the appellant files a written request to reopen the proceedings and establishes good cause for non-appearance, the hearing officer shall reopen the proceedings and reschedule the hearing with notice to all interested parties.
 - 4. Good cause, for the purpose of reopening a hearing, is established if the failure to appear at the hearing and the failure to timely notify the hearing officer were beyond the reasonable control of the nonappearing party.
- C. The hearing officer shall not enter a default if the appellant gives notice, prior to the scheduled time of hearing, that the appellant is unable to attend the hearing, due to good cause, and still wishes the hearing or to have the matter considered on the available record.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

R6-12-1011. Hearing Proceedings

- A. Standard of review and burden of proof.
 - 1. The hearing is a de novo proceeding. To prevail on appeal, the appellant must prove eligibility or entitlement to benefits by a preponderance of the evidence.
 - 2. The Department has the initial burden of going forward with presentation of the evidence.
- B. Appearance by parties and representatives.
 - 1. An appellant may appear by telephone or submit a written statement under oath, instead of appearing personally at the hearing. The appellant shall file the personal statement with all other witness statements and documents the appellant wishes to offer in evidence, with the Office of Appeals before the time of the hearing.
 - 2. The FAA worker, FAA supervisor, or FAA hearing specialist, or another appropriate person may testify for the Department at the hearing.
- C. Evidence and argument.
 - 1. The appellant may testify, present evidence, cross-examine witnesses, and present arguments.
 - 2. The hearing officer shall exclude from the record any irrelevant evidence.
- D. The record.
 - 1. The hearing officer shall keep a full and complete record of all proceedings in connection with an appeal. The appellant or the appellant's designated representative may inspect the record on appeal at any reasonable time.
 - 2. The Department need not transcribe the record unless it is required for further proceedings.
 - 3. If the record is transcribed, the appellant is entitled to receive a copy at no charge.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

R6-12-1012. Hearing Decision; Time Limits; Form; Contents; Finality

- A. No later than 90 days after the date the appellant files a request for appeal, the hearing officer shall render a written decision based solely on the evidence and testimony produced at the hearing and applicable federal and state law. The time limit is extended for any delay caused by the appellant.
- B. The decision shall include:
 1. Findings of facts pertinent to the issue;
 2. Citations to the law and authority applicable to the case;
 3. A statement of conclusions derived from the controlling facts and law, and the reasons for the conclusions; and
 4. A statement of further appeal rights available to the appellant and the time period for exercising those rights.
- C. The Office of Appeals shall mail or deliver a copy of the decision to each interested party or such party's attorney of record.
- D. The hearing officer's decision is the final decision of the Department, unless a party files a timely request for reconsideration or further appeal.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

R6-12-1013. Implementation of the Decision

- A. If the decision requires a local office to take further action, such action shall occur within 10 calendar days of the date of the decision.
- B. All decisions in favor of the appellant apply retroactively to the date of the action being appealed or the date stated by the hearing officer in the written decision.
- C. If the decision affirms the Department's decision to take adverse action, the Department shall treat any resulting overpayment as a client-caused, non-fraud overpayment.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

R6-12-1014. Further Appeal and Review of Hearing Decisions; Stay of Adverse Action

- A. A party may appeal an adverse hearing decision to the Department's Appeals Board.
 1. The party shall file a written petition for review with the Office of Appeals within 15 calendar days of the mailing date of the hearing officer's decision.
 2. The petition shall state the grounds for review and be signed and dated.
 3. The petition is deemed filed:
 - a. On the date it is mailed, if transmittal via the United States Postal Service or its successor. The mailing date is as follows:
 - i. As shown by the postmark;
 - ii. As shown by the postage meter mark of the envelope in which it is received, if there is no postmark; or
 - iii. The date entered on the document as the date of its completion, if there is no postmark, or no postage meter mark, or if the mark is illegible.
 - b. On the date it is hand-delivered to the Office of Appeals.
- B. When a party timely appeals a hearing decision, the Department shall stay implementation of the adverse action until the Appeals Board issues a decision and treat any resulting overpayment as a client-caused, non-fraud overpayment.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

R6-12-1015. Appeals Board Proceedings and Decision

- A. Upon receipt of a request for further review, the Office of Appeals shall transcribe the record of hearing and transfer the record to the Appeals Board.
- B. The Appeals Board may decide the appeal based solely on the record of proceedings before the hearing officer or, if the Board is unable to decide the appeal on the available record, the Board may remand the case for rehearing, specifying the nature of any additional evidence required or any further issues for consideration, or conduct a hearing at the Appeals Board to take additional evidence.
- C. The Appeals Board shall issue, and mail to all parties, a final written decision affirming, reversing, or modifying the hearing decision and specifying the parties' right to seek further review.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

ARTICLE 11. OVERPAYMENTS**R6-12-1101. Overpayments: Date of Discovery; Collection; Exceptions**

- A. Except as provided in subsection (E), the Department shall pursue collection of all overpayments.
- B. The Department discovers an overpayment on the date the Department determines that an overpayment exists.
- C. The Department shall write an overpayment report within 90 days of the discovery date.
- D. If the FAA office suspects that an overpayment was caused by fraudulent activity, it shall refer the overpayment report to the Department's Office of Special Investigations for potential prosecution.
- E. The Department shall not attempt to recover an overpayment from a person who is not a current recipient when the overpayment was not the result of an intentional program violation or fraud, and:
 1. The total overpayment is less than \$35, or
 2. The Department has exhausted reasonable efforts to collect an overpayment of \$35 or more and has determined that it is no longer cost-effective to pursue the claim.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

R6-12-1102. Overpayments: Persons Liable

- A. The Department shall pursue collection of an overpayment from:
 1. The assistance unit which was overpaid;
 2. Any assistance unit of which a member of the overpaid unit has subsequently become a member; or
 3. Any individual member of the overpaid assistance unit, even if that member is not currently receiving benefits.
- B. The Department shall seek recovery from the caretaker relative, or the caretaker relative's current assistance unit, first. If the caretaker relative is unavailable due to death or disappearance, or was not a member of the overpaid assistance unit, the Department shall seek recovery from the other members of the overpaid assistance unit, or the other members' current assistance units.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in

the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-1103. Methods of Collection and Recoupment

- A.** When an overpaid assistance unit is currently receiving benefits, the Department shall permit the unit to choose 1 of the following repayment methods:
1. Offset against any underpayment due the unit;
 2. Cash payments;
 3. Reduction in current benefits, in an amount not to exceed 10% of the unit's monthly payment, unless the unit desires a larger reduction;
 4. A combination of the above methods.
- B.** If the repayment reduces the unit's benefits to 0, the unit shall remain eligible for CA for all other purposes.
- C.** If the assistance unit is not receiving benefits, the Department shall pursue recovery by appropriate action under state law.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

ARTICLE 12. INTENTIONAL PROGRAM VIOLATION

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-1201. Intentional Program Violations (IPV); Defined

- A.** An intentional program violation (IPV) is an action by an individual, for the purpose of establishing or maintaining the family's eligibility for CA or for increasing or preventing a reduction in the amount of the grant, which is intentionally:
1. A false or misleading statement or misrepresentation, concealment, or withholding of facts; or
 2. Any act intended to mislead, misrepresent, conceal, or withhold facts or propound a falsity.
- B.** For the purpose of imposing sanctions as prescribed in R6-12-1204, a person is considered to have committed an IPV if:
1. The person signs a waiver of an administrative disqualification hearing,
 2. The person is found to have committed an IPV by an administrative disqualification hearing, or
 3. The person is convicted of IPV or fraud in a court of law.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-12-1202. IPV Disqualification Proceedings; Hearing Waiver

- A.** The Department shall initiate an administrative disqualification proceeding, or a referral for prosecution, upon receipt of sufficient documentary evidence substantiating that an assistance unit member has committed an IPV.
- B.** When the Department initiates a disqualification proceeding, the Department shall mail the assistance unit member sus-

pected of an IPV written notice of the right to waive the disqualification hearing.

- C.** The waiver notice shall include the following information:
1. The charges against the suspected violator and a description of the evidence supporting the charges;
 2. An explanation of the disqualification sanctions imposed for intentional program violations;
 3. A warning that the administrative proceeding does not preclude other civil or criminal court action;
 4. The date that the signed waiver notice must be received by the Department should the suspected violator wish to avoid the hearing;
 5. Signature lines for the suspected violator and the suspected violator's current caretaker relative if the suspected violator is not the caretaker relative;
 6. A statement that the caretaker relative must also sign the waiver if the suspected violator is not the caretaker relative;
 7. A statement of the suspected violator's right to remain silent concerning the charge;
 8. A warning that anything said, written, or signed by the suspected violator concerning the charge may be used against him or her in administrative proceedings or a court of law;
 9. A warning that any waiver of the hearing establishes an IPV, eliminates the right to further administrative appeal, and will result in disqualification and a reduction in benefits for other assistance unit members for the period of disqualification;
 10. Statements providing the suspected violator an opportunity to admit to the facts supporting disqualification or waive the hearing without admitting to the facts;
 11. The name, address, and telephone number of a Department representative whom the suspected violator may contact for further information;
 12. A list of persons or organizations which may provide the suspected violator with free legal advice regarding the IPV; and
 13. A warning that the Department shall hold any remaining household members responsible for repayment of any overpayment arising from the IPV.
- D.** For the purpose of imposing sanctions as prescribed in R6-12-1204, a signed waiver notice shall have the same effect as an administrative adjudication that an IPV occurred.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

R6-12-1203. Disqualification Proceedings; Hearing

- A.** If the suspected violator does not sign and return the waiver notice by the return date set in the waiver notice, the Office of Appeals shall send the suspected violator a notice of hearing. The Office of Appeals shall send the notice by certified mail, return receipt requested, no later than 30 days before the scheduled hearing date.
- B.** The notice of hearing shall include the following information:
1. The date, time, and place of the hearing;
 2. The charges against the suspected violator;
 3. A summary of the evidence supporting the charges;
 4. The location where the suspected violator may examine the supporting evidence before the hearing;
 5. A warning that the hearing officer shall render a decision based solely on the evidence which the Department offers if the suspected violator does not appear for the hearing;
 6. An explanation of the suspected violator's right to show good cause for a failure to appear at the hearing and the procedure for doing so;

7. An explanation of the sanctions the Department shall impose if the hearing officer finds that the suspected violator committed an IPV;
 8. A listing of the suspected violator's procedural rights;
 9. A warning that the pending administrative hearing does not preclude other civil or criminal court action;
 10. A statement advising of any free legal advice which may be available;
 11. A statement explaining how to obtain a copy of the Department's published hearing procedures; and
 12. A statement that the suspected violator may have the hearing postponed by contacting the hearing officer at least 10 days before the hearing date and asking for a postponement.
- C.** The hearing officer shall postpone a hearing for up to 30 days if the suspected violator files a written request for postponement with the hearing official no later than 10 days before the scheduled hearing date. Any such postponement days shall increase the time by which the hearing officer shall issue a decision, as provided in subsection (G) below.
- D.** At the start of the disqualification hearing, the hearing officer shall advise the suspected violator or representative of the right to remain silent during the hearing and the consequences of exercising that right.
- E.** A hearing officer, as prescribed in R6-12-1005, shall conduct the disqualification hearing pursuant to the procedures set forth in R6-12-1006, R6-12-1007, and R6-12-1011, except as prescribed in this subsection.
1. The suspected violator does not need to request a hearing as prescribed in R6-12-1006(B).
 2. The standard of proof is clear and convincing.
 3. So long as the Department sent an advance notice of hearing as provided in subsections (A) and (B) above, the hearing officer shall conduct the disqualification hearing even if the suspected violator or representative cannot be located or fails to appear at the hearing without good cause.
- F.** The Department shall prove by clear and convincing evidence that the household member committed an IPV.
- G.** No later than 90 days from the date of the notice of hearing, as increased by any postponement days, the hearing officer shall send to the suspected violator a written decision which shall conform to the requirements of R6-12-1012 and shall include the information described at R6-12-1204(C).

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

R6-12-1204. Disqualification Sanctions; Notice

- A.** A person found to have committed an IPV is disqualified from program participation for 6 months for the 1st violation; 12 months for the 2nd violation; and permanently for the 3rd violation.
- B.** The Department shall not include the needs of the disqualified person in the assistance unit but shall count the income and resources of the disqualified person available to the unit.
- C.** Upon a determination of IPV, the Department shall notify the violator of the pending disqualification. The notice shall:
1. Inform the violator of the decision and the reasons for the decision;
 2. Provide the beginning date and duration of the disqualification, including an explanation of any deferment of disqualification; and
 3. Explain the consequences of the disqualification on household members other than the violator.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

R6-12-1205. Disqualification Hearings; Appeal

- A.** A person found to have committed an IPV through an administrative disqualification hearing may appeal the decision to the Department's Appeals Board as prescribed in R6-12-1014.
- B.** Upon a determination of IPV through a signed waiver of a disqualification hearing, the violator has no right to further administrative appeal.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

R6-12-1206. Honoring Out-of-state IPV Determinations and Sanctions

The Department shall honor sanctions imposed against an applicant or recipient by the Title IV-A agency of another state and shall consider prior violations committed in another state when determining the appropriate sanction.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).

ARTICLE 13. JOBSTART

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-1301. Scope

The Department shall operate a wage subsidy program entitled JOBSTART on a statewide basis.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Amended effective May 15, 1997 (Supp. 97-2). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-1302. Definitions

The following definitions apply to this Article:

1. "Adjusted gross monthly wages" means the gross monthly wages a person receives from a JOBSTART-subsidized placement after deductions for federal and state income taxes and Federal Insurance Contributions Act (FICA) contributions.
2. Subsidized placement means a job with a public or private sector employer for which the Department reimburses the employer monthly for the wages paid to the participant the lesser of:
 - a. A fixed subsidy amount determined by the Department pursuant to the contract with the employer, or
 - b. The gross wages paid by the employer.
3. Wage pool means a pool of diverted CA and Food Stamp Program benefits which are used to reimburse an employer for the monthly wages paid to a participant.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Amended effective May 15, 1997 (Supp. 97-2). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was repealed and the new Section was renumbered and amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-1303. Diversion of Benefits to Wage Pool

- A. When JOBS notifies FAA that JOBS has assigned a recipient to a JOBSTART-subsidized placement, FAA shall redirect the recipient's CA and Food Stamp Program benefits to the JOBSTART wage pool to reimburse the participant's employer for wages paid to the participant.
- B. The reimbursement shall not exceed the lesser of:
 1. The recipient's gross monthly earnings from the JOBSTART-subsidized placement, calculated as total hours worked times the participant's hourly wage rate; or
 2. A fixed subsidy amount determined by the Department pursuant to the contract with the employer. The reimbursement shall not exceed 40 hours per week at the federal minimum wage.
- C. The Department shall divert the CA and Food Stamp Program benefits to the wage pool beginning with the calendar month following the month the participant 1st receives wages from the subsidized placement and shall continue diverting the benefits until the participant stops holding a subsidized placement.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Section R6-12-1303 repealed; new Section renumbered from R6-12-1304 and amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was renumbered and a new Section renumbered and amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-1304. Treatment of Income

The Department shall exclude as income the participant's gross monthly wages received from the subsidized job placement. Income from other sources shall count pursuant to Article 4.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Section R6-12-1304 renumbered to R6-12-1303; new Section renumbered from R6-12-1305 and amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was renumbered and a new Section was renumbered and amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to

Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-1305. Supplemental Payments

- A. Advance supplemental payments.
 1. The Department shall provide an advance supplemental payment to a JOBSTART participant if the adjusted gross wages the participant is expected to receive in a benefit month are less than the combined cash value of the CA and Food Stamp Program benefits which the participant is eligible to receive for that month.
 2. Each month the Department shall determine the need for a supplemental payment, and the amount of the payment, using prospective budgeting based on anticipated family composition and wages of 40 hours per week during the month at the adjusted gross monthly wage the participant is expected to receive.
 3. The supplemental payment shall equal the cash value of the combined CA and Food Stamp Program benefits the participant is eligible to receive for the month minus the anticipated adjusted gross monthly wages from the subsidized placement.
- B. Emergency supplemental payments. The Department shall provide an emergency supplemental payment to a JOBSTART participant if the adjusted gross wages the participant is expected to receive in a benefit month, plus any supplemental payments already made for that month, are less than the cash value of the monthly food stamp allotment for the participant's household. The Department shall provide an emergency payment no later than 10 days after the date:
 1. The participant requests an emergency payment, or
 2. The Department receives information from the employer which indicates the need for an emergency payment.
- C. Reconciliation supplemental payments.
 1. The Department shall provide a reconciliation supplemental payment to a JOBSTART participant who receives less in adjusted gross wages in a benefit month than the cash value of the combined CA and Food Stamp Program benefits which the participant is eligible to receive for that month due to a reduction in available work hours by the employer.
 2. The Department shall issue the reconciliation supplemental payment no later than the 10th day of the month following the benefit month.
 3. The reconciliation supplemental payment, plus the adjusted gross wages and any other supplemental payments already received for the benefit month, shall not exceed the cash value of the combined CA and Food Stamp Program benefits the participant was eligible to receive for the benefit month.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4). Section R6-12-1305 renumbered to R6-12-1304; new Section renumbered from R6-12-1306 and amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was renumbered and a new Section was renumbered and amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of pro-

posed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-12-1306. Sanctions

- A. If a recipient fails or refuses to comply with JOBSTART participation requirements without good cause the Department shall decrease the CA grant using the progressive sanction process described in R6-12-316.
- B. Good cause is limited to the following circumstances:
 1. The participant has been referred to a job or employment which is the subject of a strike, lockout, work stoppage, or other bona fide labor dispute;
 2. The job requires the participant to join a company union or to resign or refrain from joining a bona fide labor organization;
 3. The participant was incarcerated or ordered to make a court appearance;
 4. Severe weather conditions prevented the participant and other persons similarly situated from traveling to or participating in the employment activity;
 5. The participant or the participant's dependent child suffers a debilitating illness or incapacity; or
 6. The participant has a family crisis, such as:
 - a. Catastrophic loss of home to fire, flood, or other natural disaster; or
 - b. Death of an immediate family member.
- C. JOBS shall determine if good cause exists.
- D. The Department shall apply the appropriate progressive sanction reduction against the monthly CA benefit amount the assistance unit is entitled to receive for the month the sanction is applied.
- E. The progressive sanction benefit reduction shall continue for a minimum of 1 month and until the person complies with JOBS requirements or becomes exempt from JOBS participation.

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Section R6-12-1306 renumbered to R6-12-1305; new Section renumbered from R6-12-1307 and amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was renumbered under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit this change to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this change.

R6-12-1307. Renumbered

Historical Note

Adopted effective November 9, 1995 (Supp. 95-4).
Section R6-12-1307 renumbered to R6-12-1306 effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

ARTICLE 14. GRANT DIVERSION

R6-12-1401. Definitions

"Grant Diversion Payment Period" means the time period that begins the first day of the first eligible month and ends the last day of the third eligible month.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1638, effective August 4, 2013 (Supp. 13-2).

R6-12-1402. Eligibility for Grant Diversion

The Department shall offer a Cash Assistance applicant the option of receiving a lump sum Grant Diversion cash benefit when the applicant satisfies all of the following eligibility criteria:

1. The assistance unit includes an adult parent or non-parent caretaker relative;
2. The assistance unit meets all CA financial and non-financial eligibility criteria, except that the adult parent or non-parent caretaker relative is exempt from the following:
 - a. The child support requirements in R6-12-311;
 - b. The Jobs program participation requirements in R6-12-313;
 - c. The Personal Responsibility Agreement in R6-12-302; and
 - d. The TPEP employment and education requirements in R6-12-606;
3. The assistance unit is eligible for a CA cash benefit of at least one dollar in either the month of application or either of the two months following the month of application;
4. An adult assistance unit member is immediately available for full-time employment and the adult satisfies at least one of the following requirements:
 - a. Was employed in the month the application was received or in at least one of the 12 months preceding the month that the application was received;
 - b. Has a verified offer of full-time employment that will begin within the three month Grant Diversion payment period; or
 - c. Has successfully completed an educational, vocational, or job training program in the month the application was received or in one of the six months preceding the month that the application was received;
5. An adult parent or non-parent caretaker relative in the assistance unit completes and signs the Grant Diversion Applicant Agreement form, which includes the adult's agreement that the short term Grant Diversion cash benefit shall assist and support the adult in securing full-time employment within 90 days of the application date in order to enable the assistance unit to become self-sufficient;
6. The assistance unit has not received a Grant Diversion cash benefit in the 12 months preceding the month that the application was received; and
7. The assistance unit is not currently being sanctioned under R6-12-316.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1638, effective August 4, 2013 (Supp. 13-2).

R6-12-1403. Amount of the Grant Diversion Cash Benefit

The Department shall provide an eligible assistance unit a non-recurring lump sum cash benefit in an amount equal to three times the maximum monthly cash benefit for which the assistance unit would be eligible in the Cash Assistance program, based on zero countable income. The Department shall provide the cash benefit to financially assist an adult assistance unit member in securing full-time employment within the three month Grant Diversion payment period.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1638, effective August 4, 2013 (Supp. 13-2).

R6-12-1404. Treatment of Changes During the Grant Diversion Payment Period

- A. The Department shall exempt the assistance unit from the change reporting requirements in R6-12-901 during the three month Grant Diversion payment period.
- B. When the Department receives a request to add a member to the assistance unit during the three month Grant Diversion payment period, the Department shall comply with subsections (B)(1) through (B)(3).
 1. The Department shall redetermine eligibility including the added member. The Department shall add the new member, effective the date the request is received, only when the assistance unit remains eligible.
 2. When the assistance unit remains eligible, the Department shall add the new member, effective the date the

Department receives the request to add the member, and recalculate the assistance unit's Grant Diversion benefit amount. The Department shall issue the assistance unit a supplemental payment when the amount of the recalculated cash benefit amount exceeds the amount of the cash benefit that was issued to the assistance unit. The supplemental payment shall be a prorated amount from the date the Department received the request to add the member through the end of the three-month Grant diversion payment period.

3. When the recalculated Grant Diversion cash benefit amount is less than the cash benefit that was issued to the assistance unit, the Department shall not add the member to the assistance unit and shall not write an overpayment.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1638, effective August 4, 2013 (Supp. 13-2).

41-1056. Review by agency

A. At least once every five years, each agency shall review all of its rules, including rules made pursuant to an exemption from this chapter or any part of this chapter, to determine whether any rule should be amended or repealed. The agency shall prepare and obtain council approval of a written report summarizing its findings, its supporting reasons and any proposed course of action. The report shall contain a certification that the agency is in compliance with section 41-1091. For each rule, the report shall include a concise analysis of all of the following:

1. The rule's effectiveness in achieving its objectives, including a summary of any available data supporting the conclusions reached.
2. Written criticisms of the rule received during the previous five years, including any written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods.
3. Authorization of the rule by existing statutes.
4. Whether the rule is consistent with statutes or other rules made by the agency and current agency enforcement policy.
5. The clarity, conciseness and understandability of the rule.
6. The estimated economic, small business and consumer impact of the rules as compared to the economic, small business and consumer impact statement prepared on the last making of the rules.
7. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.
8. If applicable, that the agency completed the previous five-year review process.
9. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.
10. A determination that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.
11. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license or agency authorization, whether the rule complies with section 41-1037.

B. An agency may also include as part of the report the text of a proposed expedited rule pursuant to section 41-1027.

C. The council shall schedule the periodic review of each agency's rules and shall approve or return, in whole or in part, the agency's report on its review. The council may grant an agency an extension from filing an agency's report. If the council returns an agency's report, in whole or in part, the council shall inform the agency of the manner in which its report is inadequate and, in consultation with the agency, shall schedule submission of a revised report. The council shall not approve a report unless the report complies with subsection A of this section.

D. The council may review rules outside of the five-year review process if requested by at least four council members.

E. The council may require the agency to propose an amendment or repeal of the rule by a date no earlier than six months after the date of the meeting at which the council considers the agency's report on its rule if the

council determines the agency's analysis under subsection A of this section demonstrates that the rule is materially flawed, including that the rule:

1. Is not authorized by statute.
2. Is inconsistent with other statutes, rules or agency enforcement policies and the inconsistency results in a significant burden on the regulated public.
3. Imposes probable costs, including costs to the regulated person, that significantly exceed the probable benefits of the rule within this state.
4. Is more stringent than a corresponding federal law and there is no statutory authority to exceed the requirements of federal law.
5. Is not clear, concise and understandable.
6. Does not use general permits if required under section 41-1037.
7. Does not impose the least burden to persons regulated by the rule as necessary to achieve the underlying regulatory objective of the rule.
8. Does not rely on valid scientific or reliable principles and methods, including a study, if the rule relies on scientific principles or methods, and a person has submitted an analysis under subsection A of this section questioning whether the rule is based on valid scientific or reliable principles or methods. In making a determination of validity or reliability, the council shall consider the factors listed in section 41-1052, subsection G.

F. An agency may request an extension of no longer than one year from the date specified by the council pursuant to subsection E of this section by sending a written request to the council that:

1. Identifies the reason for the extension request.
2. Demonstrates good cause for the extension.

G. The agency shall notify the council of an amendment or repeal of a rule for which the council has set an expiration date under subsection E of this section. If the agency does not amend or repeal the rule by the date specified by the council under subsection E of this section or the extended date under subsection F of this section, the rule automatically expires. The council shall file a notice of rule expiration with the secretary of state and notify the agency of the expiration of the rule.

H. The council may reschedule a report or portion of a report for any rule that is scheduled for review and that was initially made or substantially revised within two years before the due date of the report as scheduled by the council.

I. If an agency finds that it cannot provide the written report to the council by the date it is due, the agency may file an extension with the council before the due date indicating the reason for the extension. The timely filing for an extension permits the agency to submit its report on or before the date prescribed by the council.

J. If an agency fails to submit its report, including a revised report, pursuant to subsection A or C of this section, or file an extension before the due date of the report or if it files an extension and does not submit its report within the extension period, the rules scheduled for review expire and the council shall:

1. Cause a notice to be published in the next register that states the rules have expired and are no longer enforceable.
2. Notify the secretary of state that the rules have expired and that the rules are to be removed from the code.

3. Notify the agency that the rules have expired and are no longer enforceable.

K. If a rule expires as provided in subsection J of this section and the agency wishes to reestablish the rule, the agency shall comply with the requirements of this chapter.

L. Not less than ninety days before the due date of a report, the council shall send a written notice to the head of the agency whose report is due. The notice shall list the rules to be reviewed and the date the report is due.

M. A person who is regulated or could be regulated by an obsolete rule may petition the council to require an agency that has the obsolete rule to consider including the rule in the five-year report with a recommendation for repeal of the rule.

N. A person who is required to obtain or could be required to obtain a license may petition the council to require an agency to consider including a recommendation for reducing a licensing time frame in the five-year report.

18-305. Reports; electronic submission; exception; posting

- A. Notwithstanding any other law, state agencies may submit all statutorily required reports and budget estimates electronically, except those required by section 35-113.
- B. Each state agency shall post all statutorily required reports and budget estimates on the state agency's website.
- C. Each state agency shall consult with the secretary of state to ensure that the Arizona state library, archives and public records receives an adequate number of copies of the statutorily required reports and budget estimates in a format that is agreed on for the purposes of the state archives pursuant to section 41-151.08.
- D. Each state agency that maintains a generally accessible internet website, or for which a generally accessible website is maintained, shall include a link on that website to the website of the ombudsman-citizens aide and a statement that reads as follows: "The ombudsman-citizens aide helps citizens to resolve ongoing issues with state agencies."

DEPARTMENT OF AGRICULTURE
Title 3, Chapter 2, Articles 1-11



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 2, 2022

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: July 1, 2022

SUBJECT: DEPARTMENT OF AGRICULTURE
Title 3, Chapter 2, Articles 1-11

Summary

This Five-Year Review Report (5YRR) from the Department of Agriculture (Department) relates to rules in Title 3, Chapter 2, Articles 1-11 regarding: Meat and Poultry Inspection, Feeding of Animals, Animal Disease Prevention and Control, State-Federal Cooperative Disease Control Program, Health Requirements Governing Admission of Animals, livestock inspection, Dairy and Dairy Products Control, Egg and Egg Products Control, Aquaculture, and Voluntary Egg Grading Program.

The Department completed the course of action indicated on the previous 5YRR, which the Council approved in 2017, through numerous rulemakings as outlined in more detail in Section 10 of the Departments report.

Proposed Action

First, the Department proposes to update R3-2-202 to incorporate by reference the 2021 version of 9 CFR, Chapter III to maintain equal status with the United States Department of Agriculture (USDA). Second, the Department proposes to consider changing rules in Article 6 to be less restrictive and more consistent with other states, if allowed by statute. Third, the Department proposes to amend R3-2-801 to incorporate by reference the most recent Pasteurized

Milk Ordinance (PMO). Fourth, the Department proposes to amend rules in Article 9 to conform with current practices in enforcement, if allowed by statute. Finally, the Department proposes to amend rules in Article 10 by updating the certification requests to include important diseases and exclude unimportant diseases. The Department plans to submit a rulemaking by July 2023 to amend these rules.

1. **Has the agency analyzed whether the rules are authorized by statute?**

Yes, the Department cites both general and specific statutory authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

For all articles, the Division believes that the economic, small business and consumer impact statement prepared on the last making of each rule was accurate and complete.

Stakeholders are identified as the Division and members of the agriculture industry.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Division states that they have determined that the benefits of all Articles in Title 3, Chapter 2, are deemed to be the minimum required for the safety of the agriculture industry while being supportive of commerce in Arizona without undue hardships, costs or barriers to business. The benefits of the rules outweigh the minimal costs of the rules and imposes the least burden and cost to any regulated persons.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Department has not received any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Department indicates the rules are clear, concise and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes, the Department indicates the rules are consistent with other rules and statutes with the exception of the following:

R3-2-801 - Establishes definitions of additional terms used in the rules.

Specifically, R3-2-801 incorporates by reference the 2017 edition of the federal PMO. There are later editions of the PMO, and the rule needs to be amended to incorporate the appropriate revision by reference.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

Yes, the Department indicates that the rules are effective in achieving their objectives with the exception of the following:

Article 10 - Aquaculture

Specifically, the Department indicates many of the aquaculture rules were originally written in 1993 and then updated in 2002-2004. The Department states much has changed in the aquaculture industry in the last 20-30 years with respect to species cultured and practices.

8. Has the agency analyzed the current enforcement status of the rules?

Yes, the Department indicates the rules are enforced as written.

9. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

No, the Department indicates that the rules are not more stringent than corresponding federal law.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

The Department indicates that the rules in Articles 1, 4, 5 and 11 do not require a permit or license and the rules Article 10 were adopted prior to July 29, 2010 so the rules are exempt from A.R.S. § 41-1037.

The Department indicates that the rules in Article 2 require a license and comply with A.R.S. § 41-1037.

The Department indicates that the rules in Article 3 and 6 require permits and comply with A.R.S. § 41-1037.

The Department indicates that the rules in Article 7 are not subject to the general permit requirements of A.R.S. § 41-1037 because the requirements for the certificate are established by state statute under A.R.S. §§ 3-1331 to 3-1350.

The Department indicates the rules in Article 8 are exempt from the general permit requirement in A.R.S. § 41-1037 because the licenses are required by A.R.S. § 3-607.

The Department indicates the rules in Article 9 are exempt from the general permit requirement in A.R.S. § 41-1037 because the licenses are required by A.R.S. § 3-715.

11. Conclusion

This 5YRR from the Department of Agriculture relates to rules in Title 3, Chapter 2, Articles 1-11. The Department indicates the rules are generally clear, concise, understandable, consistent, effective and enforced as written. The Department proposes to amend several rules to be more clear and consistent.

Council staff finds the Department submitted a report that meets the requirements of A.R.S. § 41-1056. Council staff recommends approval of this report.

DOUGLAS A. DUCEY
Governor



MARK W. KILLIAN
Director

Arizona Department of Agriculture

1688 W. Adams Street, Phoenix, Arizona 85007
(602) 542-4293 FAX (602) 542-4290

Via Email: grrc@azdoa.gov

Nicole Sornsins, Chair

Governor's Regulatory Review Council

100 N 15th Ave, Suite 305

Phoenix, AZ 85007

RE: Arizona Department of Agriculture, A.A.C Title 3, Chapter 2, Articles 1 through 11, Five Year Review Report

Dear Ms. Sornsins:

Please find enclosed the five Year Review Report of the Arizona Department of Agriculture, Animal Services Division (hereafter identified as "The Division") for A.A.C Title 3, Chapter 2, Articles 1 through 11 (the "Rules"), which is due May 31, 2022.

The Division has reviewed all of the Rules, and does not intend for any Rules to expire under A.R.S. § 41-1056(J). The Division certifies that it is in compliance with A.R.S. § 41-1091..

For questions about this report, please contact Jerome Rosa at 602-542-7186 or jrosa@azda.gov

Sincerely,

Mark Killian

Director

**ARIZONA DEPARTMENT OF AGRICULTURE
ANIMAL SERVICES DIVISION**

FIVE-YEAR REVIEW REPORT

**TITLE 3. AGRICULTURE
CHAPTER 2. DEPARTMENT OF AGRICULTURE – ANIMAL SERVICES DIVISION
ARTICLES 1 THROUGH 11**

July 19, 2022

1. Authorization of the rules by existing statutes:

Authorizing statutes: A.R.S. §§ 3-107(A)(1); 3-603; 3-605; 3-612; 3-667; 3-705 through 3-708; 3-710; 3-1203 through 3-1205; 3-2662; 3-2903; 3-2904.

Implementing statutes: A.R.S. §§ 3-214; 3-607; 3-611; 3-612; 3-665; 3-712; 3-716; 3-1203; 3-1206 through 3-1214; 3-1233; 3-1331; 3-1336; 3-1337; 3-1344 through 3-1346; 3-1350; 3-1452; 3-1741 through 3-1742; 3-1771 through 3-1776; 3-2002; 3-2003; 3-2046; 3-2049; 3-2050; 3-2051; 3-2081; 3-2161; 3-2168; 3-2662 through 3-2669; 3-2695; 3-2905; 3-2907; 3-2908.

2. The objective of each rule:

Rule	Objective
ARTICLE 1. GENERAL PROVISIONS	
R3-2-101	Establishes definitions of additional terms used in Chapter 2.
R3-2-102	Establishes licensing time frames for overall time-frame, administrative completeness review, and substantive review.
R3-2-103	Recodified.
R3-2-104	Recodified.
R3-2-105	Recodified.
R3-2-106	Recodified.
R3-2-107	Recodified.
R3-2-108	Recodified.
R3-2-109	Recodified.
Table 1	Establishes licensing time frames for inspections depicted in table format and organized by calendar days.
ARTICLE 2. MEAT AND POULTRY INSPECTION	
R3-2-201	Sets forth the definitions used in Article 2.
R3-2-202	Sets out procedures for the inspection and slaughter of livestock and poultry. The federal government requires these procedures to be at least equal to federal

	law so this rule incorporates those federal laws.
R3-2-203	Sets out the required licenses related to slaughtering livestock and selling or exchanging meat or poultry, how to obtain a license, and recordkeeping requirements. The rule also sets out temporary fee increases for those licenses authorized by recent session laws.
R3-2-204	Sets out requirements of slaughtering establishments operating under state meat inspection service for maintaining a clean and sanitary condition.
R3-2-205	Expired.
R3-2-206	Describes what can be done with dead animals and dead animal parts that are not for human consumption. In general, it prohibits a person from buying, selling, storing, transporting, receiving, or collecting dead animals or dead animal parts except as specifically allowed by this rule.
R3-2-207	Establishes the minimum requirements for animal food manufacturing plants, lists accepted decharacterizing or denaturant agents and procedures for their use, describes labeling requirements to make sure the products are for animal food only, lists businesses that may purchase the product, and prescribes vehicle labeling requirements for transportation of pet food.
R3-2-208	Sets out the conditions under which diseased animals may be processed, sold, or stored at premises where food is sold or prepared for human consumption. The rule also sets out when injured animals may be slaughtered for human consumption.
R3-2-209	Sets out requirements of exempt non-mobile slaughtering establishments for maintaining a clean and sanitary condition.
ARTICLE 3. FEEDING OF ANIMALS	
R3-2-301	Repealed.
R3-2-302	Sets out requirements for garbage feeding of swine and required permits to do so for the prevention of disease spread.
ARTICLE 4. ANIMAL DISEASE PREVENTION AND CONTROL	
R3-2-401	Establishes definitions of additional terms used in Article 4.
R3-2-402	Establishes situational awareness for disease control purposes.
R3-2-403	Sets out requirements for animal quarantine orders.
R3-2-404	Sets out requirements for importation, manufacture, sale, and distribution of biologics.
R3-2-405	Establishes action for animal depopulation for disease control response.
R3-2-406	Establishes rules for designated feedlots in disease control response.
R3-2-407	Establishes requirements for disease control of Equine Infectious Anemia (EIA).
R3-2-408	Establishes the disposition of livestock exposed to rabies.
R3-2-409	Sets out requirements for rabies vaccination of animals.
R3-2-410	Establishes the requirements for the disease control of trichomonas.
R3-2-411	Repealed.
R3-2-412	Repealed.

R3-2-413	Establishes rules for the intrastate movement of sheep and goats.
ARTICLE 5. STATE-FEDERAL COOPERATIVE DISEASE CONTROL PROGRAM	
R3-2-501	Establishes the requirements for the disease control and eradication of tuberculosis.
R3-2-502	Repealed.
R3-2-503	Establishes the requirements for the disease control and eradication of brucellosis.
R3-2-504	Establishes the requirements for the disease control and eradication of pseudorabies.
R3-2-505	Establishes the requirements for the disease control and eradication of scrapie.
ARTICLE 6. HEALTH REQUIREMENTS GOVERNING ADMISSION OF ANIMALS	
R3-2-601	Repealed.
R3-2-602	Establishes rules for importation requirements of animals into Arizona.
R3-2-603	Repealed.
R3-2-604	Repealed.
R3-2-605	Establishes rules for hold orders for animals illegally entering the state.
R3-2-606	Establishes rules for validity of certificate of veterinary inspection.
R3-2-607	Establishes rules for issuing entry permit numbers.
R3-2-608	Repealed.
R3-2-609	Establishes prohibitions on and procedures for diversion of animals in transit.
R3-2-610	Sets out requirements for the use of approved laboratories in the official testing of animals for proposed movement into Arizona.
R3-2-611	Establishes the requirements and standards for transporters of animals through or into the state of Arizona.
R3-2-612	Establishes the requirements for the importation of cattle and bison into the state of Arizona.
R3-2-613	Establishes the requirements for the importation of swine into the state of Arizona.
R3-2-614	Establishes the requirements for the importation of sheep and goats into the state of Arizona.
R3-2-615	Establishes the requirements for the importation of equine into the state of Arizona.
R3-2-616	Establishes the requirements for the importation of cats and dogs into the state of Arizona.
R3-2-617	Establishes the requirements for the importation of poultry into the state of Arizona.
R3-2-618	Establishes the requirements for the importation of psittacine birds into the state of Arizona.
R3-2-619	Repealed.
R3-2-620	Establishes the requirements for the importation of zoo animals into the state of

	Arizona.
R3-2-621	Expired.
R3-2-622	Expired.
ARTICLE 7. LIVESTOCK INSPECTION	
R3-2-701	Sets out requirements for the inspection of range cattle, describes who can obtain self-inspection and when it can be used for range cattle, and sets out collection of fees for inspection.
R3-2-702	Sets out the definitions used in Article 7; the application process for the self-inspection certificates, fees to be collected; and the self-inspection certificate rules.
R3-2-703	Sets out the requirements for seasonal self-inspection certificates on exhibition livestock.
R3-2-704	Emergency Expired.
R3-2-705	Repealed.
R3-2-706	Repealed
R3-2-707	Sets out the fee for obtaining ownership and hauling certificate for equines.
R3-2-708	Sets out Arizona equine rescue facility registration requirements.
ARTICLE 8. DAIRY AND DAIRY PRODUCTS CONTROL	
R3-2-801	Establishes definitions of additional terms used in the rules.
R3-2-802	Requires milk and milk products, unless exempt, to meet the standards in the federal Pasteurized Milk Ordinance.
R3-2-803	Sets out labeling requirements for milk and milk products.
R3-2-804	Sets out requirements for the advertising, display, labeling, and sale of trade products.
R3-2-805	Sets out health, sanitation, and labeling requirements for raw milk.
R3-2-806	Sets out standards for the construction of a parlor or milk room to ensure sanitary requirements.
R3-2-807	Sets out standards for the construction of frozen dessert plants as well as sanitary standards for processing frozen desserts at those plants.
Table 1	Establishes time temperature standards for pasteurization.
R3-2-808	Sets out additional processing standards for retail establishments that reconstitute frozen desserts from powdered mixes.
R3-2-809	Sets out procedures for dairies to exclude medicinal, chemical, and radioactive residues in milk and the Department's enforcement options.
R3-2-810	Sets out license fees for specific dairy occupations for the 2022 fiscal year.
R3-2-811	Provides the opportunity for a dairy farmer to apply for a voluntary permit, and it enables the milk processor to ship product across state lines.
ARTICLE 9. EGG AND EGG PRODUCTS CONTROL	

R3-2-901	Establishes definitions of additional terms used in the rules.
R3-2-902	Sets out standards, grades, and weight classes for shell eggs.
Table I	Establishes weight classes for pasteurized in-shell eggs.
R3-2-903	Sets out egg sampling procedures by inspectors.
Table II	Establishes the minimum number of cases and cartons comprising a representative sample.
R3-2-904	Sets reporting periods for reports of sold eggs.
R3-2-905	Sets out the inspection fee.
R3-2-906	Describes prohibited activities that are subject to civil penalties.
Table III	Establishes the amount of civil penalty per category.
R3-2-907	Sets out poultry husbandry guidelines and requires eggs sold in Arizona to be from hens raised according to the guidelines.
R3-2-908	Sets out facility and sanitary operation requirements for eggs.
R3-2-909	Repealed.
ARTICLE 10. AQUACULTURE	
R3-2-1001	Establishes definitions of terms used in the Article.
R3-2-1002	Establishes license and inspection fees for aquaculture facilities.
R3-2-1003	Establishes general licensing provisions.
R3-2-1004	Establishes specific licensing provisions for special facilities.
R3-2-1005	Prevents removal of aquatic animals from fee fishing facilities unless certain conditions exist.
R3-2-1006	Sets out requirements for aquaculture processor licenses.
R3-2-1007	Sets out requirements for aquaculture transporter licenses.
R3-2-1008	Repealed.
R3-2-1009	Provides for inspection to obtain disease-free certifications.
R3-2-1010	Sets out requirements for importation of aquatic animals.
ARTICLE 11. VOLUNTARY EGG GRADING PROGRAM	
R3-2-1101	Establishes definitions of terms used in the egg-grading Article.
R3-2-1102	Establishes the general provisions and the standards used for egg-grading services.
R3-2-1103	Describes the equipment and facilities required to be provided for egg-grading services
R3-2-1104	Provides service-schedule availability.
R3-2-1105	Establishes requirements for egg-grading service application.

R3-2-1106	Requires authority of applicant to represent the company requesting egg-grading services.
R3-2-1107	Establishes the order of service as “first-come first-served.”
R3-2-1108	Describes the types of available egg-grading services.
R3-2-1109	Describes the basis for suspension of egg-grading services.
R3-2-1110	Describes the authorization to use AZDA grademarks.
R3-2-1111	Describes the form of AZDA grademarks.
Illustration 1	Illustrates approved grademark.
Illustration 2	Illustrates approved grademark.
Illustration 3	Illustrates approved grademark.
Illustration 4	Illustrates approved grademark.
Illustration 5	Illustrates approved grademark.
R3-2-1112	Requires a lot marking for AZDA-graded eggs.
R3-2-1113	Provides for the use of retention tags for eggs and equipment that is not in compliance with the rule.
R3-2-1114	Requires supervision over the use and handling of grademarked materials.
R3-2-1115	Establishes requirements for eggs identified with AZDA grademarks.
R3-2-1116	Sets out requirements for payment of fees and costs.
R3-2-1117	Lists the charges for egg-grading services.
R3-2-1118	Sets out circumstances deemed to be termination of egg-grading services by recipient.
R3-2-1119	Allows for mutual termination of egg-grading services.
R3-2-1120	Sets forth appeal procedures.
R3-2-1121	Sets out forms and procedures for issuance of AZDA grading certificates.
R3-2-1122	Establishes minimum facility and operating requirements for egg-grading and packing plants
R3-2-1123	Establishes health and hygiene requirements for personnel.
R3-2-1124	Establishes parameters for the use of "Produced From" labeling.

R3-2-1125	Describes procedures for additional specification egg grading.
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3. Are the rules effective in achieving their objectives?

- Article 1. Yes X No
- Article 2. Yes X No
- Article 3. Yes X No
- Article 4. Yes X No
- Article 5. Yes X No
- Article 6. Yes X No
- Article 7. Yes X No
- Article 8. Yes X No
- Article 9. Yes X No
- Article 10. Yes No X
- Article 11. Yes X No

With the exception noted below, the rules in Title 3, Chapter 7 are effective in achieving their objectives.

Article 10: Many of the aquaculture rules were originally written in 1993 and then updated in 2002-2004. Much has changed in the aquaculture industry in the last 20-30 years with respect to species cultured and practices. **The changes needed to update the rules are listed in section 14 below.**

4. Are the rules consistent with other rules and statutes?

- Article 1. Yes X No
- Article 2. Yes X No
- Article 3. Yes X No
- Article 4. Yes X No
- Article 5. Yes X No
- Article 6. Yes X No
- Article 7. Yes X No
- Article 8. Yes No X
- Article 9. Yes X No
- Article 10. Yes X No
- Article 11. Yes X No

With the minor exceptions noted below, the rules in Title 3, Chapter 2, are consistent with other rules and statutes.

Exceptions:

- Article 8: R3-2-801 incorporates by reference the 2017 edition of the federal Pasteurized Milk Ordinance (“PMO”). There are later editions of the PMO, and the rule needs to be amended to incorporate the appropriate revision by reference.

5. Are the rules enforced as written?

Article 1.	Yes <u> X </u> No <u> </u>
Article 2.	Yes <u> X </u> No <u> </u>
Article 3.	Yes <u> X </u> No <u> </u>
Article 4.	Yes <u> X </u> No <u> </u>
Article 5.	Yes <u> X </u> No <u> </u>
Article 6.	Yes <u> X </u> No <u> </u>
Article 7.	Yes <u> X </u> No <u> </u>
Article 8.	Yes <u> X </u> No <u> </u>
Article 9.	Yes <u> X </u> No <u> </u>
Article 10.	Yes <u> X </u> No <u> </u>
Article 11.	Yes <u> X </u> No <u> </u>

6. Are the rules clear, concise, and understandable?

Article 1.	Yes <u> X </u> No <u> </u>
Article 2.	Yes <u> X </u> No <u> </u>
Article 3.	Yes <u> X </u> No <u> </u>
Article 4.	Yes <u> X </u> No <u> </u>
Article 5.	Yes <u> X </u> No <u> </u>
Article 6.	Yes <u> X </u> No <u> </u>
Article 7.	Yes <u> X </u> No <u> </u>
Article 8.	Yes <u> X </u> No <u> </u>
Article 9.	Yes <u> X </u> No <u> </u>
Article 10.	Yes <u> X </u> No <u> </u>
Article 11.	Yes <u> X </u> No <u> </u>

7. Has the agency received written criticisms of the rules within the last five years?

Article 1.	Yes <u> </u> No <u> X </u>
Article 2.	Yes <u> </u> No <u> X </u>
Article 3.	Yes <u> </u> No <u> X </u>
Article 4.	Yes <u> </u> No <u> X </u>

Article 5.	Yes _____ No <u> X </u>
Article 6.	Yes _____ No <u> X </u>
Article 7.	Yes _____ No <u> X </u>
Article 8.	Yes _____ No <u> X </u>
Article 9.	Yes _____ No <u> X </u>
Article 10.	Yes _____ No <u> X </u>
Article 11.	Yes _____ No <u> X </u>

The Division has not received written criticisms of the rules within the last five years.

8. Economic, small business, and consumer impact comparison:

For all Articles, the Division believes that the economic, small business and consumer impact statement prepared on the last making of each rule was accurate and complete.

9. Has the agency received any business competitiveness analyses of the rules?

Article 1.	Yes _____ No <u> X </u>
Article 2.	Yes _____ No <u> X </u>
Article 3.	Yes _____ No <u> X </u>
Article 4.	Yes _____ No <u> X </u>
Article 5.	Yes _____ No <u> X </u>
Article 6.	Yes _____ No <u> X </u>
Article 7.	Yes _____ No <u> X </u>
Article 8.	Yes _____ No <u> X </u>
Article 9.	Yes _____ No <u> X </u>
Article 10.	Yes _____ No <u> X </u>
Article 11.	Yes _____ No <u> X </u>

The Division has not received any business competitiveness analyses of the rules.

10. Has the agency completed the course of action indicated in the agency’s previous five-year-review report?

Article 1. The division completed the course of action indicated on the previous 5-year review report. The rules were amended effective as of June 8, 2020.

Article 2. The division completed the course of action indicated on the previous 5-year review report. R3-2-208 was amended effective as of June 8, 2020. In addition, R3-2-203 was amended effective September 29, 2021.

Article 3. The division completed the course of action indicated on the previous 5-year review report. R3-3-301 was repealed, and R3-3-302 was amended in the notice of final rule making effective as of June 8, 2020.

Article 4. The division completed the course of action indicated on the previous 5-year review report. All sections of Article 4 were amended, effective June 8, 2020.

Article 5. The division completed the course of action indicated on the previous 5-year review report. All sections of Article 5 were amended, effective June 8, 2020.

Article 6. The division completed the course of action indicated on the previous 5-year review report. All sections of Article 6, except R3-2-610, were amended, effective June 8, 2020.

Article 7. The division completed the course of action indicated on the previous 5-year review report. R3-2-701 was amended effective September 29, 2021. All other sections of Article 7, except R3-2-707, were amended, effective June 8, 2020.

Article 8. The division completed the course of action indicated on the previous 5-year review report. R3-2-810 was amended effective September 29, 2021. All other sections of Article 8, except R3-2-802, R3-2-806, R3-2-809, and R3-2-811, were amended, effective June 8, 2020.

Article 9. The division completed the course of action indicated on the previous 5-year review report. All sections of Article 9, except R3-2-903 through R3-2-905, were amended, effective June 8, 2020.

Article 10. The previous proposed action from the 2017 5YRR was to maintain the rules as written.

Article 11. Not applicable. This Article was not in existence when the last 5-year review was done.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to the regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

The Division has determined that the benefits of all Articles in Title 3, Chapter 2, are deemed to be the minimum required for the safety of the agriculture industry while being supportive of commerce in Arizona without undue hardships, costs or barriers to business. The benefits of the rules outweigh the minimal cost of the rules and imposes the least burden and cost to any regulated persons.

12. Are the rules more stringent than corresponding federal laws?

Article 1.	Yes _____ No <u> X </u>
Article 2.	Yes _____ No <u> X </u>
Article 3.	Yes _____ No <u> X </u>

Article 4.	Yes _____ No <u> X </u>
Article 5.	Yes _____ No <u> X </u>
Article 6.	Yes _____ No <u> X </u>
Article 7.	Yes _____ No <u> X </u>
Article 8.	Yes _____ No <u> X </u>
Article 9.	Yes _____ No <u> X </u>
Article 10.	Yes _____ No <u> X </u>
Article 11.	Yes _____ No <u> X </u>

None of the rules in Title 3, Chapter 2, are more stringent than corresponding federal laws.

13. For rules adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

Articles 1, 4, 5. Not applicable. These Articles do not require the issuance of a regulatory permit, license, or agency authorization.

Article 2. R3-2-203 is the only rule in this Article under which a license is required. Separate licenses are issued for the different categories of slaughter businesses: broker, exempt processor, distributor, jobber, pet food manufacturer, processor, storage provider, and transporter, as required by A.R.S. § 3-2081. Each category carries a separate license fee, but the separate license for each category may qualify as a general permit, as it requires the performance of similar activities under general standards within that category. The license fee for slaughter is dependent on volume of business, which is necessary to minimize negative effect on smaller businesses. Other licensed categories pay a flat license fee. One general permit for all categories would not be possible, in view of the different nature and regulatory requirements for each profession.

Article 3. The regulatory permit issued under R3-2-302 is a specific permit for a specific activity (feeding garbage to swine), which is considered a public health hazard, and is subject to federal rules, as well as regulation and inspection by the Division under A.R.S. §§ 3-2661 to A.R.S. 3-2669. Nevertheless, it may be considered a “general permit” for a very narrow class, in view of the fact that the requirements are the same for all permittees, and the license fee is the same for all permittees.

Article 6. Under R3-2-602, all animals transported into Arizona must have an entry permit number documented on a certificate of veterinary inspection. This would qualify as a general permit as it applies to importers of any type of livestock, dogs, cats, poultry, zoo animals, and Psittacine birds (macaws, parakeets, and parrots). There is no fee associated with this permit.

Article 7. Under A.R.S. §§ 3-1331 to 3-1350, cattle, sheep, goats and swine that are transferred, sold, slaughtered, or transported within Arizona must be inspected and obtain an inspection certificate. Inspections are conducted by the Division or under a self-inspection program. Division inspections and fees are established by statute, specifically, A.R.S. §§ 3-1337 and 13-1346. Under R3-2-702, participants in a self-inspection program are required to meet certain requirements and pay a fee to obtain a book of self-inspection certificates, the cost of which depends on the number and type of certificates in the book. Self-inspection is a voluntary program. Inspection of equines is also voluntary, and is covered by A.R.S. §§ 3-1344 and 3-1345, and any fees obtained are earmarked for a specific fund, under A.R.S. § 3-1345.01. The exception to this is registration and \$75 fee on equine rescue facilities, under A.R.S. § 3-1350 and R3-2-708. The Division believes that no rule in Article 7 is subject or amenable to the general permit requirements of A.R.S. § 41-1037. The self-inspection program and equine inspections are not required by the Division, and other requirements are specifically established by statute and not by rule.

Article 8. Except for producers of raw milk (a dairy farm), separate occupational licenses are required by A.R.S. § 3-607, which have been implemented by R3-2-810. Based on the varied requirements for each dairy occupation and on the regulatory scheme contemplated by the PMO, these separate licenses are not amenable to a general permit. A general permit to cover all dairy occupations is not technically feasible and would not meet the requirements of A.R.S. § 3-607 or the PMO. Producers of raw milk (a dairy farm) are permitted under R3-2-811, for which there is no fee, as contemplated by the PMO, and which allows the farm to transport raw milk interstate.

Article 9. Licenses for egg producers are enacted in A.R.S. § 3-715. Article 9 does not separately require a regulatory permit, license, or agency authorization, therefore A.R.S. § 41-1037 does not apply to this Article.

Article 10. All licensing rules in this Article were adopted prior to 2010, and are therefore exempt from application of A.R.S. § 41-1037. Further, separate occupational licenses are required by A.R.S. § 3-2907, which have been implemented by this Article. Based on the varied requirements for each aquaculture occupation, these separate licenses are not amenable to a general permit. A general permit to cover all aquaculture occupational licenses is not technically feasible and would not meet the requirements of A.R.S. § 3-2907 to ensure the different safety measures for different aquaculture occupations. However, a certificate of aquatic health is required under A.R.S. § 3-2905, and is implemented in R3-2-1009 and R3-2-1010. There is no cost to obtain the certificate of aquatic health, and it could be considered to be a general permit, applicable to multiple aquatic occupations with similar activities.

Article 11. Article 11 was adopted in 2020 to allow egg producers to obtain egg-grading service by the Division instead of egg-grading by the U.S. Department of Agriculture. The Article was adopted to comply with USDA and Food and Drug Administration rules, and provides producers an option for egg-grading that is voluntary. The Division charges fees for the service, but there is no regulatory permit, license, or agency authorization that is required by the Division.

14. Proposed course of action:

Articles 1, 3, 4, 5, 7, 9, & 11. The Division intends to continue review of the rules to verify that they are enforced as written; that the rules are clear, concise, and understandable; that any criticism received is addressed; and that the costs associated to the program are the least burdensome.

Article 2. The Division intends to update R3-2-202 to incorporate by reference the current 2021 version of 9 CFR, Chapter III. This is needed for the Meat and Poultry Inspection program to maintain equal status with USDA. The Division intends to submit this change no later than July, 2023.

Article 6. The Division is considering the following changes, if allowed by statute:

- Amend R3-2-614 (governing importation of sheep and goats) to be consistent with R3-2-613 (governing importation of swine) in requiring documentation of the certified brucellosis-free flock ID number on the certificate of veterinary inspection to signify that a breeding ram originates from a certified brucellosis-free flock in lieu of the brucellosis testing requirement.

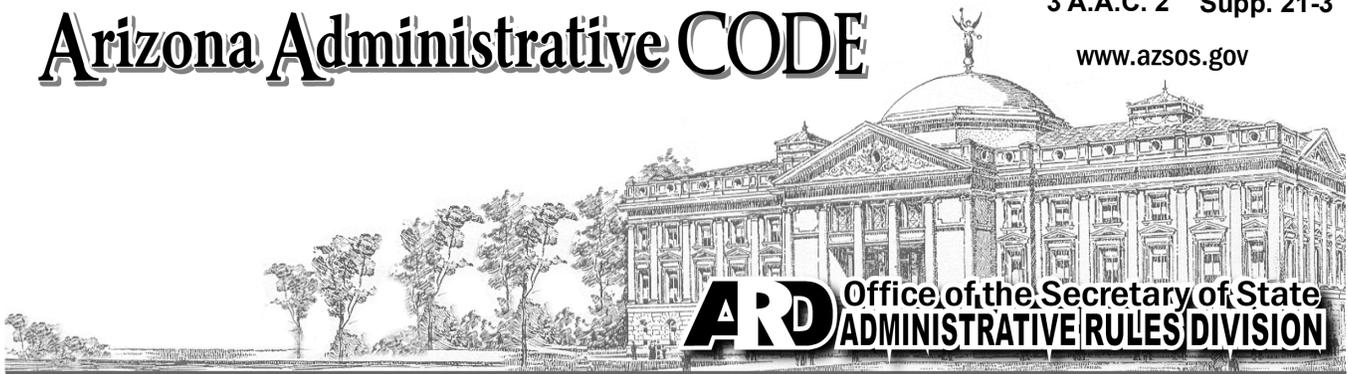
- In order to be consistent with other states and less restrictive, amend R3-2-615 to allow submission of digital photographs in place of, or in addition to, microchips as animal identification on Extended Equine Certificates of Veterinary Inspection (EECVI). The Division intends to submit this change no later than July, 2023.

Article 8. The Division is considering the following changes:

- Amend R3-2-801 to incorporate by reference the most recent PMO. The Division intends to submit this change no later than July, 2023.

Article 10. The Division is considering the following changes, no later than July, 2023, if allowed by statute:

- The Certificate of Aquatic Health defined in R3-2-1001 and the certification request in R3-2-1009 needs to be updated to include diseases important to that particular species of fish being cultured and to exclude diseases unimportant or that do not affect that particular species. The way the rule is written now, the Certificate of Aquatic Health would require testing for diseases that do not affect some species or are not the typical species of concern (ie. diseases of cold water fish in warm water fish).
- Regarding importation (R3-2-1010), the Certificate of Aquatic Health should be updated as described above; and in lieu of a Certificate of Aquatic Health, a Certificate of Veterinary Inspection could be allowed if accompanied by testing documentation for diseases of concern.
- If necessary, update the list of diseases required to be reported by veterinarians in R3-2-402; and consider requiring a reporting obligation for producers in R3-2-1009, for confirmed or suspected diseases of concern.



TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE - ANIMAL SERVICES DIVISION

The table of contents on page one contains links to the referenced page numbers in this Chapter.
Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

This Chapter contains rules that were filed to be codified in the *Arizona Administrative Code* between the dates of July 1, 2021 through September 30, 2021

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Questions about these rules? Contact:

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The release of this Chapter in Supp. 21-3 replaces Supp. 20-3, 1-53 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), Administrative Rules Division, accepts state agency rule notice and other legal filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into Titles. Titles are divided into Chapters. A Chapter includes state agency rules. Rules in Chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each Chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2021 is cited as Supp. 21-1. Supplements are traditionally released three to four weeks after the end of the quarter because filings are accepted until the last day of the quarter.

Please note: The Office publishes by Chapter, not by individual rule Section. Therefore there might be only a few Sections codified in each Chapter released in a supplement. This is why the Office lists only updated codified Sections on the previous page.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate Chapters of the Code in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* Chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, www.azleg.gov. An agency’s authority note

to make rules is often included at the beginning of a Chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a Chapter can be found at the Secretary of State’s website, www.azsos.gov under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor’s notes at the beginning of a Chapter provide information about rulemaking Sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing Chapters using these paper colors.

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Rhonda Paschal, rules managing editor, assisted with the editing of this Chapter.



Administrative Rules Division
The Arizona Secretary of State electronically publishes each A.A.C. Chapter with a digital certificate. The certificate-based signature displays the date and time the document was signed and can be validated in Adobe Acrobat Reader.

TITLE 3. AGRICULTURE

CHAPTER 2. DEPARTMENT OF AGRICULTURE - ANIMAL SERVICES DIVISION

(Authority: A.R.S. §§ 3-1201 et seq., 3-601 et seq., and 3-701 et seq., and 3-2901 et seq.)

Supp. 21-3

Chapter 2, Articles 1 through 7 renumbered from Title 3, Chapter 9, Articles 1 through 7; Article 8, consisting of Sections R3-2-801 through R3-2-808, renumbered from Title 3, Chapter 5, Article 1, Sections R3-5-01 through R3-5-08; Article 9, consisting of Sections R3-2-901 through R3-2-909 renumbered from Title 3, Chapter 6, Article 1, Sections R3-6-101 through R3-6-109 (Supp. 91-4).

Article 1 consisting of Sections R3-9-101 through R3-9-103; Article 2 consisting of Sections R3-9-201 through R3-9-208; Article 3 consisting of Sections R3-9-301 and R3-9-302; Article 4 consisting of Sections R3-9-401 through R3-9-409; Article 5 consisting of Sections R3-9-501 through R3-9-504; Article 6 consisting of Sections R3-9-601 through R3-9-620; Article 7 consisting of Sections R3-9-701 and R3-9-702 adopted effective August 19, 1983.

Former Article 1 consisting of Sections R3-9-01 through R3-9-11; Article 2 consisting of Sections R3-9-16 through R3-9-26; Article 3 consisting of Sections R3-9-22 through R3-9-35; Article 4 consisting of Sections R3-9-46 through R3-9-48 repealed effective August 19, 1983.

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Article 11, consisting of Sections R3-2-1101 through R3-2-1109, expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3).

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CHAPTER 2. DEPARTMENT OF AGRICULTURE - ANIMAL SERVICES DIVISION

ARTICLE 1. GENERAL PROVISIONS**R3-2-101. Definitions**

In addition to the definitions provided in A.R.S. §§ 3-1201, 3-1451, and 3-1771, the following terms apply to this Chapter:

“Accredited veterinarian” means a veterinarian approved by the State Veterinarian and USDA Area Veterinarian In Charge (A.V.I.C.) to perform functions required by cooperative State-Federal animal disease control and eradication programs.

“Animal” means livestock, bison, dogs, cats, rabbits, rodents, aquatic animals, game animals, furbearing and wildlife mammals, poultry and psittacines.

“APHIS” means the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

“Beef cattle” means all cattle other than dairy cattle.

“Certificate of Veterinary Inspection” or “CVI” means a legible record that is issued by a VS animal health official, state animal health official, or accredited veterinarian at the point of origin of a shipment of animals, conforms to the requirements of R3-2-606, and is written on a form approved by the chief animal health official of the state of origin or an equivalent form of the USDA attesting that the animal described has been inspected and found to meet the Arizona entry requirements.

“Dairy cattle” means any domesticated bovine dairy animal or crosses of the *Bos* genus that show at least 50 percent phenotypic characteristics of a dairy breed, including; Ayrshire, Brown Swiss, Canadienne, Dutch Belt, Holstein, Jersey, Guernsey, Kerry, Milking Devon, Milking Shorthorn, or Norwegian Red.

“Designated feedlot” means a feedlot containing a confined drylot area under state quarantine that is approved and authorized by the State Veterinarian; contains a restricted feeding pen; and is maintained for finish feeding of cattle or bison that do not meet the brucellosis or tuberculosis import test requirements.

“Entry permit number” or “Import permit number” means a serialized number issued by the State Veterinarian’s Office that conforms to the requirements of this chapter and allows the regulated movement of certain animals into Arizona.

“Equine Infectious Anemia” or “EIA” means an infectious, noncontagious, and potentially fatal viral disease of members of equine caused by a RNA virus classified in the Lentivirus genus, family Retroviridae.

“Official Identification” as defined in 9 CFR 71.19 (b) as revised on January 1, 2018 for swine; 9 CFR 79.2 (a)(2) as revised on January 1, 2018 for sheep and goats; and 9 CFR 86.4 as revised on January 1, 2018 for cattle.

“Poultry” means any bird except psittacine, whether live or dead, including but not limited to chickens, turkeys, ducks, geese, guineas, ratites, squabs, and any exotic birds not regulated as restricted wildlife by the Arizona Game and Fish Department. The definition “poultry” also includes hatching eggs, which are fertilized eggs produced by breeding poultry.

“Psittacine” means a bird belonging to the family Psittacidae, which includes macaws, parakeets, and parrots.

“USDA” means the United States Department of Agriculture.

“VS” means the Veterinary Services branch of APHIS.

Historical Note

Reserved Section R3-2-101 renumbered from R3-9-101

(Supp. 91-4). New Section adopted effective September 11, 1996 (Supp. 96-3). Section R3-2-101 recodified to R3-2-1101 (Supp. 97-1). New Section adopted effective May 7, 1997 (Supp. 97-2). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-102. Licensing Time-frames

A. Overall time-frame. The Department shall issue or deny a license within the overall time-frames listed in Table 1 after receipt of the complete application. The overall time-frame is the total of the number of calendar days provided for the administrative completeness review and the substantive review.

B. Administrative completeness review.

1. The administrative completeness review time-frame established in Table 1 begins on the date the Department receives the application. The Department shall notify the applicant in writing within the administrative completeness review time-frame whether the application or request is incomplete. The notice shall specify what information is missing. If the Department does not provide notice to the applicant within the administrative completeness review time-frame, the Department considers the application complete.

2. An applicant with an incomplete license application shall supply the missing information within the completion request period established in Table 1. The administrative completeness review time-frame is suspended from the date the Department sends the notice of missing information to the applicant until the date the Department receives the information.

3. If the applicant fails to submit the missing information before the expiration of the completion request period, the Department shall close the file, unless the applicant requests an extension. An applicant whose file has been closed may obtain a license by submitting a new application.

C. Substantive review. The substantive review time-frame established in Table 1 shall begin after the application is administratively complete.

1. If the Department makes a comprehensive written request for additional information, the applicant shall submit the additional information identified by the request within the additional information period provided in Table 1. The substantive review time-frame is suspended from the date of the Department request until the information is received by the Department. If the applicant fails to provide the information identified in the written request within the additional information period, the Department shall deny the license.

2. The Department shall issue a written notice granting or denying a license within the substantive review time-frame. If the application is denied, the Department shall send the applicant written notice explaining the reason for the denial with citations to supporting statutes or rules, the applicant’s right to seek a fair hearing, and the time period in which the applicant may appeal the denial.

Historical Note

Reserved Section R3-2-102 renumbered from R3-9-102 (Supp. 91-4). New Section adopted effective September 11, 1996 (Supp. 96-3). Section R3-2-102 recodified to R3-2-1102 (Supp. 97-1). New Section R3-2-102 adopted effective October 8, 1998 (Supp. 98-4). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020

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(Supp. 20-2).

tion R3-2-105 recodified to R3-2-1105 (Supp. 97-1).

R3-2-103. Recodified

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). R3-2-103 renumbered from Section R3-9-103 (Supp. 91-4). Repealed effective April 11, 1994 (Supp. 94-2). New Section adopted effective September 11, 1996 (Supp. 96-3). Section R3-2-103 recodified to R3-2-1103 (Supp. 97-1).

R3-2-104. Recodified

Historical Note

Adopted effective September 11, 1996 (Supp. 96-3). Section R3-2-104 recodified to R3-2-1104 (Supp. 97-1).

R3-2-105. Recodified

Historical Note

Adopted effective September 11, 1996 (Supp. 96-3). Sec-

R3-2-106. Recodified

Historical Note

Adopted effective September 11, 1996 (Supp. 96-3). Section R3-2-106 recodified to R3-2-1106 (Supp. 97-1).

R3-2-107. Recodified

Historical Note

Adopted effective September 11, 1996 (Supp. 96-3). Section R3-2-107 recodified to R3-2-1107 (Supp. 97-1).

R3-2-108. Recodified

Historical Note

Adopted effective September 11, 1996 (Supp. 96-3). Section R3-2-108 recodified to R3-2-1108 (Supp. 97-1).

R3-2-109. Recodified

Historical Note

Adopted effective September 11, 1996 (Supp. 96-3). Section R3-2-109 recodified to R3-2-1109 (Supp. 97-1).

Table 1. Time-frames (Calendar Days)

License	Authority	Administrative Completeness Review	Response to Completion Request	Substantive Completeness Review	Response to Additional Information	Overall Time-frame
MEAT AND POULTRY INSPECTION						
License to Slaughter	A.R.S. §§ 3-2002 & 3-2003 R3-2-208	14	14	30	14	44
Transfer of license without fee	A.R.S. § 3-2009	14	14	30	5	44
State Meat Inspection Service	A.R.S. § 3-2047	14	14	30	14	44
Sale or Exchange of Meat or Poultry	A.R.S. § 3-2081 R3-2-208	14	14	30	14	44
Rendering Facility Certification	A.R.S. § 3-2081	14	14	30	14	44
Transfer of License	A.R.S. § 3-2086	14	14	30	5	44
Official Slaughter Meat Licenses	A.R.S. § 3-2122 R3-2-208	14	14	30	14	44
FEEDING OF ANIMALS						
Feed Lot License	A.R.S. § 3-1452	14	14	60	14	74
Permit to Feed Garbage to Swine	A.R.S. § 3-2664	14	14	60	14	74
DAIRY PRODUCTS AND CONTROL						
Milk Distributing Plant New Renewal	A.R.S. § 3-607	14 14	14 14	14 14	14 14	28 28
Milk Processing Plant New Renewal	A.R.S. § 3-607	14 14	14 14	14 14	14 14	28 28
Plant Licensing New Renewal	A.R.S. § 3-665	14 14	14 14	14 14	14 14	28 28
Request to market a product as a milk product	A.R.S. § 601.01	14	14	14	14	28
Tester License	A.R.S. § 3-619	7	7	7	7	14
Trade Product Label	A.R.S. § 3-667	14	14	30	30	44
LIVESTOCK INSPECTION						
Equine Trader Permit	A.R.S. § 3-1348	7	7	7	7	14

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License	Authority	Administrative Completeness Review	Response to Completion Request	Substantive Completeness Review	Response to Additional Information	Overall Time-frame
Ownership and Hauling Certificate for Equines	A.R.S. §§ 3-1344 & 3-1345	14	14	14	14	28
EGG PRODUCTS AND CONTROL						
Annual Licensing	A.R.S. § 3-714	10	10	10	10	20
AQUACULTURE						
Aquaculture Facility	A.R.S. § 3-2907 R3-2-1004	14	14	30	14	44
Fee Fishing Facility	R3-2-1005	14	14	30	14	44
Processor	R3-2-1006	14	14	30	14	44
Transporter	R3-2-1007	14	14	30	14	44
Special Licenses	A.R.S. § 3-2908	14	14	30	14	44

Historical Note

Adopted effective October 8, 1998 (Supp. 98-4). Amended by final rulemaking at 8 A.A.R. 3625, effective August 7, 2002 (Supp. 02-3). Amended by final rulemaking at 9 A.A.R. 2089, effective August 2, 2003 (Supp. 03-2). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

ARTICLE 2. MEAT AND POULTRY INSPECTION

R3-2-201. Definitions

In addition to the definitions provided in A.R.S. §§ 3-101 and 3-2001 and 9 CFR 301.2 and 9 CFR 381.1, which are incorporated by reference in R3-2-202, the following terms apply to this Article:

1. "Animal" means any steer, heifer, calf, cow, bull, sheep, goat, swine, horse, ass, mule, burro, ratite, or poultry.
2. "Dead animal" means an animal that died other than by slaughter in a place where inspection is performed by the Department or by the United States Department of Agriculture.
3. "Inedible meat" means:
 - a. Meat or meat food product from an animal that died by slaughter or was processed in an inspected slaughterhouse, but which an inspector did not pass as fit for human consumption; or
 - b. Meat condemned by a federal or state inspector.
4. "Rendering" means the conversion of packinghouse waste or dead animal carcasses and parts into industrial fat, oil, or other product unfit for human consumption.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Amended effective June 4, 1987 (Supp. 87-2). Amended subsection (A) effective February 28, 1989 (Supp. 89-1). Section R3-2-201 renumbered from Section R3-9-201 (Supp. 91-4). Section repealed, new Section adopted effective July 13, 1995 (Supp. 95-3). Amended by final rulemaking at 10 A.A.R. 2661, effective August 7, 2004 (Supp. 04-2).

R3-2-202. Meat and Poultry Inspection; Slaughtering Standards

All meat and poultry inspection, slaughtering, production, processing, labeling, storing, handling, transportation and sanitation procedures shall be conducted as prescribed in 9 CFR Chapter III, revised January 1, 2016, as amended by 80 FR 75590-01 (December 2, 2015), except sections 302.2, 307.5, 307.6, 312, 322, 327, 329.7, 329.9, 331, 335, 351, 352, 354, 355, 381.38, 381.39, 381.96 through 381.112, 381.195 through 381.209, 381.218 through 381.225, 390, 391, 392, 590 and 592. This material is incorporated by reference and does not include any later amendments or editions. A copy of the incorporated material is available from the Department and may also be viewed online at www.gpo.gov/fdsys.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Amended effective June 4, 1987 (Supp. 87-2). Amended subsection (A) effective February 28, 1989 (Supp. 89-1). Section R3-2-202 renumbered from Section R3-9-202 (Supp. 91-4). Amended effective July 13, 1995 (Supp. 95-3). Amended effective March 5, 1997 (Supp. 97-1). Amended by final rulemaking at 6 A.A.R. 465, effective January 5, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 3625, effective August 7, 2002 (Supp. 02-3). Amended by final rulemaking at 10 A.A.R. 1971, effective May 4, 2004 (Supp. 04-2). Amended by emergency rulemaking at 15 A.A.R. 1890, effective October 21, 2009 for 180 days (Supp. 09-4). Emergency expired; Section amended by final rulemaking at 16 A.A.R. 351, effective April 3, 2010 (Supp. 10-1). Amended by emergency rulemaking at 19 A.A.R. 150, effective January 9, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 1789, effective July 9, 2013 (Supp. 13-3). Amended by final rulemaking at 22 A.A.R. 2167, effective October 2, 2016 (Supp. 16-3).

R3-2-203. Licenses; Registration; Records

- A. Any person operating a business in any of the following categories shall obtain the appropriate license from the Department.
 1. Types of slaughter licenses.
 - a. Official slaughter – the slaughtering of animals in a slaughterhouse for sale for human consumption.
 - b. Exempt slaughter.
 - i. Exempt non-mobile slaughter – the slaughtering or dressing of an animal in a stationary building for human consumption, that is not sold or offered for sale.
 - ii. Exempt mobile slaughter – the slaughtering or dressing of an animal for human consumption by using a mobile structure on the property of the animal's owner, that is not sold or offered for sale.
 2. Types of meat licenses.
 - a. Broker – any person, firm or corporation engaged in buying or selling carcasses, parts of carcasses, meat or poultry food products, or by-products from state or federally inspected establishments. A broker negotiates purchases or sales of these products other

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than for the broker's own account, as an employee of another person, and is paid a commission.

- b. Exempt – any person, firm, or corporation engaged in processing meat or poultry products without meat inspection, for an individual owner of meat that is not for sale.
 - c. Distributor – any person, firm, or corporation engaged in receiving carcasses, parts of carcasses, meat or poultry food products, or by-products from state or federally inspected establishments and storing or distributing these products to commercial outlets, processors, or individuals. A distributor does not process any of these products.
 - d. Jobber – any person, firm, or corporation with an established place of business that buys meat or poultry food products and offers the products for sale to someone other than the end-use consumer.
 - e. Pet food manufacturer – any person, firm, or corporation engaged in manufacturing animal food from meat or poultry unfit for human consumption.
 - f. Processor – any person, firm, or corporation that changes meat or poultry food products by cutting, mixing, blending, canning, curing or otherwise preparing meat or meat food products wholesale for human consumption.
 - g. Renderer – any person, firm, or corporation that renders and tallows and any person, firm, or corporation engaged commercially in the hide, hair, or pelt removal, cutting up, or rendering of animals.
- B.** Applications for a license or registration pursuant to A.R.S. § 3-2081(A), shall be made on forms provided by the Department and shall contain the following:
1. The name of the applicant and the applicant's partners, officers or directors of the business, if any;
 2. The business name, mailing address, telephone number, and Social Security number of the applicant;
 3. The exact location of the business, if different from subsection (B)(2).
- C.** All persons licensed or registered under this Section, and all other persons described in A.R.S. § 3-2081, shall maintain the records required under A.R.S. § 3-2081 for a minimum of one year. In addition, all registered dead animal haulers, licensed rendering and tallow plants, and pet food manufacturing plants shall prepare and submit the reports required under A.R.S. § 3-2695 and shall include copies of those reports as part of records maintained under this Section and A.R.S. § 3-2081.
- D.** During fiscal year 2022, the fee to obtain or renew a license to slaughter is:
1. Not to exceed 45 head of cattle, and not to exceed 55 head of sheep, goats or swine in one calendar year: \$250.
 2. For more than 45 and not to exceed 150 head of cattle and more than 45 and not to exceed 160 head of sheep, goats or swine in one calendar year: \$300.
 3. For more than 150 head of cattle and more than 160 head of sheep, goats or swine in any one calendar year: \$450.
- E.** During fiscal year 2022, the fee to obtain or renew a meat license is:
1. For a broker, \$450.
 2. For exempt processing, \$300.
 3. For a distributor, \$500 for a large distributor (more than \$100,000 in sales per calendar year) and \$150 for a small distributor (not to exceed \$100,000 in sales per calendar year).
 4. For a jobber, \$450.
 5. For a pet food manufacturer, \$300.
 6. For a processor, \$300.

7. For meat storage, \$450.
8. For transportation, \$300.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-208 renumbered from Section R3-9-208 (Supp. 91-4). Amended effective July 13, 1995 (Supp. 95-3). Former Section R3-2-203 renumbered to R3-2-208; new Section R3-2-203 renumbered from Section R3-2-208 and amended by final rulemaking at 5 A.A.R. 1593, effective May 5, 1999 (Supp. 99-2). Amended by exempt rulemaking at 16 A.A.R. 1331, effective June 29, 2010 (Supp. 10-2). Amended by exempt rulemaking at 17 A.A.R. 1756, effective July 20, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 2060, effective August 2, 2012 (Supp. 12-3). Amended by exempt rulemaking at 19 A.A.R. 3127, effective September 14, 2013 (Supp. 13-3). Amended by exempt rulemaking at 20 A.A.R. 2449, effective July 24, 2014 (Supp. 14-3). Amended by exempt rulemaking pursuant to Laws 2015, Ch. 10, § 14, at 21 A.A.R. 2404, effective July 3, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 23 A.A.R. 1937, effective August 9, 2017 (Supp. 17-2). Amended by final exempt rulemaking at 24 A.A.R. 2219, effective August 3, 2018 (Supp. 18-3). Amended by final exempt rulemaking at 25 A.A.R. 2081, effective August 27, 2019 (Supp. 19-3). Amended by final exempt rulemaking at 26 A.A.R. 1471, effective August 25, 2020 (Supp. 20-3). Amended by final exempt rulemaking at 27 A.A.R. 1264, effective September 29, 2021 (Supp. 21-3).

R3-2-204. Official Slaughter Establishment

In addition to the requirements in A.R.S. § 3-2051, the following shall be provided when slaughtering cattle, calves, sheep, and hogs:

1. Cattle.
 - a. A metal knocking box or concrete box with metal door to confine the animals prior to stunning;
 - b. A separately drained, dry landing area at least five feet wide in front of the knocking box;
 - c. A curbed-in bleeding area at least eight feet wide and seven feet long, located so that blood will not splash upon stunned animals lying in the dry landing area or upon carcasses being skinned on the siding bed. Curbing shall be at least six inches high and six inches wide;
 - d. A separately drained area at least five feet from the curbed-in bleeding area to the siding bed;
 - e. A distance of at least 14 feet from the vertical of the dropoff to the vertical of the hoist where carcasses are eviscerated. For multiple-bed plants, this distance shall be increased to 16 feet;
 - f. A distance of at least 14 feet between the vertical of the hoist where carcasses are eviscerated and the header rail leading to the cooler. This distance may be shortened when a single rail hang-off is used;
 - g. A distance of at least three feet from the header rail to the adjacent wall;
 - h. A bleeding rail with its top at least 16 feet above the floor or a traveling hoist on an I-beam which will provide an equivalent distance of the carcass from the floor;
 - i. Floor space for a head-flushing cabinet and head inspection rack with removable hooks;
 - j. When hides are dropped to a room below, a hide chute near the point where hides are removed from the carcasses. The chute shall have a vented hood with a self-closing, push-in door. The vent shall be

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- approximately 10 inches in diameter and extend to a point above the roof. Additional chutes, which meet the requirements of this subsection, for inedible and condemned materials shall be provided separate from the hide chutes;
- k. A two-level viscera inspection truck for evisceration, except when a moving top viscera inspection table is used;
 - l. An area for washing and shrouding carcasses which shall be curbed and sloped to a separate drain or have a slope of approximately 1/2 inch to the foot leading to a separate drain;
 - m. Dressing rails and cooler rails at least 11 feet in height.
2. Calves and sheep.
 - a. A bleeding rail with its top approximately 11 feet from the floor. The floor of the bleeding area shall be curbed and separately drained;
 - b. Dressing and cooler rails of such height as to provide a clearance of at least eight inches from the carcasses to the floor. Calves which are of such size that there is not a clearance of at least eight inches above the floor, or whose viscera cannot be transferred manually and unaided to the inspection stand, shall be skinned and eviscerated as cattle;
 - c. Facilities for washing hides of calves before any incision is made (except the sticking wound) when carcasses are dressed hide on. The heads of calves and veal slaughtered by the Kosher method shall be skinned prior to the washing of the carcasses;
 - d. Facilities for flushing, washing, and inspecting calf heads, including head-flushing cabinet and head inspection rack with removal calf loops;
 - e. Facilities for the inspection of the viscera. A hopped metal stand shall be provided which accommodates two removal inspection pans. One inspection pan is for the thoracic viscera; the other is for the abdominal viscera. The pans shall have perforated bottoms and handles or hand holes for removal. A sterilizing receptacle shall be provided for sterilization of contaminated pans;
 - f. Facilities for washing sheep carcasses after removal of the pelt. Calves and sheep shall be washed again after they have been eviscerated.
 3. Hogs.
 - a. Facilities for bleeding hogs in a hanging position, over a separately drained, curbed-in bleeding area;
 - b. A scalding vat and gambreling table, including the platforms, of metal construction;
 - c. A shaving rail to assure that carcasses are cleaned;
 - d. A hopped metal stand for the inspection of viscera. A sterilizing receptacle shall be provided at a convenient location for the sterilization of contaminated pans;
 - e. Dressing and cooler rails at least nine feet high or of such height as to provide a clearance of at least eight inches between the lowest point of the carcass, or head if left attached, and the floor.
 4. Coolers. A chill cooler and separate holding coolers may be provided or both may be combined in one room. The chill cooler shall have floors of concrete sloped to a drain. The walls shall be smooth, light colored, impervious, and the room shall be sealed. The other coolers shall have floors of concrete; the walls shall be smooth, free of cracks, light colored, impervious, and the room shall be sealed. The door between the slaughtering department and the chill cooler shall be clad with rust-resistant metal. Rails shall be spaced at least two feet from walls, columns, refrigerating equipment, or other fixed equipment to prevent contact with the carcasses. Header rails shall be three feet from the walls. When overhead refrigerating facilities are provided, insulated drip pans must be installed beneath them and the pans connected to the drainage system. If wall coils are installed, a drip gutter of impervious material and connected with the drainage system shall be installed beneath the coils. When edible offal is chilled or stored in a cooler other than a separate offal cooler, that area shall be separately drained.
 5. Other edible products departments.
 - a. Floors, walls, and ceilings in the various edible products departments of the plant shall be constructed of material that can be readily kept clean. Wooden structures and equipment shall be kept at a minimum. Floors requiring drainage shall be constructed of dense concrete or floor brick laid on a concrete base. The interior walls and, where practical, ceiling surfaces shall be smooth and flat. Walls shall be constructed of glazed tile, smooth cement plaster, or other USDA-approved impervious material. Walls shall be free of cracks and crevices, and, where brick or tile is used, the mortar joints shall be flush with the surface of the walls. Walls shall be light colored.
 - b. The floors of the plant shall be well-drained; a slope of not less than 1/4 inch to the foot to drainage inlets is required. The floors shall be smooth, impervious, and in good repair; they shall be free from cracks and depressions which could hold floor liquids. Wooden floors are not permitted. Junctions of floors and walls shall be coved.
 - c. Walls, ceilings, beams, and hangers shall be cleaned. Rails may be oiled instead of painted. Rust and scale shall be removed from hangers and meat trolleys. Smooth Portland cement plaster walls shall not be painted.
 6. Hide room. The floor of the hide room, if provided, shall be of concrete and drained. Walls shall be smooth and impervious to at least the highest point of the hide pile. The hide room shall not connect with the slaughtering department except for one opening which shall be equipped with a tight-fitting, self-closing door. The hide room shall not connect with any other room in which edible products are stored, processed, or handled.
 7. Disposal of blood. When blood is not permitted to drain into the sewage system, it may be collected in a metal tank and removed from the premises or blown to the blood drier in a manner that will not mask odors or create a harborage for pests.
 8. Other inedible products departments.
 - a. An inedible products department, completely separate and apart from edible products departments, shall be provided. Walls shall be of smooth, finished, Portland cement plaster, glazed tile, or other USDA-approved material impervious to moisture. Floors shall be constructed of dense concrete or floor tile, sloped to drain. Hot and cold water connections shall be provided. With the exception of one opening to the slaughtering department, there shall be no openings between an inedible products department and an edible products department. This one opening shall be approximately five feet in width to allow the free passage of materials and shall be equipped

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- with a close-fitting, self-closing door of solid construction. This door shall be kept closed at all times, except when in actual use, to prevent the entrance of undesirable odors to the slaughtering department. The area at the loading dock shall be paved, drained, and of sufficient size to accommodate the largest truck used. If inedible offal is stored in an edible offal room, the room is classed as an inedible products department. Paunches may be opened in the slaughtering department only when a hydraulic mechanically operated paunch lift table is provided and used for this purpose. Otherwise, the paunches shall be opened in the inedible offal rooms.
- b. Requests for permission for rendering of shop scraps and outside dead animals shall be made to the inspector who shall grant or deny the request pursuant to Article 2.
9. Pens.
 - a. Holding pens shall be surfaced with an impervious material, sloped to drains. A curb shall be installed around the outside of the pens to prevent the wash from escaping. Water under pressure shall be available for washing out the pens. Feeding pens shall be at least 300 feet from the plant and shall not be located in front of the plant.
 - b. Holding and shackling pens shall be located outside of, or separated from, the slaughtering department.
 10. Drainage
 - a. Floors which require flushing during operations shall have sloped floor drains to carry off the floor drainage. Each floor drain shall be equipped with a deep-seal trap; the drainage lines shall be vented to the outside in accordance with local plumbing codes. In no case shall a drain line be less than four inches in diameter.
 - b. Sewage may be disposed of into a municipal sewer system, if permitted by local ordinance, or it may be disposed of into a stream or other similar body of water, provided that:
 - i. This method is acceptable to local health authorities having jurisdiction over sewage disposal, and
 - ii. The flow of the stream or other body of water is sufficient to carry the sewage away from the plant at all seasons of the year. When cesspools are used, they shall be of sufficient size to receive the sewage from the plant at all times; they shall be so constructed that they do not create a nuisance by breeding flies or other insects.
 - c. Grease recovery basins shall not mask odors or create a harborage for pests.
 11. Equipment and utensils.
 - a. Equipment shall be constructed of metal and shall be so constructed that it can be easily cleaned. Cutting boards may be of hard wood or synthetic material, but equipment, such as the framework of boning or cutting tables, scalding vats, offal racks and trees, product storage racks, and product trucks shall be of metal construction. Rusty or worn-out equipment shall be replaced.
 - b. All equipment shall be thoroughly cleaned following each day's operations. The use of a clear, colorless, odorless, tasteless, edible mineral oil may be used on metal equipment, such as choppers, grinders, mixers, tables, meat trucks, offal racks, hooks, and trolleys. Scale shall not be permitted to accumulate on metal equipment.
 - c. Sterilizing receptacles equipped with drains to permit draining and cleaning shall be placed at convenient locations in the slaughtering department for the cleaning and sterilization of contaminated tools and equipment. Water wasting from equipment shall not flow across the floor.
 - d. Shovels used for transferring ice or other edible materials from one container to another shall not touch the floor.
12. Ventilation and lighting. Natural ventilation may be supplemented by artificial means and shall be sufficient to assure the absence of dust, masking odors, or steam vapors. Points where inspection is conducted may require special lighting. The glass area shall be at least 1/4 of the floor area in all nonrefrigerated work rooms. To assure adequate lighting at all times and at all places, natural lighting must be supplemented by well-distributed artificial lighting.
 13. Water supply, wash basins, sterilizing facilities.
 - a. Hot and cold running water, under pressure, shall be available at all parts of the establishment and in conformity with the requirements of the Arizona Department of Health Services. The hot water used for sterilizing equipment, floors, and walls that may be contaminated by the dressing procedure or handling of diseased carcasses, viscera, and other animal parts, shall be at least 180° F. A thermometer shall be installed to verify the temperature of the water at the point of use. A cleanup hose shall be available for use.
 - b. Foot-pedal operated wash basins shall be placed in or near dressing rooms. These wash basins shall be equipped with running hot and cold water, delivered through a combination mixing faucet with an outlet at least 12 inches above the rim of the bowl. The drainage outlet shall lead directly into the sewage lines. Soap and towels, and a receptacle for dirty paper towels or other trash, shall be convenient to the wash basin.
 - c. One or more wash basins shall be located in the slaughtering department, and one or more in the sausage manufacturing room and at any other place in the establishment essential to ensure cleanliness of all persons handling products. The wash basins shall be equipped with hot and cold running water, delivered through a combination mixing faucet with an outlet at least 12 inches above the rim of the bowl. The water delivery shall be foot-pedal operated, and the drainage outlet shall lead directly into the sewage lines. Soap and disposable towels shall be convenient to the wash basins.
 - d. Water for sterilizing purposes shall be maintained at a temperature of at least 180° F. One or more sterilizing receptacles of rust-resisting, impervious material shall be placed at convenient locations in the slaughtering department for the sterilization of all implements that have been contaminated or used on a diseased carcass or part of a diseased carcass. The sterilizer shall be equipped with a cold water and steam line, or other means to maintain water at a temperature of at least 180° F during slaughtering operations. The sterilizer shall contain a drain so that water may be completely drained out for daily cleaning. Boilers and water heaters shall not be located in

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the slaughtering department or in any edible products department. To prevent possible back siphonage, vacuum breakers shall be provided on all steam and water lines when open ends are submerged or connected to equipment.

14. Protection against flies, rodents, or other vermin.
- a. Plants must be kept free of flies, rats, mice, roaches, and other pests or vermin. The plant shall be constructed to prevent entrance of rodents to the premises and to eliminate their breeding places from the surrounding areas and in the establishment. Construction of the plant shall be such as to eliminate roach and other insect harbors. Windows, doors, and other openings to the plant shall be provided with insect screens, or other measures to prevent entrance of flies or other insects. The screens shall be kept in good repair. Sprays containing residual-acting chemicals shall not be used in edible products departments.
 - b. Animal-handling facilities such as stock pens and runways shall be cleaned as often as necessary and the manure or other waste materials removed shall not be permitted to accumulate at or near the plant.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-204 renumbered from Section R3-9-204 (Supp. 91-4). Amended effective July 13, 1995 (Supp. 95-3). Amended by final rulemaking at 5 A.A.R. 1593, effective May 5, 1999 (Supp. 99-2).

R3-2-205. Expired**Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-205 renumbered from Section R3-9-205 (Supp. 91-4). Amended effective July 13, 1995 (Supp. 95-3). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 135, effective December 15, 2016 (Supp. 16-4).

R3-2-206. Purchase, Sale, Collection, Transportation, Disposition, and Use of Meat or Meat Food Products; Dead Animals; Animal Bone, Animal Fat, Animal Offal

- A. A person shall not buy, sell, offer for sale, store, transport, receive, or collect any meat or meat food product except as provided in this subsection.
1. Any of the following meat or meat food products may be bought, sold, or offered for sale as animal food and may be stored, transported, received, or collected anywhere within the state:
 - a. Any meat or meat food product that is processed in an animal food manufacturing plant licensed by the Department;
 - b. Any meat or meat food product that comes from an animal that died by slaughter or is approved or passed for animal food by either state or federal meat inspectors;
 - c. Any meat or meat food product that is thoroughly cooked at a minimum temperature of 180° F for 30 minutes and is certified by a state or a federal meat inspector having jurisdiction at the place of processing.
 2. A carcass with the hide, hair, or pelt still on the carcass may be bought, sold, offered for sale, collected and transported to or received by the following only:
 - a. A rendering or tallow plant;
 - b. A state or county diagnostic laboratory, a veterinarian's clinic, or crematory;

- c. An animal food manufacturing plant;
- d. A landfill regulated by the Arizona Department of Environmental Quality;
- e. An out-of-state landfill regulated by that state's landfill regulatory authority; or
- f. A landfill located on a Native American reservation that is regulated by equivalent standards to those prescribed by the Arizona Department of Environmental Quality.

3. Any meat or meat food product described in subsection (A)(1) or a carcass with the hide, hair, or pelt still on the carcass from an official state or federal slaughter establishment shall be denatured with a denaturant that will not leave a toxic residue and is removable when steam-distilled at atmospheric pressure.
 4. Any meat or meat food product that has been condemned by state or federal meat inspectors shall be treated as provided in 9 CFR 314.3, which has been incorporated by reference in R3-2-202, and may be disposed of as provided in that rule or may be collected and transported to or received by a rendering or tallow plant or a state or county diagnostic laboratory or crematory.
- B.** A person engaged commercially in the collection or transportation of dead animal carcasses or inedible meat shall register with the Department as a dead animal hauler as prescribed in R3-2-203(B) and shall maintain and keep all records for the time required by R3-2-203(C).
- C.** A vehicle or other means of conveyance used to transport a dead animal carcass or inedible meat shall be:
1. Leak-proof,
 2. Constructed of impervious materials that permit thorough cleaning and sanitizing,
 3. Equipped to control insects and odors and prevent the spread of disease, and
 4. Comply with the Department of Environmental Quality vehicle requirements prescribed in R18-13-310(A) and (B).
- D.** Except as provided in subsection (E), a dead animal carcass may be rendered or made into animal food only at a licensed rendering or animal food manufacturing plant as prescribed in A.R.S. § 3-2088 and this Article.
- E.** Dead animals diagnosed with anthrax or an animal disease foreign to the United States shall be handled as directed by the State Veterinarian.
- F.** Discarded animal bone, animal fat, and animal offal generated by a wholesale food manufacturer shall be transported to and received by only a:
1. Licensed rendering plant, or
 2. Landfill, as prescribed in subsections (A)(2)(d), (A)(2)(e), and (A)(2)(f).

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-206 renumbered from Section R3-9-206 (Supp. 91-4). Amended effective July 13, 1995 (Supp. 95-3). Citation in subsection (B) corrected to R3-2-203(C) from R3-2-208(C) under R1-1-109(C) (Supp. 01-2). Amended by final rulemaking at 8 A.A.R. 3015, effective July 10, 2002 (Supp. 02-3).

R3-2-207. Meat from Dead Animals Processed and Decharacterized for Use as Animal Food

- A.** The following are minimum requirements for animal food manufacturing plants:
1. Hot and cold water shall be provided with facilities for its distribution in the plant which shall conform with the minimum requirements of the state Department of Health

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Services. The hot water shall be at least 180° F and shall be used for the cleaning of equipment, floors, and walls.

2. There shall be a drainage and plumbing system and a sewage disposal system that will not serve as a breeding place for flies, constitute a hazard, or endanger public health. Both systems shall meet the minimum requirements of the state Department of Health Services.
 3. The floors, walls, ceilings, partitions, posts, doors, and other parts of all structures shall be of materials, construction, and finish that are capable of being thoroughly cleaned. The floors shall be tile, cement or other material impervious to water and shall have sufficient drainage to preclude stagnant accumulations of moisture.
 4. All outside windows and doors shall be screened.
 5. All rooms shall have natural or artificial lighting and well-distributed ventilation sufficient to prevent uncontrolled mold growth and filth or bacteria that may endanger health.
 6. The plant shall be kept free from flies, rats, mice, and other vermin. Dogs and cats shall be excluded from the plants.
 7. Tables, benches, and other equipment shall be provided so that processing can be performed free from filth or bacteria that may endanger health.
 8. Each plant shall provide toilets, wash basins, towels, hot and cold running water, and soap for the employees with separate facilities when both sexes are employed. Toilets and wash basins shall be kept free from filth or bacteria that may endanger health. The rooms in which the toilet facilities are located shall be ventilated and shall be separated from the rooms in which the animal food is manufactured.
 9. Coolers shall be maintained below 40° F. Freezers shall be maintained below 10° F.
- B.** Decharacterizing or denaturant agents: The following USDA-approved denaturant agents may be used: Charcoal (finely powdered) with a minimum 1 lb. per 100 lbs. meat, F-D & C Blue 1, F-D & C Blue 2, F-D & C Green 3, or liquid charcoal.
1. In addition to the application of the denaturing agents listed, meat or meat products shall be identified with the following information:
 - a. The kind of animal,
 - b. The following phrases:
 - i. For pet food only from dead animals,
 - ii. Denatured with _____,
 - c. The correct statement of net weight, and
 - d. The name and address of processor or manufacturer.
 2. Before the denaturing agents are applied to pieces more than four inches in diameter, the pieces shall be freely slashed or sectioned. The application of any of the denaturing agents listed in this Section to the outer surfaces of molds or blocks of boneless meat, meat by-products, or meat food products shall not be considered adequate. The denaturing agent shall be mixed thoroughly with all of the material to be denatured and shall be applied in such quantity and manner that it cannot easily and readily be removed by washing or soaking. Denaturant shall be used to give the meat, meat by-products, raw animal fat, or rendered animal fats and oils, a distinctive color, odor, or taste so that such material cannot be confused with an article of human food.
 3. All denaturing shall be done immediately upon condemnation of the meat or product, or immediately after the meat or product is prepared or during preparation.
 4. True containers shall be legibly marked with the words "Beef or horse meat from dead animals for pet food only

and not for human consumption" in letters at least 3/4 inch in height, on all sides and in at least two places if the container has less than four sides.

5. Every carrying container in which meat obtained from a dead animal is packaged shall have an exterior surface sufficiently absorbent so that the markings on at least two sides, in letters two inches high "Pet food only," will not become illegible during handling, storage, or transportation of the container.
- C.** Sales of meat obtained from a dead animal are permitted only to kennels, zoos, and animal food manufacturing plants registered by the Department, and records of sales shall be maintained by the purchaser and animal food manufacturing plant.
- D.** Each vehicle used for the transportation of fresh or frozen pet food shall be clearly and legibly marked with the name of the manufacturer in letters not less than four inches in height on both sides of the cab or body.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-207 renumbered from Section R3-9-207 (Supp. 91-4). Amended effective July 13, 1995 (Supp. 95-3).

R3-2-208. Diseased and Injured Animals

- A.** Diseased animals.
1. No meat from any diseased animal shall be processed, sold or stored at premises where food is sold or prepared for human consumption, unless it is decharacterized and clearly identified "Not for Human Consumption."
 2. Subsection (A)(1) does not apply to meat from animals affected by any disease that does not render the meat unfit for human consumption if the affected animals are slaughtered in establishments where meat inspection is maintained under A.R.S. § 3-2051 and 9 CFR, Chapter III, Subchapter A, which is incorporated by reference in R3-2-202(A).
- B.** Injured animals. An injured animal may be slaughtered by:
1. The animal's owner at the owner's premises if the meat is used solely for consumption by the owner, the owner's immediate family, or employees. The owner shall keep the animal's hide until it has been inspected and marked or tagged by a livestock officer under A.R.S. § 3-2011.
 2. An official slaughter establishment, if:
 - a. The animal is inspected by a livestock officer at origin; or
 - b. The animal is transported to the official slaughter establishment with a self-inspection certificate; or
 - c. The animal is transported to an official slaughter establishment with a waiver from the Associate Director and the waiver is documented by the livestock officer.
 3. An exempt slaughterer, if the meat is used solely for consumption by the animal's owner, the owner's immediate family or employees, and if:
 - a. The animal's body temperature is 103° F or less and except for the injury its condition appears normal; and
 - b. The animal is inspected by a livestock officer at origin who verifies the temperature and condition of the animal and approves it for slaughter; or
 - c. The Associate Director waives the inspection and the waiver is documented by the livestock officer, and the exempt slaughterer verifies the temperature and condition of the animal.
- C.** Non-ambulatory disabled cattle. Non-ambulatory disabled cattle shall not be slaughtered by any official or exempt slaughterer. Non-ambulatory disabled cattle are cattle that cannot rise

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from a recumbent position or that cannot walk, including, but not limited to, those with broken appendages, severed tendons or ligaments, nerve paralysis, fractured vertabal column, or metabolic conditions.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-203 renumbered from Section R3-9-203 (Supp. 91-4). Amended effective July 13, 1995 (Supp. 95-3). Former Section R3-2-208 renumbered to R3-2-203; new Section R3-2-208 renumbered from Section R3-2-203 and amended by final rulemaking at 5 A.A.R. 1593, effective May 5, 1999 (Supp. 99-2). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-209. Exempt Non-mobile Slaughter Establishments

In addition to A.R.S. § 3-2050 and the material incorporated in R3-2-202(A), the following shall be provided when slaughtering animals in an exempt non-mobile slaughter establishment:

1. General.
 - a. A metal knocking box or concrete box with metal door to confine the animal before stunning;
 - b. A distance of at least three feet from the header rail to the adjacent wall;
 - c. A bleeding rail with its top at least 16 feet above the floor; and
 - d. Dressing rails and cooler rails placed so the lowest part of the carcass is at least 12 inches from the floor.
2. Coolers. A chill cooler and separate holding cooler may be provided or both may be combined in one unit. The walls shall be light colored, smooth, free from cracks, and impervious to moisture. The door between the slaughtering department and the chill cooler shall be clad with rust-resistant material. Rails shall be spaced at least two feet from walls, columns, refrigeration equipment, or other fixed equipment to prevent contact with the carcasses.
3. Disposal of blood. If blood is not permitted to drain into the sewage system, it may be collected in a metal tank and removed from the premises.
4. Drainage.
 - a. Floors that require flushing during operations shall have sloped floor drains to carry off the effluent. Drainage systems shall conform to state and local plumbing codes.
 - b. Grease recovery systems shall not mask odors or create a harborage for pests.
5. Ventilation and lighting. Natural ventilation may be supplemented by artificial means and shall be sufficient to ensure the absence of dust, masking odors, or steam vapors. To ensure adequate lighting at all times and at all places, natural lighting shall be supplemented by well-distributed artificial lighting.
6. Potable water supply, wash basins, sterilizing facilities.
 - a. Hot and cold running water, under pressure, shall be available in all parts of the plant and in conformity with the requirements of the Arizona Department of Health Services. The hot water used for sterilizing equipment, floors, and walls that may be contaminated by the dressing procedure or handling of diseased carcasses, viscera, and other animal parts, shall be at least 180° F. A thermometer shall be installed to verify the temperature of the water at the point of use. A cleanup hose shall be available for use.

- b. One or more wash basins shall be located in the slaughtering department. The wash basins shall be equipped with hot and cold running water, delivered through a combination mixing faucet with an outlet at least 12 inches above the rim of the bowl. The water delivery shall be foot-pedal operated, and the drainage outlet shall lead directly into the sewage lines. Soap and disposable towels shall be convenient to the wash basins.
 - c. The tool sterilizer shall be maintained at 180° F and be in operation at all times during slaughter activities.
7. Protection against flies, rodents, or other vermin.
 - a. Establishments shall be free of flies, rats, mice, roaches, and other pests or vermin. The establishment shall be constructed and maintained to prevent entrance of pests to the premises and to eliminate breeding places from the surrounding area and in the establishment.
 - b. Animal handling facilities such as stock pens and runways shall be clean and manure or other waste materials removed shall not accumulate at or near the establishment.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 1593, effective May 5, 1999 (Supp. 99-2).

ARTICLE 3. FEEDING OF ANIMALS**R3-2-301. Repealed****Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-301 renumbered from Section R3-9-301 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Section repealed by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-302. Permit to Feed Garbage to Swine; Requirements

A swine garbage feeding permit holder or applicant for a permit to feed garbage to swine shall comply with the following requirements:

1. An approved cooker is installed, is in operating condition on the premises, and fenced off from all swine.
2. A concrete slab, trough, or other easily cleanable area, and equipment for feeding garbage is provided.
3. Premises utilized for swine garbage feeding are reasonably clean, free of litter, adequately drained, and provide for removal of animal excrement and garbage not consumed.
4. Individually operated swine garbage feeding premises are separated from other swine premises by a minimum distance of 200 feet in all directions and constructed to prevent the escape of any swine.
5. In addition, all swine garbage feeding permit holders shall follow all federal garbage feeding regulations as outlined in 9 CFR Part 166 as revised on January 1, 2018.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-302 renumbered from Section R3-9-302 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

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ARTICLE 4. ANIMAL DISEASE PREVENTION AND CONTROL**R3-2-401. Definitions**

The following terms apply to this Article:

“Biologics” means medical preparations made from living organisms and their products, including serums, vaccines, antigens, and antitoxins.

“Foreign Animal Disease” means a transboundary animal disease or pest, or an aquatic animal disease or pest, not known to exist in the United States.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-401 renumbered from Section R3-9-401 (Supp. 91-4). Former Section R3-2-401 renumbered to R3-2-402; new Section R3-2-401 adopted by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-402. Mandatory Disease Reporting by Veterinarians and Veterinary Laboratories

A. All veterinarians and laboratories performing diagnostic services on animals shall:

B. Notify the State Veterinarian at (602) 542-4293 and diseasereporting@azda.gov, within four hours of diagnosing or suspecting any disease or clinical signs of disease listed below:

1. African horse sickness
2. African swine fever
3. African trypanosomiasis
4. Anthrax
5. Avian influenza
6. Bovine Babesiosis
7. Bovine spongiform encephalopathy
8. Classical Swine Fever
9. Contagious agalactia
10. Contagious bovine pleuropneumonia
11. Contagious caprine pleuropneumonia
12. Crimean Congo Hemorrhagic Disease
13. Dourine
14. Enterovirus encephalomyelitis
15. Equine infectious anaemia
16. Equine Neurologic Diseases (Eastern, Western, Venezuelan, West Nile Virus, Equine Herpesvirus-1/ Equine Herpesvirus Myeloencephalopathy)
17. Foot and Mouth Disease
18. Glanders
19. Heartwater (*Ehrlichia ruminantium*)
20. Hemorrhagic septicemia (*Pasteurella multocida*)
21. Hendra virus (Equine morbillivirus)
22. Infectious haematopoietic necrosis of fish
23. Japanese encephalitis
24. Lumpy skin disease
25. Malignant catarrhal fever
26. Melioidosis (*Burkholderia pseudomallei*)
27. Nairobi sheep disease
28. Newcastle Disease
29. Nipah
30. Peste des Petits Ruminants
31. Rabies
32. Rabbit Hemorrhagic Disease
33. Rift Valley Fever

34. Rinderpest
35. Schmallenberg virus/ Akabane
36. Senecavirus A
37. Screwworm myiasis
38. Sheep and goat pox
39. Surra (*Trypanosoma evansi*)
40. Swine Vesicular Disease
41. Theileriosis (*T. parva* or *T. annulata*)
42. Tuberculosis (*Mycobacterium bovis*)
43. Tularemia
44. Turkey rhinotracheitis (Avian metapneumovirus)
45. Trypanosomiasis
46. Viral hemorrhagic septicemia of fish
47. Vesicular exanthema of swine virus
48. Vesicular stomatitis

B. Notify the State Veterinarian at (602) 542-4293 and diseasereporting@azda.gov, within 24 hours of diagnosing or suspecting any disease or clinical signs of disease listed below:

1. Brucellosis (*Brucella* spp.)
2. Chronic Wasting Disease in Cervids
3. Contagious Equine Metritis
4. Epizootic Lymphangitis
5. Equine Piroplasmiasis
6. Equine Viral Arteritis
7. Fowl typhoid (*Salmonella gallinarum*)
8. Ornithosis (*Psittacosis*, Avian Chlamydiosis, Chlamydophilia psittaci)
9. Pigeon Fever (*Corynebacterium pseudotuberculosis*)
10. Pseudorabies (*Aujeszky's disease*)
11. Q fever
12. Pullorum disease (*Salmonella pullorum*)
13. Scrapie
14. Sheep scabies
15. Strangles (*Strep equi* spp. *equi*)
16. Swine enteric coronavirus diseases
17. Trichomoniasis (*Trichomonas foetus*)

Aquatic Diseases

1. Crayfish plague
2. Epizootic hematopoietic necrosis disease
3. Epizootic ulcerative syndrome
4. Gyrodactylosis
5. Abalone Viral Ganglioneuritis
6. Bonamiosis (*B. exitiosa/ ostreae*)
7. Marteiliellosis (*M. refringens*)
8. Perkinsiosis (*P. marinus / olseni*)
9. Salmonid alphavirus infection
10. Infection with *Xenohalictis californiensis*
11. Infectious hematopoietic necrosis
12. Infectious hypodermal and haematopoietic necrosis
13. Infectious myonecrosis
14. Infectious salmon anemia
15. Koi herpesvirus disease
16. Necrotizing hepatopancreatitis
17. Red sea bream iridoviral disease
18. Spring viremia of carp
19. Taura syndrome
20. Tilapia Lake Virus (TiLV)
21. Viral hemorrhagic septicemia
22. Viral nervous necrosis (VNN)
23. White spot disease
24. White tail disease
25. Yellowhead

C. Notify the State Veterinarian by email at diseasereporting@azda.gov or facsimile at (602) 542-4290 within 30 days after diagnosing any of the diseases listed below:

1. Anaplasmosis

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2. Avian infectious bronchitis
3. Avian infectious laryngotracheitis
4. Bluetongue
5. Bovine cysticercosis
6. Bovine genital campylobacteriosis
7. Bovine viral diarrhoea
8. Camelpox
9. Caprine arthritis/encephalitis
10. Duck viral hepatitis
11. Echinococcosis/hydatidosis
12. Enzootic abortion of ewes
13. Enzootic bovine leukosis (BLV)
14. Epizootic hemorrhagic disease
15. Equine Herpesvirus - 4
16. Equine influenza
17. Infectious bovine rhinotracheitis
18. Infectious bursal disease
19. Johne's disease
20. Leishmaniasis
21. Leptospirosis
22. Maedi-visna (OPP)
23. Marek's disease
24. Mycoplasma Gallisepticum
25. Mycoplasma Synoviae
26. Myxomatosis in rabbits
27. Porcine cysticercosis
28. Porcine Reproductive and Respiratory Syndrome
29. Paratyphoid abortion in Ewes (Salmonella abortusovis)
30. Swine influenza
31. Trichinellosis (Trichinella spiralis)

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-402 renumbered from Section R3-9-402 (Supp. 91-4). Former Section R3-2-402 renumbered to R3-2-403; new Section R3-2-402 renumbered from R3-2-401 and amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-403. Quarantine for Diseased Animals

- A. A quarantine order shall be issued by the Director or his designee when the presence of a Foreign Animal Disease is suspected or diagnosed.
- B. A quarantine order may be issued by the Director or his designee on the advice of the State Veterinarian when the presence of a disease is suspected or diagnosed.
- C. The quarantine order may isolate specific animals, premises, counties, districts, or sections of the state and shall restrict the movement of animals.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-403 renumbered from Section R3-9-403 (Supp. 91-4). Former Section R3-2-403 repealed; new Section R3-2-403 renumbered from Section R3-2-402 and amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 135, effective December 15, 2016 (Supp. 16-4). New Section made by final rulemaking at

26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-404. Importation, Manufacture, Sale, and Distribution of Biologics

- A. Any person importing, manufacturing, selling, or distributing any biologic intended for diagnostic or therapeutic treatment of animals shall request, in writing, permission from the State Veterinarian.
- B. The State Veterinarian shall not approve the importation, manufacture, sale, or distribution of any biologic that will interfere with the state's animal disease control programs.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-404 renumbered from Section R3-9-404 (Supp. 91-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-405. Depopulation of Animals Infected with a Foreign Animal Disease

When a Foreign Animal Disease is diagnosed, the State Veterinarian may order the owner, agent, or feedlot operator to immediately depopulate and dispose of all infected and exposed animals on the premises if necessary to prevent the spread of the disease among animals.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-405 renumbered from Section R3-9-405 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney general, for 180 days at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-406. Disease Control; Designated Feedlots

- A. Designated feedlots are subject to the following restrictions:
- B. A designated feedlot shall have a restricted feeding pen. A restricted feeding pen shall:
 1. Be isolated from all other pens,
 2. Have separate loading and unloading chutes, alleys, and handling facilities from all other pens,
 3. Not share water or feeding facilities accessible to other areas,
 4. Be posted at all corners with permanently affixed signs stating "Restricted Feeding Area,"
 5. Have a minimum of eight feet between restricted and other pens and facilities, and
 6. Have no common fences or gates with other pens.
- C. An operator may place diseased cattle or bison that are under state quarantine into a restricted feeding pen as follows:
 1. All cattle or bison, except steers and spayed heifers, shall be branded with an "F" at least two inches in height, adjacent to the tailhead before entering the pen; and
 - a. Imported cattle or bison, of any age and from any area shall be transported under seal and shall be accompanied by an entry permit number and a Cer-

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tificate of Veterinary Inspection or federal restricted movement document; or

- b. Native Arizona cattle or bison shall be accompanied by an Arizona livestock inspection certificate, as approved by the State Veterinarian or designee.

- D. An operator may move cattle or bison from a restricted feeding pen to slaughter or to another designated feedlot only by prior written approval of the State Veterinarian or APHIS veterinarian.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-406 renumbered from Section R3-9-406 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-407. Disease Control; Equine Infectious Anemia

- A. The Arizona official test for EIA is either the agar-gel immunodiffusion test, known as the Coggins Test, or the Competitive Enzyme-Linked Immunosorbent Assay test, known as the CELISA test. The test shall be performed in a laboratory approved by APHIS, and required samples shall be drawn by an accredited veterinarian, the State Veterinarian, the State Veterinarian's designee, or an APHIS veterinarian.

- B. Disposal of equine testing positive.

1. When an Arizona equine tests positive to EIA, the testing laboratory shall notify the State Veterinarian by telephone at (602) 542-4293 and email at diseasereporting@azda.gov, within four hours.
2. The EIA-positive equine shall be quarantined at its current location, segregated from other equine, and shall not be moved unless authorized by the State Veterinarian. The equine shall be retested by the State Veterinarian, the State Veterinarian's designee, or an APHIS veterinarian within two weeks of the notification.
3. Within 14 days of being notified by the testing laboratory of a positive test conducted under subsection (B)(2), the State Veterinarian or the State Veterinarian's designee shall brand the equine on the left side of its neck with "86A" not less than two inches in height.
4. Within 10 days after being branded, the EIA-positive equine shall be:
 - a. Humanely destroyed,
 - b. Confined to a screened stall marked "EIA Quarantine" that is at least 200 yards from other equine, or
 - c. Consigned to slaughter at a slaughtering establishment. If consigned to slaughter, the equine shall be accompanied by a Permit for Movement of Restricted Animals, VS 1-27, issued by the State Veterinarian, the State Veterinarian's designee, or an APHIS veterinarian.
5. Offspring of mares testing EIA-positive shall be quarantined, segregated from other equine, and tested for EIA at six months of age. Offspring testing positive shall be handled as prescribed in subsections (B)(3) and (B)(4).
6. If an EIA-positive equine is located on premises other than those of the owner at the time a quarantine under this Section, the State Veterinarian may authorize movement of the EIA-positive equine to the owner's premises if requested by the owner. Movement shall be under the direct supervision of the State Veterinarian or the State Veterinarian's designee. If the owner lives in another state, the owner may move the equine to that state with the permission of the chief livestock health official of the state and APHIS.

- C. The State Veterinarian shall require testing of any equine located in the same facility as the EIA-positive equine or any equine considered exposed to the EIA-positive equine. The owner of the equine tested shall pay the expenses for the testing.

- D. The owner of any equine found to be EIA-positive shall not be indemnified by the state for any loss caused by the destruction or loss of value of the equine.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-407 renumbered from Section R3-9-407 (Supp. 91-4). Amended effective February 4, 1998 (Supp. 98-1). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-408. Disposition of Livestock Exposed to Rabies

Livestock bitten by a known or suspected rabid animal shall be handled using the methods prescribed in the National Association of State Public Health Veterinarians' Compendium of Animal Rabies Control, 2016 Part I, Section B. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-408 renumbered from Section R3-9-408 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-409. Rabies Vaccines for Animals

All animals in Arizona vaccinated against rabies shall be vaccinated as prescribed in the National Association of State Public Health Veterinarians' Compendium of Animal Rabies Control, 2016 Part I Section A. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Amended effective October 16, 1986 (Supp. 86-5). Amended effective January 6, 1989 (Supp. 89-1). Section R3-2-409 renumbered from Section R3-9-409 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-410. Trichomonas Testing Requirements

- A. Definitions. For purposes of this Section, the following definitions shall apply.

"Accredited Veterinarian" means an individual who is currently licensed to practice veterinary medicine in the State of Arizona and is an Accredited Level II by the

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United States Department of Agriculture, Animal Plant Health Inspection Service.

“Approved Laboratory” means any laboratory designated and approved by the State Veterinarian for examining *T. foetus* samples and reporting all results to the State Veterinarian.

“Bull” means an intact male bovine 12 months of age and older and is not confined to a drylot dairy.

“Change of Ownership” means when a bull is sold, leased, gifted, or exchanged and changes premises for breeding purposes in Arizona.

“Commingle” means cattle of opposite sex in the same enclosure or pasture with a reasonable opportunity for sexual contact.

“Direct to Slaughter” means transporting an animal from site of testing to a sale yard or directly to a slaughter plant without unloading or commingling prior to arrival.

“Official *T. foetus* bull test” means the sampling of a bull by a licensed, accredited veterinarian. Such test must be conducted after at least seven days separation from all female bovine. The bull and sample must be officially and individually identified and documented for laboratory submission. The official laboratory test shall be a polymerase chain reaction (PCR), or other technologies as approved by the State Veterinarian and adopted through a Director’s Administrative Order. The test is not considered official until results are reported by the testing laboratory.

“Official *T. foetus* laboratory testing” means the laboratory procedures that shall be approved by the State Veterinarian for identification of *T. foetus*.

“Positive *T. foetus* bull” means a bull that has had a positive official *T. foetus* bull test.

“Trichomonas foetus” OR “*T. foetus*” means a protozoan parasite that is the causative agent to the contagious venereal disease Trichomoniasis.

B. Testing requirements for Official *T. foetus*.

1. All Arizona origin bulls sold, leased, gifted, exchanged or otherwise changing possession for breeding purposes in Arizona shall be tested for *T. foetus* via Official *T. foetus* bull test prior to sale or change of ownership in the state, unless going to direct slaughter. *T. foetus* testing shall be performed on bulls prior to change of ownership of that bull.
2. The Official *T. foetus* test shall be collected by an Accredited Veterinarian and performed through an Approved Laboratory.
3. Pooled testing is not an official test.
4. The *T. foetus* negative test is valid for 60 days after the test is performed, providing the bull is kept separated from all female bovine.

C. Positive bull identification.

1. When a positive *T. foetus* bull is identified, the Accredited Veterinarian shall notify the producer upon receipt of the positive test results.
2. Regardless of R3-2-402, the Accredited Veterinarian and Approved Laboratory shall notify the State Veterinarian of a positive *T. foetus* bull within 24 hours of receiving the results. The State Veterinarian’s Office, working in coordination with the regional livestock inspection staff, shall to the best of their ability notify the regional bovine

producers about the positive test within 14 days upon notification of positive test. The State Veterinarian and/or livestock inspection staff is not required to reveal any details of the test just that there is a positive test in the region.

3. The Accredited Veterinarian that performed the test shall return to place of testing to verify the Official Identification of the positive bull.
 4. The Accredited Veterinarian, or a person under direct supervision of the Veterinarian, shall brand the bull with an official “S” brand adjacent to the tailhead on the right hip.
 5. If the bull testing positive is not at the premises where the *T. foetus* testing occurred, the Accredited Veterinarian will immediately notify the State Veterinarian’s Office.
 6. If an Accredited Veterinarian is unable to return to the premises in a time that is reasonable for sale of the bull, the producer shall take the positive *T. foetus* bull directly to the regional livestock sale yard.
 - a. The producer shall immediately notify the sale yard of the positive *T. foetus* bull. Failure to notify the sale yard of the positive *T. foetus* bull will result in a violation of this Section and the producer shall be subject to the penalties of A.R.S. § 3-1205(D).
 - b. Prior to sale at the sale yard, a Livestock Officer shall verify the official identification of the positive *T. foetus* test bull.
 - c. After the official identification is verified, the bull shall be branded with an official “S” brand adjacent to the tailhead on the right hip. The branding shall be done under direct supervision of a Livestock Officer or Livestock Inspector.
 7. If a bull arrives at a livestock auction without an Official *T. foetus* bull test, the bull shall be quarantined at the auction and tested at the expense of the owner or shall be branded with an “S” brand and be sold only for slaughter.
- D. Disposal of bull testing positive.**
1. A bull testing positive for *T. foetus* or branded with the official “S” brand shall go direct to slaughter or shall be placed under State Quarantine and fed in a restricted feeding pen within a designated feedlot according to R3-2-406.
 2. The *T. foetus* positive bull shall not be commingled with any other female bovine. The bull shall go from the testing premises to direct slaughter or to the restricted feeding pen within 30 days of the positive *T. foetus* test.
 3. All remaining herd bulls shall be under a Trichomonas Herd Management Program overseen by the Herd Veterinarian until two negative *T. foetus* tests are performed and documented.
 4. “S” branded bulls purchased at a sale yard shall go direct to a slaughter plant without unloading or commingling prior to arrival.
- E. Trespassing or Stray Bulls.**
1. In the event of a trespassing or stray bull, the herd owner who locates the bull, may request an Official *T. foetus* bull test for that bull. In the event of a positive Official *T. foetus* bull test, subsections (B) and (C) shall apply.
 2. The cost of the veterinary services and Official *T. foetus* bull test shall be the responsibility of the herd owner. In the event of a stray bull, the animal will be subject to A.R.S. §§ 3-1401 et seq.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in

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the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Repealed by final rulemaking at 26 A.A.R. 781, effective June 8, 2020; new Section made by final rulemaking at 26 A.A.R. 812, effective June 8, 2020 (Supp. 20-2).

R3-2-411. Repealed**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 4812, effective December 7, 2000 (Supp. 00-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by exempt rulemaking under Laws 2016, Ch. 160, § 9 at 22 A.A.R. 2400, effective August 6, 2016 (Supp. 16-3). Repealed by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-412. Repealed**Historical Note**

New Section made by final rulemaking at 8 A.A.R. 3628, effective August 7, 2002 (Supp. 02-3). Repealed by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-413. Sheep and Goats; Intrastate Movement

- A.** Before intrastate movement of a sheep more than 18 months of age, or a sheep or goat of any age not in a slaughter channel, the producer shall identify the animal to the flock of birth using official identification before leaving the flock of birth. A sheep or goat not in a slaughter channel includes an animal not for sale, transfer, or movement to:
1. A slaughter facility,
 2. Custom slaughter, or
 3. A feeding operation before movement to slaughter.
- B.** Subsection (A) does not apply if the first point of commingling with animals other than those in the flock of birth is an Arizona auction market that is an approved tagging site.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3628, effective January 1, 2003 (Supp. 02-3). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

ARTICLE 5. STATE-FEDERAL COOPERATIVE DISEASE CONTROL PROGRAM**R3-2-501. Tuberculosis Control and Eradication Procedures**

- A.** Procedures for tuberculosis control and eradication in cattle, bison, and goats shall be as prescribed in 9 CFR Part 77 as revised on January 1, 2018. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Office of the Secretary of State.
- B.** Procedures for tuberculosis control and eradication in cervidae not listed as restricted live wildlife in A.A.C. R12-4-406 shall be as prescribed in 9 CFR 77 Subpart C as revised on January 1, 2018. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Office of the Secretary of State.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Amended subsection (A) effective October 16, 1986 (Supp. 86-5). Section R3-2-501 renumbered from Section R3-9-501 (Supp. 91-4). Amended effective March 5,

1997 (Supp. 97-1). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-502. Repealed**Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-502 renumbered from Section R3-9-502 (Supp. 91-4). Amended effective March 5, 1997 (Supp. 97-1). Section repealed by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1).

R3-2-503. Brucellosis Control and Eradication Procedures

- A.** Procedures for brucellosis control and eradication in cattle and bison shall be as prescribed in 9 CFR 78 as revised on January 1, 2018. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department.
- B.** Procedures for brucellosis control and eradication in swine shall be as prescribed in 9 CFR 78 Subpart D as revised on January 1, 2018. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department.
- C.** Procedures for brucellosis control and eradication in animals not listed as restricted live wildlife in A.A.C. R12-4-406, shall be as prescribed in the USDA publication, Brucellosis in Cervidae: Uniform Methods and Rules, effective September 30, 2003. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Amended effective October 16, 1986 (Supp. 86-5). Amended effective January 6, 1989 (Supp. 89-1). Section R3-2-503 renumbered from Section R3-9-503 (Supp. 91-4). Amended March 5, 1997 (Supp. 97-1). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-504. Pseudorabies Procedures for Eradication

Procedures for pseudorabies control and eradication in swine shall be as prescribed in 9 CFR 85 as revised on January 1, 2018. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department.

Historical Note

Adopted effective March 5, 1997 (Supp. 97-1). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-505. Scrapie Procedures for Eradication

The Department controls and eradicates scrapie using the procedures outlined in 9 CFR 79 as revised on January 1, 2018. This material is incorporated by reference, does not include any later amendments or editions, and is on file with the Department.

Historical Note

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New Section made by final rulemaking at 8 A.A.R. 3628, effective August 7, 2002 (Supp. 02-3). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

ARTICLE 6. HEALTH REQUIREMENTS GOVERNING ADMISSION OF ANIMALS

R3-2-601. Repealed

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-601 renumbered from Section R3-9-601 (Supp. 91-4). Amended effective March 5, 1997 (Supp. 97-1). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1). Amended by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney general, for 180 days at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4). Repealed by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-602. Importation Requirements

- A. All animals transported or moved into the state of Arizona, shall be accompanied by a valid, official Certificate of Veterinary Inspection from the state of origin, or a VS 9-3 form for National Poultry Improvement Plan flocks. All animals shall be imported in accordance with this Section and the species-specific Section in this Article. Any violation of this Article is subject to a hold order pursuant to R3-2-605.
- B. Livestock may not enter the state of Arizona unless accompanied by an Arizona entry permit number documented on the Certificate of Veterinary Inspection. This requirement applies regardless of the species, breed, sex, class, age, point of origin, place of destination, or purpose of the movement of the livestock entering the state, except:
 1. Equine;
 2. Livestock consigned directly to slaughter at a state or federally licensed slaughter establishment; or
 3. Livestock being transported through the state.
- C. An animal affected with or recently exposed to any infectious, contagious, or communicable disease, or which originates in a state or federal quarantine area, shall not be transported or moved into the state of Arizona unless a permit for the entry is first obtained from the Arizona State Veterinarian's Office. All conditions for the movement of animals from a quarantined area established by the quarantining authority or APHIS shall be met. Animals imported from a quarantine area may be subject to additional import requirements by the State Veterinarian prior to entry into Arizona.
- D. The owner or owner's agent shall obtain prior permission from the State Veterinarian to ship or move into the state of Arizona any animal from a lot or herd from which an animal shows clinical signs of disease or positive reaction to a test required for admission to Arizona.
- E. The Director may enter into an agreement to allow New Mexico livestock consigned directly to an Arizona livestock auction to enter the state on a New Mexico brand inspection certificate in place of a Certificate of Veterinary Inspection. If the agreement is entered, it shall be posted on the Arizona Department of Agriculture's website. In the event the agree-

ment is terminated or expires, the Department shall put notice of the termination on the website. The livestock owner or owner's agent is responsible for ensuring that the agreement is current prior to shipping the livestock. This process is subject to the restrictions included in the agreement.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-602 renumbered from Section R3-9-602 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney general, for 180 days at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-603. Repealed

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-603 renumbered from Section R3-9-603 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney general, for 180 days at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4). Repealed by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-604. Repealed

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-604 renumbered from Section R3-9-604 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Repealed by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-605. Hold Order for Animals Entering Illegally

- A. Animals entering the state in violation of any Section under this Article, may be placed under a hold order at the risk and expense of the owner until released by an authorized representative of the State Veterinarian. Animals placed under a hold order for noncompliance with this Article may be released only after the State Veterinarian is satisfied by testing, dipping, or observation over time, that the animals are not a threat to the livestock industry.
- B. The State Veterinarian may order that an imported animal failing to meet entry requirements be returned to the state of origin, consigned directly to slaughter, confined to a designated feedlot, or consigned to a feedlot in another state within two weeks of the request. Any extension to this time-frame must be approved in writing by the State Veterinarian.
- C. If the owner or owner's agent fails to comply with an order to return an animal to the state of origin within the time-frame required in subsection (B), the Department shall require that the animal be immediately gathered and tested at the owner's risk and expense to avoid exposure of Arizona animals to disease. The owner shall pay the expenses no later than five days after receipt of the bill. Failure to do so will result in an auction of sufficient livestock to pay the expenses which shall be held within 10 days at public auction. If additional expenses occur due to lack of cooperation by the owner or the owner's agent, the Director shall order the further sale of livestock.

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Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Former Section R3-9-605 renumbered to R3-2-605 (Supp. 91-4).

Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney general, for 180 days at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-606. Certificate of Veterinary Inspection

- A.** A Certificate of Veterinary Inspection is valid for not more than 30 days after the date of issue, except where otherwise noted in this Article, and shall contain:
1. The name and address of the Consignor and Consignee;
 2. The physical address of the origin of the animal;
 3. The physical address of the animal's final destination;
 - a. Entry permit number if applicable;
 - b. Official identification if applicable; and
 - c. Certificate of Veterinary Inspection individual certificate number.
 - d. Qualifying required tests with completion dates.
- B.** The Certificate of Veterinary Inspection shall be forwarded to the State Veterinarian in Arizona within 14 days of issue.
- C.** A VS form 17-30 is deemed a valid international CVI if the following conditions are met:
1. Accompanied by a valid brand inspection certificate from a southern border state with an entry permit number; and
 2. Official identification as documented on the VS form 17-30.
- D.** Official Certificates of Veterinary Inspection may be used in electronic or paper form.
- E.** Additions, deletions, and unauthorized or uncertified changes inserted or applied to a Certificate of Veterinary Inspection renders the certificate void and may be subject to state or federal penalties.
- F.** The veterinarian issuing a Certificate of Veterinary Inspection shall certify that the animals shown on the Certificate of Veterinary Inspection are free from evidence of any infectious, contagious, or communicable disease or known exposure.
- G.** An accredited veterinarian shall inspect animals for entry into the state.
- H.** The Director may limit the period for which a Certificate of Veterinary Inspection is valid to less than 30 days if advised by the State Veterinarian of the occurrence of a disease that constitutes a threat to the livestock industry.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-606 renumbered from Section R3-9-606 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 8 A.A.R. 3628, effective August 7, 2002 (Supp. 02-3). Amended by final rulemaking at 14 A.A.R. 884, effective May 3, 2008 (Supp. 08-1). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1). Amended by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney general, for 180 days

at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-607. Entry Permit Number

- A.** An entry permit number for interstate movement may be obtained from the Office of the State Veterinarian, by calling (602) 542-4293 during the hours of 8 a.m. to 5 p.m. Monday through Friday, excluding state holidays. Any person applying for an entry permit number shall provide the following information:
1. The name and address of the Consignor and Consignee;
 2. The number and kind of animals;
 3. The physical address of the origin of shipment;
 4. The physical address of the shipment's final destination;
 5. The method of transportation; and
 6. Any other information required by the State Veterinarian.
- B.** An entry permit number is valid for a maximum of 30 calendar days from the date of issuance unless otherwise indicated on the CVI.
- C.** An entry permit number shall be issued if the animals listed on the Certificate of Veterinary Inspection are in compliance with this Article. To cope with changing disease conditions, the State Veterinarian may refuse to issue an entry permit number or may require additional conditions not specifically established in this Article if necessary to protect animal health in Arizona.
- D.** The entry permit number issued shall be affixed or written on the Certificate of Veterinary Inspection, brand inspection certificate, and any other official documents as follows: "Arizona Permit No. _____" followed by the serialized number.
- E.** The State Veterinarian shall refuse to grant an entry permit number to any person who repeatedly commits the following:
1. Giving false information concerning an entry permit number for transportation of animals,
 2. Failing to fulfill the conditions of an entry permit number, or
 3. Failing to obtain an entry permit number.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-607 renumbered from Section R3-9-607 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-608. Repealed**Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-608 renumbered from Section R3-9-608 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney general, for 180 days at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4). Repealed by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-609. Diversion; Prohibitions

A person consigning, transporting, or receiving an animal into the state of Arizona shall not authorize, order, or carry out diversion of

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the animal to a destination or consignee other than as set forth on the Certificate of Veterinary Inspection and entry permit, if required, without first obtaining permission from the State Veterinarian.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-609 renumbered from Section R3-9-609 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney general, for 180 days at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-610. Tests; Official Confirmation

A state or federal animal diagnostic laboratory or APHIS-approved laboratory shall perform or confirm any animal testing required by a state or federal authority as a condition for entry into Arizona.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-610 renumbered from Section R3-9-610 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney general, for 180 days at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4).

R3-2-611. Transporter Duties

- A. All owners and operators of railroads, trucks, airplanes, or other conveyances transporting animals into or through the state shall possess all of the importation documents required by this Article. These documents shall be attached to the waybill, or be in the possession of the vehicle driver, or person in charge of the animals. When a single Certificate of Veterinary Inspection and entry permit number is issued for animals being moved in more than one vehicle, the driver of each vehicle shall possess the original or a copy of the Certificate of Veterinary Inspection containing the entry permit number, if required.
- B. The owner or operator of a railroad car, truck, airplane, or other conveyance used to transport animals into or through the state shall maintain the conveyance in a clean and sanitary condition.
- C. The owners and operators of railroads, trucks, airplanes, or other conveyances who transport animals into the state in violation of this Section shall clean and disinfect the conveyance in which the animals were illegally brought into the state before using the conveyance for transporting more animals. The cleaning and disinfection shall be performed under the supervision of an authorized representative of the State Veterinarian or the USDA.
- D. The owners or operators of railroads, trucks, airplanes, or other conveyances shall follow the USDA requirements and Arizona Department of Agriculture rules and statutes, in the humane transport of animals into, within, or through the state.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-611 renumbered from Section R3-9-611 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is

January 1, 2000 (Supp. 01-1). Amended by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney general, for 180 days at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-612. Importation of Cattle and Bison

- A. The Certificate of Veterinary Inspection for cattle and bison shall include:
 1. A valid entry permit number.
 2. The number of cattle and bison covered by the Certificate of Veterinary Inspection, an accurate description and official identification, if applicable except for "F" branded heifers consigned to a designated feedlot identified by brand.
 3. The health status of the cattle and bison including:
 - a. The date of the inspection;
 - b. The dipping date, if applicable;
 - c. The date of negative results for required testing under this Article; and
 - d. The vaccination status as required by this Article.
 4. The method of transportation; and
 5. For bulls subject to testing under R3-2-612(I), a statement that the bulls:
 - a. Tested negative for *Tritrichomonas foetus* within 30 days prior to shipment using a polymerase chain reaction test; and
 - b. Have had no breeding activity during the interval between the collection of the samples and the date of shipment.
- B. The owner of cattle and bison entering Arizona or the owner's agent shall comply with the requirements in this Article. Failure to comply with entry requirements will incur the following conditions:
 1. Pay the expenses incurred by a hold order to test and retest the imported cattle or bison or return them to the state of origin.
 2. For imported beef breeding cattle, breeding bison, and dairy cattle, ensure that an accredited veterinarian applies official identification to each bovine or bison.
- C. Arizona shall not accept:
 1. Cattle or bison from brucellosis infected, exposed, or quarantined herds regardless of their vaccination or test status, or both, except:
 - a. Steers and spayed females, and
 - b. Cattle or bison shipped directly for immediate slaughter to an official state or federal slaughter establishment;
 2. Cattle or bison of unknown brucellosis exposure status, unless consigned for feeding purposes to a designated feedlot;
 3. Dairy cattle from a state or region within a foreign country without brucellosis status comparable to a Class-Free State, or without tuberculosis status comparable to an Accredited-Free State;
 4. Dairy and dairy cross steers, and dairy and dairy cross spayed heifers from Mexico;
 5. Beef breeding cattle or breeding bison from a state or region within a foreign country without brucellosis status comparable to a Class A State, or without tuberculosis status comparable to a Modified Accredited State.
- D. Brucellosis testing requirements for beef breeding cattle, breeding bison, and dairy cattle imported into Arizona from other states.

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1. Brucellosis testing is not required in dairy and beef cattle from a brucellosis Class-Free State that does not have free-ranging brucellosis infected bison or wildlife.
 2. Brucellosis not required for any cattle or bison consigned to a designated feedlot that are branded with an "F" adjacent to the tail head as long as the State Veterinarian grants permission to apply the "F" brand upon arrival. All "F" branded cattle or bison that leave the designated feedlot shall be shipped directly to:
 - a. An official state or federal slaughter establishment for immediate slaughter,
 - b. Another designated feedlot, or
 - c. Another state if shipping is permitted by the State Veterinarian in the state of destination.
 3. All female dairy cattle four months of age or older, imported into Arizona, shall be official calfhooed vaccinates, officially identified, certified, and legibly tattooed except for the following:
 - a. Show cattle for exhibition,
 - b. Cattle consigned directly to an official state or federal slaughter establishment for immediate slaughter, and
 - c. Cattle consigned for feeding purposes to a designated feedlot with an entry permit number.
 4. For beef breeding cattle, breeding bison, and dairy breeding cattle from a Class A state the owner or owner's agent:
 - a. Shall ensure that the cattle remain under quarantine and isolation until the cattle test negative for brucellosis. The test shall be performed no earlier than 45 days and no later than 120 days after entry.
 - b. Shall retest dairy cattle if the State Veterinarian determines there is a potential risk of the introduction of brucellosis in the state.
 - c. Is not required to quarantine or test for brucellosis official calfhooed vaccinates less than 18 months of age, if permission is granted by the State Veterinarian.
 5. The owner or owner's agent:
 - a. Shall notify the State Veterinarian within seven days of moving cattle or bison that are under quarantine from the destination listed on the import permit and Certificate of Veterinary Inspection.
 - b. Shall notify the State Veterinarian at the time animals are retested for brucellosis, if the animals are under quarantine and are not moved from the destination listed on the import permit and Certificate of Veterinary Inspection.
 - c. Is not required to notify the State Veterinarian if the cattle or bison are shipped directly to an official state or federal slaughter establishment for immediate slaughter.
- E.** Tuberculosis testing requirements for beef breeding cattle, breeding bison, and dairy cattle imported into Arizona from other states.
1. No tuberculosis test is required for:
 - a. Beef breeding cattle or breeding bison, from a tuberculosis accredited Free State if the state accredited status is documented on the Certificate of Veterinary Inspection and entry permit; or
 - b. Steers and spayed heifers.
 2. Beef breeding cattle and breeding bison from a Tuberculosis Modified Accredited State or Tuberculosis Class Free State with a Tuberculosis Quarantine in effect, shall test negative for Bovine Tuberculosis within 60 days prior to entry into Arizona.
 3. All dairy breeding cattle greater than 120 days of age shall test negative for Bovine Tuberculosis within 60 days prior to entry into Arizona.
- F.** Brucellosis testing requirements for beef breeding cattle, breeding bison, and dairy cattle imported into Arizona from Mexico.
1. Prior to entry into Arizona, beef breeding cattle, breeding bison, or dairy cattle from Mexico shall meet the requirements of 9 CFR 93.424 through 93.427, as revised on January 1, 2018. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007.
 2. The owner or owner's agent shall ensure that beef breeding cattle, breeding bison, and dairy cattle from Mexico remain under import quarantine and isolation until tested negative for brucellosis. The test shall not be performed earlier than 60 days nor later than 120 days after entry into Arizona. All cattle or bison consigned to a designated feedlot shall be branded with an "F" adjacent to the tail head before entry into Arizona unless the State Veterinarian grants permission to apply the "F" brand on arrival. Unless neutered, all beef breeding cattle, breeding bison, and dairy cattle leaving the designated feedlot shall go directly to an official state or federal slaughter establishment for immediate slaughter or to another designated feedlot. The owner of the designated feedlot shall ensure that official identification records are kept on all incoming consignments and then submit the records monthly to the State Veterinarian. An accredited veterinarian shall identify, on a form approved by the State Veterinarian, all cattle and bison leaving the designated feedlot. A copy of the form shall accompany the cattle or bison to slaughter and a copy shall be submitted to the State Veterinarian.
 3. Dairy cattle from Mexico shall test for brucellosis again 30 days after calving, unless the dairy cattle were consigned directly to a feedlot.
- G.** Tuberculosis testing requirements for cattle and bison imported into Arizona from Mexico.
1. Prior to entry into Arizona, cattle and bison from Mexico shall meet the requirements of 9 CFR 93.424 through 93.427 as revised on January 1, 2018, incorporated by reference in subsection (F)(1).
 2. Steers and spayed heifers from states or regions in Mexico shall not enter the state if they have not been determined by the State Veterinarian to have fully implemented the Control, Eradication, or Free Phase of the bovine tuberculosis eradication program of Mexico.
 3. Steers and spayed heifers from states or regions in Mexico determined by the State Veterinarian to have fully implemented the Control Phase of the bovine tuberculosis eradication program of Mexico shall not be imported into Arizona without permission of the State Veterinarian.
 4. Steers and spayed heifers from states or regions in Mexico determined by the State Veterinarian to have fully implemented the Eradication Phase of the bovine tuberculosis eradication program of Mexico may be imported into Arizona, if they have either:
 - a. Tested negative for tuberculosis in accordance with procedures equivalent to the 9 CFR Part 77 as amended on January 9, 2013 within 60 days before entry into the United States, or
 - b. Originated from a herd that is equivalent to an accredited herd in the United States and are moved directly from the herd of origin across the border as

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- a single group and not commingled with other cattle or bison before arriving at the border.
5. Steers and spayed heifers from states or regions in Mexico determined by the State Veterinarian to have achieved the Free Phase of the bovine tuberculosis eradication program of Mexico may move directly into Arizona without testing or further restrictions if they are moved as a single group and not commingled with other cattle before arriving at the border.
 6. Beef breeding cattle and breeding bison from states or regions in Mexico may be imported into Arizona if the State Veterinarian determines the Eradication or Free Phase of the bovine tuberculosis eradication program of Mexico has been fully implemented and the breeding cattle and breeding bison remain under quarantine and isolation until retested negative for tuberculosis in accordance 9 CFR Part 77 as revised on January 1, 2018. The test shall be performed not earlier than 60 days but not later than 120 days after entry unless consigned to a designated feedlot for feeding purposes only. Unless neutered, all beef breeding cattle or breeding bison consigned to a designated feedlot shall be branded with an "F" adjacent to the tail head before entry into Arizona, unless permission is granted by the State Veterinarian to apply the "F" brand on arrival. All beef breeding cattle or breeding bison leaving the designated feedlot shall go directly to an official state or federal slaughter establishment for immediate slaughter or to another designated feedlot. The owner of the designated feedlot shall ensure that official identification records are kept on all incoming consignments and submit the records monthly to the State Veterinarian. An accredited veterinarian shall identify, on a form approved by the State Veterinarian, all beef breeding cattle and breeding bison leaving the designated feedlot. A copy of the form shall accompany the cattle and bison to slaughter and a copy shall be submitted to the State Veterinarian.
- H. Bovine scabies requirements.**
1. The owner or owner's agent shall ensure that no cattle or bison affected with or exposed to scabies is shipped, trailed, driven, or otherwise transported or moved into Arizona except cattle or bison identified and moving under a VS Form 1-27 and seal for immediate slaughter at an official state or federal slaughter establishment.
 2. The owner or owner's agent of cattle or bison from an official state or federal scabies quarantined area shall comply with the requirements of 9 CFR 73, Scabies in Cattle, as revised on January 1, 2018, before moving the cattle or bison into Arizona. This material is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department.
 3. The State Veterinarian may require that breeding and feeding cattle and bison from known scabies infected areas and states be dipped or treated even if the animals are not known to be exposed. The State Veterinarian shall require that dairy cattle be dipped only if the animals are known to be exposed; otherwise an accredited veterinarian's examination and certification shall be sufficient.
- I. Trichomoniasis requirements for bulls imported into Arizona from other states.**
1. The owner or owner's agent shall ensure bulls:
 - a. Test negative for *Tritrichomonas foetus* within 30 days prior to shipment using a polymerase chain reaction test or a diagnostic test approved by the state veterinarian, except for bulls:
 - i. Less than 12 months of age,
 - ii. Consigned directly to a state or federal licensed slaughter facility,
 - iii. Consigned directly to a dairy,
 - iv. Consigned directly to an exhibition or rodeo,
 - v. Consigned directly to a licensed feedlot for castration on arrival,
 - vi. Branded with an "F" adjacent to the tailhead and consigned directly to a designated feedlot for feeding and later movement directly to slaughter, and
 - b. Have no breeding activity during the interval between the collection of a sample and the date of shipment.
 - c. The following statements documented on the CVI in reference to R3-2-612(A)(5):
 - i. Test negative for *Tritrichomonas foetus* within 30 days prior to shipment using a polymerase chain reaction test; and
 - ii. Have had no breeding activity during the interval between the collection of the samples and the date of shipment.
 2. An accredited veterinarian approved to collect samples for *Tritrichomonas foetus* testing by the state animal health official in the state of origin shall collect the *Tritrichomonas foetus* test samples.
 3. A laboratory approved to conduct tests for *Tritrichomonas foetus* by the state animal health official in the state of origin shall perform the test for *Tritrichomonas foetus*.
- J. For purposes of this Section beef breeding cattle means intact beef cattle.**

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-612 renumbered from Section R3-9-612 (Supp. 91-4). Amended effective March 5, 1997 (Supp. 97-1). Amended effective February 4, 1998 (Supp. 98-1). Amended by final rulemaking at 14 A.A.R. 884, effective May 3, 2008 (Supp. 08-1). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-613. Importation of Swine

- A.** A Certificate of Veterinary Inspection for swine shall include:
1. A valid entry permit number;
 2. The following statements recorded on the CVI;
 - a. The swine listed on this CVI have never been fed garbage; and
 - b. The swine listed on this CVI have not been vaccinated for pseudorabies;
 3. Official Identification; and
 4. If applicable, the validated brucellosis-free herd number and last test date for swine originating from a validated brucellosis-free herd.
- B.** Brucellosis test requirements. Swine imported into Arizona from other states shall:
1. Originate from a validated swine brucellosis-free herd or from a swine brucellosis-free state; or
 2. Test negative for brucellosis within 30 days before entry.
- C.** For purposes of this Section, breeding swine means intact swine that have had breeding activity.
- D.** It is unlawful for any person to import into the state of Arizona live feral swine. Any person or corporation owning or possessing a live feral swine in this state shall at all times keep such feral swine in a safe and suitable enclosure so that it may not

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run at large or damage the person or property of others. For purposes of this Section, feral swine means a hog, boar, or pig that appear to be untailed, undomesticated, or in a wild state; or appear to be contained for commercial hunting or trapping.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Amended effective June 29, 1984 (Supp. 84-3). Section R3-2-613 renumbered from Section R3-9-613 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 4812, effective December 7, 2000 (Supp. 00-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-614. Importation of Sheep and Goats

- A. A Certificate of Veterinary Inspection for sheep and goats shall include:
1. A valid entry permit number; and
 2. A statement that:
 - a. The sheep or goats are not infected with bluetongue, or exposed to scrapie, and do not originate from a scrapie-infected or source flock; and
 - b. The sheep or goats test negative for *Brucella ovis* if a test is required by subsection (B); and if applicable
 - c. Breeding rams have been individually examined and are free of gross lesions of ram epididymitis.
- B. A breeding ram six months of age or older shall test negative for *Brucella ovis* within 30 days of entry or originate from a certified brucellosis-free flock. An exhibition ram that returns to the out-of-state flock of origin within five days of the conclusion of the exhibit is exempt from the testing requirement of this subsection.
- C. Arizona native commercial flocks participating in a *Brucella ovis* control program through testing performed by an accredited and licensed veterinarian may return to Arizona from another state without testing, provided the flock has not commingled with other flocks.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-614 renumbered from Section R3-9-614 (Supp. 91-4). Amended by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 8 A.A.R. 3628, effective August 7, 2002 (Supp. 02-3). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-615. Importation of Equine

- A. A Certificate of Veterinary Inspection for equine shall include:
1. An accurate identification for each equine including age, sex, breed, color, name, brand, tattoo, scars, microchip if any, and distinctive markings; and
 2. A statement that the equine has a negative test for EIA, including:
 - a. The date and results of the test;
 - b. The name of the testing laboratory; and
 - c. The laboratory accession number.
- B. Equine entering the state are not required to obtain an entry permit number.

- C. All equine six months of age or older shall, using a test established in R3-2-407(A), test negative for EIA within 12 months before entry. Testing expenses shall be paid by the owner.
- D. Extended Equine Certificates of Veterinary Inspection (EECVI) are valid for the life of the certificate (up to 6 months) in the state of Arizona. The equine listed on the EECVI shall be officially identified with a microchip.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-615 renumbered from Section R3-9-615 (Supp. 91-4). Amended effective February 4, 1998 (Supp. 98-1). Amended by final rulemaking at 8 A.A.R. 3628, effective August 7, 2002 (Supp. 02-3). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-616. Importation of Cats and Dogs

A dog or cat shall be accompanied by a Certificate of Veterinary Inspection that documents the animal is currently vaccinated against rabies if older than three months of age according to the requirements of the National Association of State Public Health Veterinarians' Compendium of Animals Rabies Control, incorporated by reference in R3-2-409.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-616 renumbered from Section R3-9-616 (Supp. 91-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-617. Importation of Poultry

Poultry entering the state shall appear healthy, not originate from a poultry quarantine area, comply with all interstate requirements of APHIS, and be accompanied by a Certificate of Veterinary Inspection or Form 9-3 from the National Poultry Improvement Program.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-617 renumbered from Section R3-9-617 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1). Repealed by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney general, for 180 days at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-618. Importation of Psittacine Birds

- A. The owner or the owner's agent of a psittacine bird entering Arizona shall obtain a Certificate of Veterinary Inspection issued by a veterinarian within 30 days of entry, certifying:
1. The bird is not infected with the agent that causes avian chlamydiosis, and
 2. The bird was not exposed to birds known to be infected with avian chlamydiosis within the past 30 days.
- B. The Certificate of Veterinary Inspection shall accompany the psittacine bird at the time of entry into Arizona.

Historical Note

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Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-618 renumbered from Section R3-9-618 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1). Repealed by emergency rulemaking at 22 A.A.R. 1750, effective immediately upon filing, June 22, 2016, as determined by the attorney general, for 180 days at 22 A.A.R. 1750 (Supp. 16-2). Emergency expired December 19, 2016 (Supp. 16-4). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-619. Repealed**Historical Note**

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-619 renumbered from Section R3-9-619 (Supp. 91-4). Section repealed by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1).

R3-2-620. Importation of Zoo Animals

- A. An owner or owner's agent may transport or move zoo animals into the state of Arizona if the animals are accompanied by an official Certificate of Veterinary Inspection, and consigned to a zoo or in the charge of a circus or show.
- B. The owner, or owner's agent, of livestock except swine and equine in a "Petting Zoo" shall have the livestock tested for tuberculosis within 12 months before importation. A negative test result is required for entry into Arizona.
- C. A business that transports or exhibits zoo animals shall be licensed by the Arizona Game and Fish Department.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-620 renumbered from Section R3-9-620 (Supp. 91-4). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-621. Expired**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Amended by final rulemaking at 14 A.A.R. 876, effective May 3, 2008 (Supp. 08-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 135, effective December 15, 2016 (Supp. 16-4).

R3-2-622. Expired**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 25, effective December 8, 1999 (Supp. 99-4). December 8, 1999 effective date corrected to reflect what is on file in the Office of the Secretary of State; correct effective date is January 1, 2000 (Supp. 01-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 135, effective December 15, 2016 (Supp. 16-4).

ARTICLE 7. LIVESTOCK INSPECTION**R3-2-701. Department Livestock Inspection**

- A. A Division employee shall inspect range cattle, as defined in R3-2-702(A), at a ranch if the owner or agent of livestock is:
 1. Moving cattle out-of-state,
 2. Transferring cattle ownership, or
 3. Shipping cattle for custom slaughter.
- B. An owner or agent of cattle cannot be issued both non-range and range self-inspection certificates.
- C. With prior approval from a Division employee, livestock can be moved to a licensed custom slaughter facility using the livestock owner's or agent's or feedlot operator's self-inspection certificate. A Division employee must validate the self-inspection certificate prior to slaughter.
- D. The Department shall not issue a self-inspection certificate to an owner or agent of livestock or feedlot operator if that individual has been convicted of a felony under A.R.S. Title 3 within the three-year period before the date on the self-inspection application. The Department may deny self-inspection to an applicant if within the five-year period before the date on the self-inspection application, the applicant was convicted of any A.R.S. Title 3 offense or an A.R.S. Title 13 offense related to livestock. A Division employee shall inspect livestock if an applicant is denied self-inspection authority.
- E. During fiscal year 2022, livestock officers and inspectors shall collect from the person in charge of cattle, dairy cattle, or sheep inspected a service charge of \$10 plus the per head inspection fee set out in A.R.S. § 3-1337 for making inspections for the transfer of ownership, sale, slaughter or transportation of the animals.

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-701 renumbered from Section R3-9-701 (Supp. 91-4). Section R3-2-701 repealed; new Section R3-2-701 adopted effective February 4, 1998 (Supp. 98-1). Error in subsection (A)(3) corrected under R1-1-109, filed with the Office of the Secretary of State October 18, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 513, effective April 6, 2003 (Supp. 03-1). Amended by exempt rulemaking at 16 A.A.R. 1331, effective June 29, 2010 (Supp. 10-2). Amended by exempt rulemaking at 17 A.A.R. 1756, effective July 20, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 2060, effective August 2, 2012 (Supp. 12-3). Amended by exempt rulemaking at 19 A.A.R. 3127, effective September 14, 2013 (Supp. 13-3). Amended by exempt rulemaking at 20 A.A.R. 2449, effective July 24, 2014 (Supp. 14-3). Amended by exempt rulemaking pursuant to Laws 2015, Ch. 10, § 14, at 21 A.A.R. 2404, effective July 3, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 23 A.A.R. 1937, effective August 9, 2017 (Supp. 17-2). Amended by final exempt rulemaking at 24 A.A.R. 2219, effective August 3, 2018 (Supp. 18-3). Amended by final exempt rulemaking at 25 A.A.R. 2081, effective August 27, 2019 (Supp. 19-3). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2). Amended by final exempt rulemaking at 26 A.A.R. 1471, effective August 25, 2020 (Supp. 20-3). Amended by final exempt rulemaking at 27 A.A.R. 1264, effective September 29, 2021 (Supp. 21-3).

R3-2-702. Livestock Self-inspection

- A. Definitions.

"Dairy" means an owner or agent of a place or premise where one or more lactating animals are kept for milking purposes and from which a part or all of the milk is provided, sold, or

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offered for sale that meets both of the following conditions: the livestock is not permitted to range and the dairy is permitted by the Department. If these conditions are met, then a Division employee may grant the applicant dairy status.

“Description” means sex, breed, color, and markings, as applicable to the type of livestock.

“Exhibition” means an event including a fair, show, or field day that has as its primary purpose the opportunity for a member of a livestock organization, including 4-H and FFA, to display an animal raised by the individual in a judged competition.

“Feedlot” means an operator of a beef cattle feedlot or feed yard in which the livestock is not permitted to range and that is licensed by the Department. If these conditions are met, then a Division employee may grant the applicant feedlot status.

“Livestock” means cattle, sheep, goats, and swine.

“Livestock broker” means an owner or agent who engages in the business of buying and selling livestock and has immediate possession of the livestock for 10 days or less in which the livestock is not permitted to range. If these conditions are met, then a Division employee may grant the applicant livestock broker status.

“Non-range” means any owner or agent of an enclosed property that is 100 acres or less that meets all of the following conditions: the fence enclosing the livestock is well maintained, the livestock is not permitted to range, and the owner or agent of the livestock lives where the livestock are kept. If these conditions are met, then a Division employee may grant the applicant non-range status.

“Range” means every character of lands, enclosed or unenclosed, outside of cities and towns, upon which livestock is permitted by custom, license or permit to roam and feed. A.R.S. § 3-1201(7)

“Range cattle” means cattle customarily permitted to roam upon the ranges of the state, whether public domain or in private control, and not in the immediate actual possession or control of the owner although occasionally placed in enclosures for temporary purposes. A.R.S. § 3-1201(8)

B. Application.

1. Owners or agents of livestock or feedlot operators shall request a book of self-inspection certificates from the Department. The applicant shall submit a written application form obtained from the Department and provide the following information:
 - a. Name, mailing address, physical address, telephone number, and email address;
 - b. Name of business and type of livestock operation;
 - c. Whether the applicant has been convicted of a violation of A.R.S. Title 3, or a violation of A.R.S. Title 13 related to livestock within the past five years, and if so, the case number, court, charge, and sentence;
 - d. Recorded brand number;
 - e. Individual or individuals designated to sign self-inspection certificates, if applicable; and
 - f. Signature and date.
2. The holder of a self-inspection book shall advise the Department within 30 days of any change to the information provided on an application form.
3. The holder of a self-inspection book shall renew registration with the Department every three years from the date the initial or renewal application form is signed.

4. If a holder with self-inspection privileges has been convicted of a criminal violation under A.R.S. Title 3, or a violation of Title 13 related to livestock, that holder shall notify the Department immediately and their privileges shall be revoked.
 5. Prior to a Department employee issuing a book of self-inspection certificates, the owner shall submit the following payment amount and the Department shall receive the payment in full prior to issuing the book:
 - a. \$25.00 for a twenty five page feedlot or livestock broker book;
 - b. \$20.00 for a twenty page dairy book; or
 - c. \$10.00 for a ten page non-range, range, sheep, goat, or swine book.
- #### C. Self-inspection certificate.
1. An owner or agent of livestock or feedlot operator shall provide the following information, as applicable, on a self-inspection certificate whenever livestock subject to self-inspection are moved or ownership is transferred:
 - a. Name, address, and signature, of the owner or agent of livestock or feedlot operator;
 - b. Date of the shipment or transfer of ownership;
 - c. If moved, location from which and to which the livestock are moved, including the name of the auction, feedlot, arena, slaughter establishment, pasture, or other premises, and physical location;
 - d. Name of transporter;
 - e. Number and description of livestock;
 - f. Official identification of each dairy cattle and sexually intact cattle over 18 months of age shipped out of state and back tag numbers of culled dairy cattle;
 - g. Brand number, expiration date, and location;
 - h. Name and address of buyer;
 - i. Number of head of cattle sold for which Beef Council fees are payable under A.R.S. §§ 3-1236 and 3-1238.
 2. The owner or agent of livestock or feedlot operator shall complete a self-inspection certificate, except when livestock are subject to inspection by a Division employee under R3-2-701, and distribute copies of the certificate as follows:
 - a. One copy and any fees that are owed under subsection (C)(1)(i) shall be sent to the Department within 10 days after the end of the month in which it was used;
 - b. If the livestock are shipped, the original certificate shall accompany the livestock whenever they are in transit and one copy shall be retained by the person transporting the livestock; or
 - c. If ownership of the livestock is transferred without shipment, two copies shall be provided to the new owner or agent of livestock or feedlot operator; and one copy shall be retained by the seller.
 3. A certificate may be used once to either transfer livestock ownership or to move livestock to a specific destination. If the livestock are diverted to a destination other than that stated on the self-inspection certificate, the certificate is void. The owner or agent of livestock, or feedlot operator shall complete a new certificate and send both the voided and new certificates to the Department within 10 days after the end of the month in which the certificates are used or voided.
 4. An owner or agent of livestock or feedlot operator shall use a self-inspection certificate only with a shipment of livestock matching the description for which the certificate is issued and only for the self-inspection issued date.

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If any of the information on the self-inspection certificate changes, the certificate is void and the owner or agent of livestock or feedlot operator shall complete a new certificate.

5. An altered, erased, completed but unused, or defaced self-inspection certificate is void. A voided certificate shall be returned to the Department within 10 days after the end of the month in which it is voided.
 6. Upon request, certificates shall be returned to the Department by the owner or agent of livestock or feedlot operator. If an operation licensed for self-inspection is sold, leased, transferred, or otherwise disposed of, the owner or agent of livestock or feedlot operator shall notify the Department and return all self-inspection certificates to the Department within 30 days of the transaction.
 7. If the owner or agent of livestock or feedlot operator cannot find an unused or used certificate, they must sign an affidavit provided by the Department verifying the certificate is lost and cannot be found. New certificates will not be issued until the signed affidavit has been received by the Department.
- D. Sale of livestock.** A seller shall document a sale by completing a self-inspection certificate as prescribed in subsection (C) and providing a bill of sale to the purchaser as required under A.R.S. § 3-1291.
- E. Feedlot receiving form.**
1. The operator of a feedlot shall document receipt of incoming cattle on a form obtained from the Department. The operator shall include the following information on the form:
 - a. Name of feedlot and location;
 - b. Month and year for which report is made;
 - c. Number of cattle received, date received, and name and address of owner;
 - d. Description of the cattle;
 - e. If not Arizona native cattle, the import permit and Certificate of Veterinary Inspection numbers;
 - f. If native Arizona cattle, self-inspection certificate number or Department inspection certificate number; and
 - g. Pen number to which cattle are initially assigned.
 2. The operator shall return the completed form within 10 days after the end of the month of the reporting period.
- F. Quarantine.** Livestock under quarantine by the Department shall not be shipped or sold by use of a self-inspection certificate.
- G. Violations.** The Department shall process violations of this Section as prescribed under A.R.S. § 3-1203(D).

Historical Note

Adopted effective August 19, 1983 (Supp. 83-4). Section R3-2-702 renumbered from Section R3-9-702 (Supp. 91-4). Section R3-2-702 repealed; new Section R3-2-702 adopted effective February 4, 1998 (Supp. 98-1). Amended by final rulemaking at 9 A.A.R. 513, effective April 6, 2003 (Supp. 03-1). Amended by exempt rulemaking under Laws 2016, Ch. 160, § 9 at 22 A.A.R. 2400, effective August 6, 2016 (Supp. 16-3). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-703. Seasonal Self-inspection Certificate

Exhibition cattle, sheep, goats, and swine.

1. An applicant for a seasonal self-inspection certificate prescribed under A.R.S. § 3-1346 shall request a seasonal self-inspection certificate from the Department. The

applicant shall provide the following information, as applicable:

- a. Name, mailing address, physical address if different from mailing address, telephone number, and email address;
 - b. Name of 4-H or FFA group, and group leader;
 - c. Physical description of livestock;
 - d. Official identification of livestock, except for native cattle born and raised in Arizona;
 - e. Permit number and Certificate of Veterinary Inspection number for livestock imported from another state;
 - f. Name of seller and self-inspection certificate number or Department inspection certificate number for livestock purchased from an Arizona seller; and
 - g. Signature and date of signature of the owner or lessee. If the owner or lessee is under 18 years of age, a signature of the parent or guardian and date of signature are required.
2. The Department employee who records the information required in subsection (1) shall advise the applicant of the required fee prescribed under A.R.S. § 3-1346(A). The Department shall issue a seasonal self-inspection certificate upon receipt of the fee.
 3. An exhibitor shall provide the following information, as applicable, on a seasonal self-inspection certificate whenever livestock subject to seasonal self-inspection is moved or ownership is transferred:
 - a. Name, address, telephone number, email address, and signature;
 - b. Date of movement;
 - c. Name of exhibition and location;
 - d. Final disposition of the livestock (sale, death, or retention) and date of occurrence; and
 - e. If the livestock is sold, name, address, and phone number of purchaser (person or slaughter plant).
 4. The holder of a seasonal self-inspection certificate shall return the certificate to the Department within two weeks of the sale or slaughter of the livestock or at the end of the show season if the livestock is retained.

Historical Note

Adopted effective November 27, 1987 (Supp. 87-4). Section R3-2-703 renumbered from Section R3-9-703 (Supp. 91-4). Section R3-2-703 repealed; new Section R3-2-703 adopted effective February 4, 1998 (Supp. 98-1). Section repealed; new Section made by final rulemaking at 9 A.A.R. 513, effective April 6, 2003 (Supp. 03-1). Amended by exempt rulemaking under Laws 2016, Ch. 160, § 9 at 22 A.A.R. 2400, effective August 6, 2016 (Supp. 16-3). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-704. Emergency Expired**Historical Note**

Adopted effective February 4, 1998 (Supp. 98-1). Section repealed by final rulemaking at 9 A.A.R. 513, effective April 6, 2003 (Supp. 03-1). Section made by emergency rulemaking at 24 A.A.R. 3589, with an immediate effective date of December 13, 2018, valid for 180 days (Supp. 18-4). Emergency expired (Supp. 20-2).

R3-2-705. Repealed**Historical Note**

Adopted effective February 4, 1998 (Supp. 98-1). Amended by final rulemaking at 8 A.A.R. 3628, effective August 7, 2002 (Supp. 02-3). Section repealed by final

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rulemaking at 9 A.A.R. 513, effective April 6, 2003 (Supp. 03-1).

R3-2-706. Repealed**Historical Note**

Adopted effective February 4, 1998 (Supp. 98-1). Section repealed by final rulemaking at 9 A.A.R. 513, effective April 6, 2003 (Supp. 03-1).

R3-2-707. Ownership and Hauling Certificate for Equines; Fees

The fee for a new, transferred, or replacement Ownership and Hauling Certificate for Equines as prescribed under A.R.S. §§ 3-1344(B) and 3-1345(B) is \$10 per certificate.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 3932, effective August 22, 2002 (Supp. 02-3).

R3-2-708. Equine Rescue Facility Registration

- A. "Arizona Equine Rescue Standards" means the American Association of Equine Practitioners Care Guidelines for Equine Rescue and Retirement Facilities, 2004 Edition. This material, which includes the Veterinary Checklist for Rescue/Retirement Facilities, is incorporated by reference, does not include any later amendments or editions, and is available for inspection at the Department of Agriculture, 1688 W. Adams St., Phoenix, Arizona 85007. A copy of this material may also be obtained from the American Association of Equine Practitioners web site at http://www.aaep.org/pdfs/rescue_retirement_guidelines.pdf. The American Association of Equine Practitioners is located at 4033 Iron Works Parkway, Lexington, Kentucky 40511.
- B. An equine rescue facility shall pay the annual registration fee and file the following documents with the Department's Animal Services Division for the facility to be included on the Department's registry of equine rescue facilities:
1. An application form containing the facility's name, physical and mailing address, and contact person and the contact person's phone number and email address.
 2. A copy of documents filed with the Arizona Corporation Commission demonstrating the facility's current status as a nonprofit corporation in good standing in this state.
 3. A letter from a licensed veterinarian, dated within 15 days of filing, certifying that the facility is not inadequate with respect to any of the Arizona Equine Rescue Standards and attaching a signed copy of the completed Arizona Equine Rescue Standards' veterinary checklist.
- C. Registration is valid for one year. Registration may be renewed annually by complying with subsection (B).
- D. The annual registration fee is \$75.
- E. A nonprofit corporation owning multiple equine rescue facilities must file the letter and checklist described in subsection (B)(3) and pay the annual registration fee for each location it wants included on the registry.
- F. The Department shall remove a facility from the registry if it determines that the facility is not presently incorporated as a nonprofit corporation in this state or is inadequate with respect to any of the Arizona Equine Rescue Standards.

Historical Note

New Section made by final rulemaking at 16 A.A.R. 876, effective July 3, 2010 (Supp. 10-2). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

ARTICLE 8. DAIRY AND DAIRY PRODUCTS CONTROL**R3-2-801. Definitions**

In addition to the definitions in A.R.S. §§ 3-601 and 3-661, the following terms apply to this Article:

"3-A Sanitary Standards" and "3-A Accepted Practices," as published by the International Association for Food Protection, effective on or before October 15, 2017, means the criteria for design, materials, construction and use of dairy processing equipment. This material is incorporated by reference, does not include any later amendments or editions, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007 and is also available at <http://www.3-A.org>.

"C-I-P" means a procedure by which equipment, pipelines, and other facilities are cleaned-in-place as prescribed in the 3-A Accepted Practices.

"Converted" means the process by which a frozen dessert is changed from a frozen to semi-frozen form without any change in the ingredients.

"Fluid milk" means milk and any other product made by the addition of a substance to milk or to a liquid form of milk product if the milk or other product is produced, processed, distributed, sold or offered or exposed for sale for human consumption.

"Fluid trade product" means any trade product as defined in A.R.S. § 3-661(5) that resembles or imitates any fluid milk product.

"Food establishment" means any establishment, except a private residence, that prepares or serves food for human consumption, regardless of whether the food is consumed on the premises.

"Frozen desserts mix" or "mix" means any frozen dessert before being frozen.

"Grade A raw milk" means raw milk produced on a dairy farm that conforms to Section 7 of the PMO and the requirements of R3-2-805.

"Parlor" and "milk room" mean the facilities used for the production of Grade A raw milk for pasteurization or Grade A raw milk.

"Plant" means any place, premise, or establishment, or any part, including specific areas in retail stores, stands, hotels, restaurants, and other establishments where frozen desserts are manufactured, processed, assembled, stored, frozen, or converted for distribution or sale, or both. A plant may consist of rooms or space where utensils or equipment is stored, washed, or sanitized and where ingredients used in manufacturing frozen desserts are stored. Plant includes:

"Manufacturing plant" means a location where frozen desserts are manufactured, processed, pasteurized, and converted.

"Handling plant" means a location that is not equipped or used to manufacture, process, pasteurize, or convert frozen desserts, but where frozen desserts are sold or offered for sale other than at retail.

"PMO" means the Grade A Pasteurized Milk Ordinance, 2017 Revision. This material is incorporated by reference, does not include any later amendments or editions, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007. A copy of the incorporated material may also be viewed at <http://agriculture.az.gov>.

"Retail food store" means any establishment offering packaged or bulk goods for human consumption for retail sale.

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Historical Note

Former Regulations 1-11. Section R3-2-801 renumbered from R3-5-01 (Supp. 91-4). R3-2-801 renumbered to R3-2-803; new Section R3-2-801 adopted effective December 2, 1998 (Supp. 98-4). Amended by final rulemaking at 7 A.A.R. 2215, effective May 9, 2001 (Supp. 01-2). Amended by final rulemaking at 9 A.A.R. 2089, effective August 2, 2003 (Supp. 03-2). Amended by final rulemaking at 12 A.A.R. 3030, effective September 30, 2006 (Supp. 06-3). Amended by final rulemaking at 14 A.A.R. 889, effective May 3, 2008 (Supp. 08-1). Amended by emergency rulemaking at 20 A.A.R. 1134, effective May 2, 2014, for 180 days (Supp. 14-2). Emergency expired. Amended by exempt rulemaking at 21 A.A.R. 2407, effective September 22, 2015 (Supp. 15-3). Amended by final rulemaking at 22 A.A.R. 2169, effective October 2, 2016 (Supp. 16-3). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-802. Milk and Milk Products Standards

Unless specifically mentioned in A.R.S. Title 3, Chapter 4, Article 1, or in this Article, all milk and milk products, except frozen desserts, sold or distributed for human consumption shall meet the PMO standards for production, processing, storing, handling, and transportation.

Historical Note

Former Regulations 1, 2. Section R3-2-802 renumbered from R3-5-02 (Supp. 91-4). Section repealed; new Section adopted effective December 2, 1998 (Supp. 98-4).

R3-2-803. Milk and Milk Products Labeling

- A. The manufacturer or processor shall ensure that milk and milk products listed in A.R.S. § 3-601(10), and Sections 1 and 2 of the PMO are designated by the name of the product and shall conform to its definition.
- B. The manufacturer or processor of milk and milk products shall conform with the labeling requirements in A.R.S. §§ 3-601.01 and 3-627, Section 4 of the PMO, and 21 CFR 101, 131, and 133, amended April 1, 2017. This CFR material is incorporated by reference, does not include any later amendments or editions, and is on file with the Department.
- C. The name of the manufacturer or processor shall be on all cartons or closures where it can be easily seen. A manufacturer or processor that has plants in other states shall use a code number or letter to designate the state in which a carton or closure is manufactured or processed. If a manufacturer or processor has a plant within Arizona, the Dairy Supervisor shall issue a code number or letter for each plant and shall keep a record of the number or letter issued. Manufacturers and processors shall include the Arizona code, 04, with the plant code assigned by the Dairy Supervisor.
- D. If milk or milk products are manufactured or processed and packaged at a plant for other retailers and the container or closure is not labeled the same as the manufacturer's or processor's like product, the manufacturer or processor shall include the statement "Manufactured or Processed at (name and address of plant or code number or letter)" on the carton or closure. The carton or closure may also contain the statement, "Distributed by: (name of person or firm)."
- E. Any person planning to use a new or modified label on a container shall submit the proposed label to the Dairy Supervisor for review.
 1. If the proposed label does not meet labeling standards specified in subsection (B), the Dairy Supervisor shall note the required changes on the proposed label, and sign and return the proposed label to the applicant.

2. A person who requests additional time to use the inventory amounts of slow moving cartons or closures before using a modified label shall submit a written request to the Dairy Supervisor. The Dairy Supervisor may approve continued use of the existing cartons and closures if:
 - a. The use does not present a public health issue, and
 - b. The information on the cartons and closures is not misleading.

Historical Note

Former Regulations 1 - 21; Amended effective August 4, 1978 (Supp. 78-4). Section R3-2-803 renumbered from R3-5-03 (Supp. 91-4). R3-2-803 renumbered to R3-2-804; new Section R3-2-803 renumbered from R3-2-801 and amended effective December 2, 1998 (Supp. 98-4). Amended by final rulemaking at 9 A.A.R. 2089, effective August 2, 2003 (Supp. 03-2). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-804. Trade Products

- A. Any fluid trade product containing milk solids shall be regulated as a fluid milk product.
- B. Advertising, display, and sale:
 1. Any retail food store may submit its methods and techniques for the advertising, display, and sale of trade products and real products to the Dairy Supervisor to determine compliance with this Section.
 2. No food establishment shall sell or provide any patron or employee, for use as food, any trade product or food whose main ingredient is a trade product, unless one of the following disclosures is posted for each trade product, in a prominent place on the premises, or is plainly visible on each menu where other food items are described:
 - a. "_____ served here
(brand or common name of trade product)
instead of _____,"
(common name of dairy product)
 - b. "Nondairy products served here."
 3. No food establishment shall advertise or otherwise represent to the public that it serves, or uses in the preparation of a food, a real product when it actually serves or uses a trade product.
- C. Labeling: Except as follows, all labels shall comply with the PMO and 21 CFR 101, 131, and 133.
 1. The Dairy Supervisor shall approve a new or modified trade product label before the label is used. The applicant shall file a written request with duplicate copies of the proposed label and any supporting materials necessary to establish the truthfulness, reasonableness, relevancy, and completeness of the label.
 2. Unless each ingredient of a trade product is homogenized or pasteurized, the whole product shall not be labeled or advertised as an homogenized or pasteurized product. Individual ingredients that are homogenized or pasteurized may be identified as homogenized or pasteurized in the listing of ingredients.
 3. Except for combined ingredients constituting less than 1% of the whole product or unless each ingredient of a trade product qualifies as grade A, the whole product shall not be labeled or advertised as a grade A product. Ingredients that qualify as grade A may be identified as grade A in the listing of ingredients.
 4. Any trade product produced outside the state and labeled as prescribed in R3-2-802 and R3-2-803, may be sold within the state provided that the product meets the requirements of A.R.S. §§ 3-663 and 3-665.

Historical Note

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Former Regulations 1 - 8; Amended effective December 7, 1976 (Supp. 76-5). Correction, subsection (A)(2) through (H) omitted, Supp. 76-5 (Supp. 79-4). Section R3-2-804 renumbered from R3-5-04 (Supp. 91-4). R3-2-804 renumbered to R3-2-805; new Section R3-2-804 renumbered from R3-2-803 and amended effective December 2, 1998 (Supp. 98-4). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-805. Grade A Raw Milk For Consumption

- A. All cattle and other dairy animals from which Grade A raw milk is produced shall be tested and found free of tuberculosis before any milk is sold. All herds shall be tested for tuberculosis at least every 12 months. All cattle and other dairy animals from which Grade A raw milk is produced shall be tested and found free of brucellosis before any milk is sold, and shall be tested every 12 months or have negative brucellosis ring tests of the milk at least once each month, or both, as determined by the State Veterinarian.
- B. Grade A raw milk shall be cooled immediately after completion of milking to 45° F or less and shall be maintained at that temperature until delivery.
- C. Grade A raw milk shall be bottled on the farm where it is produced. Raw milk products authorized under A.R.S. § 3-606, except for hard cheeses aged 60 days or more as defined in 7 CFR 58.439, shall be processed, manufactured and packaged on the farm where the milk is produced. Bottling and capping shall be done in a sanitary manner on approved equipment. Hand-capping is prohibited. Caps and cap stock shall be kept in sanitary containers until used.
- D. All vehicles used for the distribution of Grade A raw milk shall prominently display the distributor's name.
- E. Grade A raw milk shall be labeled as prescribed in R3-2-803 and A.R.S. § 3-606.

Historical Note

Former Regulations 1, 2. Section R3-2-805 renumbered from R3-5-05 (Supp. 91-4). Section R3-2-805 repealed; new Section R3-2-805 renumbered from R3-2-804 and amended effective December 2, 1998 (Supp. 98-4). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-806. Parlors and Milk Rooms

- A. Construction Plans.
 1. Any person constructing or extensively altering a parlor or milk room shall submit the plans and specifications to the Dairy Supervisor for written approval before work begins. The Dairy Supervisor shall approve or deny the plans within 10 business days.
 2. Plans shall consist of a scaled plot design with elevations and pertinent dimensions.
 3. Any deviations from the requirements in this Section and from approved plans and specifications may be made only after written approval of the Dairy Supervisor.
- B. Site.
 1. The parlor and milk room shall be located in a place free from contaminated surroundings.
 2. Feed racks, calf pens, bull pens, hog pens, poultry pens, horse stables, horse corrals, and shelter sheds shall not be closer than 100 feet to the milk room or closer than 50 feet to the parlor.
- C. Surroundings.
 1. Dirt or unpaved corrals and unpaved lanes shall not be closer than 25 feet to the parlor or closer than 50 feet to the milk room; corrals shall be constructed to remove runoff from the lowest point of the grade.
 2. A paved (concrete or equivalent) ramp or corral shall be provided to allow the animals to enter and leave the parlor. This paved area shall be curbed sufficiently high enough to contain waste material and water used to clean this area.
- D. Drains and waste disposal systems shall be adequate to drain the volume of water used in rinsing and cleaning, as well as the waste created by animals in the parlor. Instead of natural drainage, automatic pumps or other means shall be provided for drainage disposal.
- E. Milk room.
 1. The milk room shall consist of one or more rooms for the handling of the milk and the cleaning, sanitization, and storage of the milk-handling equipment. Hot and cold running water outlets shall be provided as needed for sanitation. There shall be a minimum of five feet between a farm milk tank at the widest point and the milk room wall where the wash vats are installed. Except for currently installed milk tanks, there shall be at least three feet between any farm tank or farm tank appurtenance and the milk room walls.
 2. Passageway. The passageway between the milk room and parlor shall have at least a 3-foot clearance for ingress and egress. Equipment such as milk receivers, dump tanks, or coolers that are part of an enclosed milk line system may be installed in the passageway if:
 - a. A 3-foot clearance is allowed for the walkway;
 - b. Space is provided between walls and equipment to permit the disassembly of equipment for cleaning or inspection;
 - c. The passageway between the parlor and the milk room may be closed at one end. The parlor may be separated from the passageway by a pipe rail fence if the slope of the parlor floor is away from the passageway. If the slope of the parlor floor is toward the passageway, a concrete wall between the passageway and parlor floor of at least 12 inches in height shall be provided.
 - d. Rustless pipe sleeves with tight-fitting flanges and protective closures shall be installed where the milk lines, hoses for tankers, and wash lines go through the walls of the passageway.
 3. Floors.
 - a. The floors of the milk room, and passageway, if provided, shall be constructed of four-inch thick concrete, or other impervious material troweled smooth. The milk room floor shall slope at least 1/4 inch per 12 inches to a vented trapped drain. The passageway floor shall slope at least one inch per 10 feet toward a drain or gutter. All floor and wall junctions shall have at least a two-inch radius cove.
 - b. Drainage from the milk room may be independent from or connected to the parlor drainage. Floor drains shall be vented, have a water trap, and a clean-out plug. All floor drains and pipes under the milk room and parlor floor shall meet all applicable plumbing codes.
 4. Walls and ceilings.
 - a. All walls and ceilings shall be constructed of a light colored, impervious material with a smooth finish. If concrete block or masonry construction is used, all voids below the floor line shall be filled with concrete.
 - b. The main ceiling height shall allow sufficient room for access to, and sampling from, the bulk milk storage tank.

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5. Doors and windows.
 - a. All opening windows shall have at least 16-inch mesh screen.
 - b. Exterior doors of the milk room shall open outward, be solid, self-closing, and tight fitting. Any door from the passageway shall be a solid door, metal covered on both sides of the bottom half. Wooden door jambs or frames shall terminate six inches above the floor, and the concrete floor cove shall extend to the jambs or frames.
 - c. All working areas in the milk room shall contain at least 30 foot-candles of natural and/or artificial lighting.
 6. Ventilation. The milk room shall provide adequate ventilation to minimize condensation on ceilings, walls and equipment. Vents shall be protected from the penetration of insects, dust and other contaminants. The milk room shall contain one or more ceiling vents. Ceiling vents shall not be installed directly above bulk milk storage tanks.
 7. Tanker loading area. A tanker-loading area, at least 10 feet by 12 feet, paved, curbed, and sloped to drain, shall be provided adjacent to the milk room where milk is transferred from a farm tank to a milk tanker. If a tanker is used instead of a farm tank, a tanker shelter shall be provided that complies with the construction, light, drainage, and general maintenance requirements of the milk room.
 8. Farm tank installations. All farm tanks for the cooling and storing of milk shall be installed in the milk room. Bulk milk tanks equipped with agitator shaft opening seals may, if approved by the Dairy Supervisor, be bulk-headed through a wall.
- F. Parlor.**
1. Floors.
 - a. The floors shall be constructed of four-inch thick concrete or other, light-colored, impervious material, finished smooth. The floors, alleys, gutters, mangers, and curbs shall slope lengthwise toward a drain or gutter. The cow standing platform in the elevated stall parlor shall slope sufficiently to provide for adequate drainage and cleaning.
 - b. Floor and wall junctions shall have at least a two-inch radius cove and shall be an integral part of the floor.
 - c. The cow standing platform, litter alley, holding corral and concrete lane shall be treated to prevent slipping.
 2. Walls. All walls shall be constructed of a light-colored, impervious material. If necessary, means shall be provided to prevent the entrance of swine, fowl and other prohibited animals. All walls shall be finished smooth on the inside with the top ledge rounded on open walls. If a parlor wall forms a part of the holding corral or an entrance or exit lane, it shall be finished smooth on the outside. If a concrete block or masonry construction is used, all voids below the floor line shall be filled with concrete. In elevated stall parlors, the wall under the cow standing platform adjacent to the milking area shall be finished smooth and designed to prevent leakage.
 3. Stalls. A tandem stall and a herringbone stall shall have a smooth, flat, non-absorbent splash panel behind each cow.
 4. Light. Natural and/or artificial light shall be at least 30 foot-candles at the floor level and located to minimize shadows in the milking area.
 5. Gutters.
 - a. All parlors shall have gutters to catch the defecation of cows while in the stall and for any water used for rinsing.
 - b. Pipe used for parlor gutter drainage shall be at least four inches in diameter and meet applicable plumbing codes.
 6. Curbs.
 - a. In elevated stall parlors, the cow standing platform shall be curbed on the side next to the milking alley and the curb shall be at least six inches in height with the top rounded to retain the elevated stall floor washings. This curb may be lowered to not less than two inches at the area where the milking machines are applied. Metal curbs shall be free of voids and sealed to stall and floor or wall.
 - b. Floor level parlors shall contain a curb under the stanchion line at least six inches wide, 12 inches high from the stall floor, except if metal mangers are used the top of this curb shall be rounded.
 7. Stanchions.
 - a. The stanchion shall be metal or other impervious, easily cleanable material.
 - b. Mangers and feed boxes in all types of parlors shall be constructed of impervious materials, finished smooth, and provided with drainage outlets at low points.
 8. Ventilation. Adequate ventilation shall be provided in the parlor, holding corral, and wash area, if roofed.
- G.** Roof drainage from parlors and milk rooms shall not drain into a corral unless the corral is paved and properly drained.
- H.** If animals are fed in the parlor, feed storage facilities shall be provided. Feed storage rooms, when installed, shall be partitioned from the parlor and shall be fly and rodent proof. The feed discharge area of the bulk feed storage shall be concrete or other impervious material that is curbed and drained. Bulk feed may discharge directly into the parlor. A bulk feed tank located opposite the passageway shall be at least six feet from the milk room. Overhead feed storage is permissible if it is fly, rodent, and dust tight. Feed shall be conveyed to the manger or feed box in a tightly closed dust-free system. Overhead metal feed tanks may be used.
- I.** Facilities to store dairy supplies shall be provided. Only supplies that come in contact with the milk or milk contact surface of the milk-handling equipment may be stored in the milk room and shall be protected from toxic materials, vectors, and dust.

Historical Note

Former Regulations 1 - 11. Section R3-2-806 renumbered from R3-5-06 (Supp. 91-4). Section amended effective December 2, 1998 (Supp. 98-4). Amended by final rulemaking at 22 A.A.R. 2169, effective October 2, 2016 (Supp. 16-3).

R3-2-807. Frozen Dessert Plant and Processing Standards**A. Plant and Processing Standards.**

1. The plant area shall be clean, orderly and free from refuse, rubbish, smoke, dust, air pollution and strong or foul odors originating on the premises. A drainage system shall be provided for the rapid drainage of water away from the building. If unsatisfactory conditions occur in the plant area, with respect to smoke, dust, air pollution, or odors, provision shall be made to protect the frozen desserts and ingredients from contamination.
2. Sewage and industrial waste shall be disposed in accordance with the provisions of the state or county environ-

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mental laws. Refuse, unless in appropriate containers, shall not accumulate on the premises.

3. Roads, driveways, yards, and parking areas adjacent to the plant shall be paved or treated to prevent dust and shall be smooth and well drained to prevent accumulation of stagnant liquid.
4. Buildings.
 - a. The building exterior and interior shall be kept clean and in good repair.
 - b. In processing and packaging areas, outside doors, windows, skylights, transoms, or other openings shall be protected and operated to preclude the entrance of dust, insects, vermin, rodents, and other animals. Outside doors shall be self-closing wherever practical. Window sills on new construction shall slope inward at least 45-degrees. Outside conveyor openings and other outside openings shall be protected by doors, screens, flaps, fans, or tunnels. Pipes shall be sealed where they extend through exterior walls. Outside pipe openings shall be covered when not in use.
 - c. Rooms. All rooms, compartments, coolers, freezers, and dry storage space in which any raw material, packaging or ingredient supplies, or finished products are handled, processed, manufactured, packaged, or stored shall be constructed to ensure clean and orderly operations.
 - i. Boiler and tool rooms shall be separate from rooms where milk products are received, where processing and packaging is done, or where equipment, facilities, and containers are washed and stored.
 - ii. Toilets and dressing rooms shall be conveniently located and toilets shall not open directly into any room where milk products, ingredients, or frozen desserts are handled, processed, packaged, or stored. Toilet and dressing room doors shall be self-closing. Toilets and dressing rooms shall be well vented to the outer air, and contain hand-washing facilities, hot and cold running water, soap, single-service towels or air dryers. Hand-washing signs shall be posted. Fixtures shall be kept clean and in good repair.
 - iii. Rooms for receiving milk and other raw ingredients and materials shall be separated from the processing area to avoid contamination of frozen desserts in the processing operations, except that products in cans or other closed containers may be received and transferred to a cooler or other storage without being received in a separate room.
 - iv. If tank truck deliveries of milk, milk products, or frozen desserts mix are made, other than occasional deliveries, a tank truck room large enough to accommodate the entire truck shall be provided with equipment for cleaning. A covered outside unloading pad may be used for truck tankers with filter dome vents, if washing and sanitizing facilities are provided. If a tank truck room is not located on the premises of an existing plant, facilities for washing and sanitizing tank trucks shall be provided at another location where the washing and sanitizing facility is free from dust and extreme weather conditions.
 - d. Walls and ceilings shall be constructed of smooth, washable, impervious material. They shall be light-colored, kept clean and sanitary, and refinished when discolored. A darker color material may be used to a height not exceeding 60 inches from the floor.
 - e. Floors shall be an impervious, smooth-surfaced material that may be flushed clean with water. Except for hardening rooms, floors shall slope 3/16 to 1/4 inch per foot to one or more trapped outlets. No open channel drainage is permitted in new construction or in extensive remodeling of existing plants. Floor drains are not required in freezers used for storing frozen desserts or frozen ingredients. However, the floors shall be sloped to drain to at least one exit and shall be kept clean. Floors in new construction or extensive remodeling shall be joined and coved with the walls to form water-tight joints. Smooth wood floors may only be permitted in rooms where there will be no spillage of product or ingredients, such as rooms where wrapped or packaged frozen products are packed in multiple-pack containers. Toilets and dressing rooms shall have impervious floors and smooth walls.
 - f. Plumbing shall be installed to prevent back-up of sewage or odors into the plant.
 - g. All rooms and compartments, including storage space for materials, ingredients, and packages, and toilets and dressing rooms, shall be ventilated to maintain sanitary conditions, and to minimize or eliminate condensation and odors.
 - h. Lighting, whether natural or artificial, shall be well distributed in all rooms and compartments. Light bulbs and fluorescent tubes shall be protected so that broken glass cannot fall into any product or equipment.
 - i. Rooms where frozen desserts are handled, processed, manufactured, or packaged, or where equipment or utensils are washed, shall have at least 30 footcandles of light on all working surfaces;
- v. Except for existing processing and packaging rooms, there shall be at least three feet clearance between installations and the wall to prevent overcrowding and to facilitate cleaning. Existing facilities not meeting this requirement shall be permitted if cleaning can be accomplished and permission is obtained from the Dairy Supervisor or the Dairy Supervisor's designee. All processing and packaging rooms shall be equipped with hand-washing facilities including hot and cold running water, soap, single-service towels, or air-dryer.
- vi. Refrigeration rooms and units shall be constructed of impervious material and shall be kept clean and sanitary.
- vii. Separate rooms shall be provided so that the manufacturing, processing, and packaging are separate from the cleaning and sterilizing of utensils and containers.
- viii. No person shall reside or sleep in a frozen desserts plant or in any room connected with it. No animal shall be kept or permitted in a frozen desserts plant.

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- ii. Areas where dairy products are examined for condition and quality shall have at least 50 footcandles of light; and
- iii. All other rooms shall have at least 20 footcandles of light 30 inches above the floor.
- i. Containers for collecting and holding waste other than dry waste paper and other dry packaging material shall be constructed of metal or other impervious material, covered with tight-fitting lids or covers, and emptied or disposed of daily or at least once during the shift. Clothing, tools, equipment, and other material not used with the frozen desserts operations shall not accumulate in the work areas or in the storage rooms.
- j. A room or other space separate from any room or space where milk products or frozen desserts are received, handled, processed, packaged, or stored, shall be provided where employees may change and store clothing. This area shall contain hand-washing facilities, with hot and cold running water, soap or other detergents, and single-service towels or air dryers. Self-closing containers shall be provided for used towels and other wastes.
- k. Approval of plans. Plans shall be submitted to the Dairy Supervisor, for any new or remodeled frozen dessert manufacturer, to be reviewed for compliance with this Section. The Dairy Supervisor may allow variances to the requirements in this Section, if protection from contamination is provided for all products handled.
- 5. Water and steam.
 - a. Potable hot and cold water shall be available in sufficient quantity for all plant operations and facilities. Non-potable water may be used for boiler feed and condenser water, if the water lines are separated from the water lines carrying the potable water supply and the equipment is constructed to preclude contamination of any product or product contact surface. If water for washing frozen desserts equipment and utensils and for use in rehydration or as an ingredient in any frozen desserts is obtained from other than a regulated municipal supply, a bacteriological examination shall be made of the water supply at least once every six months by a laboratory acceptable to the Dairy regulatory program to determine potability. If the examination indicates contamination of the water supply, a device shall be installed to eliminate the contamination.
 - b. If steam is used, it shall be provided in sufficient volume and pressure for the operation of equipment or for sterilization, or both. Steam that comes in contact with frozen desserts, ingredients, or with the product contact surface, shall be steam of culinary quality as prescribed in Appendix H, Part III, Culinary Steam – Milk and Milk Products, of the PMO.
- 6. Equipment and utensils.
 - a. New equipment shall meet applicable 3-A Sanitary Standards. All equipment, including connections, coming in contact with frozen desserts or ingredients during processing, manufacturing, handling, or packaging, shall be made of stainless steel. No equipment shall be permitted that is rusted, corroded, or in any other condition that may result in contamination of the frozen desserts. Non-metallic parts with product contact surfaces shall consist of material that meets 3-A Sanitary Standards for Plastic or Rubber and Rubber-like Materials or shall be of plastic approved by the United States Food and Drug Administration. Equipment, apparatus, and piping shall be easily accessible for cleaning and shall be kept in good repair and free from cracks and corroded surfaces. Stationary equipment, including welded sanitary lines and apparatus that permit in-place-cleaning, may be used if prior approval from the Dairy Supervisor has been obtained. C-I-P piping and welded sanitary pipeline systems shall be permitted if engineered and installed according to 3-A Accepted Practices for Permanently Installed Sanitary Product and Solution Pipelines and Cleaning Systems. If rigid pipelines are not practical, plastic pipelines listed in the 3-A Accepted Practices may be used. Product pumps shall be sanitary and easily dismantled for cleaning or shall be constructed to allow C-I-P procedures. All parts of interior surfaces of equipment, pipes (except C-I-P piping), or fittings, including valves and connections shall be accessible for inspection. The Dairy Supervisor may require other equipment, apparatus or piping if stationary equipment, apparatus or piping cannot or is not being effectively cleaned-in-place.
 - b. Equipment for storage and distribution of liquid sweetening agents shall be constructed of metals, alloys, or other material that will withstand corrosive action by the ingredient. The equipment and the ingredients shall be protected from contamination.
 - c. Pasteurizing equipment shall meet the standards prescribed in the PMO and 3-A Accepted Practices for Sanitary Construction, Installation, Testing and Operation of High-Temperature-Short-Time Pasteurizers and 3-A Sanitary Standards for Non-Coiled Type Batch Pasteurizers. Batch-type pasteurizers shall be provided with close-coupled outlet valves protected against leakage and shall be equipped with thermometers that record the information of each day's operation on separate charts. Air space thermometers and indicating thermometers shall be provided to check the recording thermometers. The recording thermometer chart shall contain the date, the identity of the pasteurizing number, the batch and product name, and the signature of the employee responsible for this information. The record shall be kept on file at the plant for at least six months. The accuracy of the recording thermometer shall be checked daily using the indicating thermometer and the time and temperature shall be documented on the recording chart. Chart recorders and thermometers for batch pasteurizers shall be tested and sealed by the Dairy Supervisor or the Supervisor's designee after testing and seals shall not be removed without immediately notifying the Dairy Supervisor or the Supervisor's designee.
 - d. Every plant shall contain hardening rooms, refrigerating rooms, or refrigerated cabinets with space for storage of frozen desserts and perishable ingredients.
 - e. All utensils used in the receiving, storing, processing, manufacturing, packaging, and handling of frozen desserts or any ingredients shall be of smooth, stainless steel, or plastic listed in the 3-A Accepted Practices and shall have flush seams. Utensils that are badly worn, rusted, or corroded or that cannot be rendered clean and sanitary by washing shall not be

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- used. Lead solder shall not come in contact with milk or milk products or frozen desserts.
7. Cleaning and sanitizing.
 - a. Cleaning and sanitizing. Equipment, sanitary piping and utensils used in receiving, storing, processing, manufacturing, packaging, and handling frozen desserts and ingredients, and all product contact surfaces of homogenizers, high pressure pumps, packing glands on agitators, pumps and vats, and lines shall be kept clean. Before use, all equipment coming in contact with milk products or frozen desserts shall have a bactericidal or sanitizing treatment. Equipment not designed for C-I-P cleaning shall be disassembled, thoroughly cleaned and sanitized. Biodegradable dairy cleaners, wetting agents, detergents, sanitizing agents, or other similar material that does not adversely affect or contaminate the frozen desserts or ingredients may be used. Steel wool or metal sponges shall not be used to clean any equipment or utensils with product contact surfaces. C-I-P cleaning shall be used only on equipment and pipeline systems designed, engineered, and installed for that type of cleaning. Other equipment and areas in the plant shall be thoroughly cleaned with appropriate methods that prevent potential contamination of ingredients, packaging and frozen desserts. Exhaust stacks, elevators and elevator pits, conveyors and similar facilities shall be inspected and cleaned regularly.
 - b. Equipment shall be sanitized by using one of the following methods:
 - i. Using 180° F water for at least two minutes.
 - ii. Using steam under pressure for at least two minutes or until all parts of the equipment being sanitized have reached 180° F, or the condensate off the equipment remains at 180° F for at least two minutes.
 - iii. Using chlorine with a residual of at least 50 ppm after one minute contact with equipment, or if sprayed, with a residual of at least 100 ppm after five minutes.
 - iv. Using any other sanitizing substance prescribed in Appendix F of the PMO.
 8. Pasteurization and cooling.
 - a. All frozen desserts mix, except for flavoring agents used in frozen desserts, shall be pasteurized.
 - b. Frozen desserts mix shall be pasteurized by heating every particle as described in Table 1.
 - c. Continuous flow pasteurizers, high-temperature-short-time and higher-heat-shorter-time, shall have all public health controls sealed against access and alteration. The seals shall be applied by the Dairy Supervisor or the Supervisor's designee after testing and shall not be removed without immediately notifying the Dairy Supervisor or the Supervisor's designee. The system shall be designed to meet the requirements of the PMO.
 - d. After pasteurization all mix shall be cooled immediately to 45° F or less and shall be maintained at that temperature until frozen. Milk, cream, and other fluid milk products other than sterilized, evaporated or sweetened condensed milk in hermetically sealed containers shall be stored at 45° F or less.
 - i. Refrigerated vehicles or approved insulated containers shall be used when transporting frozen desserts mix from the manufacturing or other plant to a retail manufacturer, and
 - ii. Mix shall be moved from coolers or refrigeration units in a manufacturing plant to freezers by using pipes, tubing, or other means listed in the Permanently Installed Product and Solution Pipelines and Cleaning Systems Used in Milk and Milk Product Processing Plants section of the 3-A Accepted Practices.
 9. Storage.
 - a. Utensils and equipment. Utensils and portable equipment used in processing, handling, or packaging of frozen desserts shall be stored above the floor in clean, dry locations and in a self-draining position on racks constructed of impervious, corrosion-resistant material.
 - b. Supplies and containers. Whenever possible, supplies shall be kept in a room separate from the processing, handling, and packaging of frozen desserts and under conditions that result in keeping the materials clean and free from dust, moisture, insects, rodents, or other possible contamination. Supplies shall be arranged to permit cleaning of the area and easy inspection and access. Insecticides and rodenticides shall be plainly labeled, segregated, and stored in a separate room or cabinet away from the edible material or packaging supplies. Caps, parchment papers, wrappers, liners, gaskets, and single-service sticks, spoons, covers, and containers for frozen desserts or ingredients shall be stored only in sanitary tubes, wrappings, or cartons and kept in a clean, dry place until used and shall be handled in a sanitary manner.
 - c. Raw milk products. Raw products for use in frozen desserts that are conducive to bacterial growth shall be handled and stored to minimize bacterial growth. When stored, raw products shall be maintained at 45° F or lower until processing commences.
 - d. Non-refrigerated products. Products such as non-fat dry milk and other frozen desserts ingredients that do not require refrigeration for proper storing shall be placed in dry storage to be easily accessible for inspection and removal, and for adequate cleaning of the room. Dunnage, pallets or other similar method of elevation shall be used. Frozen desserts or ingredients shall not be stored with any product that would damage them or impair their quality. Opened containers of ingredients shall be protected from contamination.
 - e. Refrigerated products. All products that require refrigeration shall, except as otherwise specified, be stored under conditions of temperature and humidity that best maintain quality and condition. Products shall not be stored directly on wet floors or be exposed to foreign odors or conditions such as dripping or condensation that may cause package or product damage.
 10. Notification of change in products to be manufactured. Any person manufacturing only frozen desserts with butterfat, or only frozen desserts with fats other than butterfat, and uses the other type of fat shall first notify the Dairy Supervisor.
 11. Clearing lines and equipment. If the same equipment is used for processing, pasteurizing, and packaging frozen desserts made with dairy products and frozen desserts made with vegetable fats, oils, or proteins, any remaining

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product shall be completely removed from the lines and equipment and sanitized before introducing another product into the lines and equipment. All equipment and lines shall be sanitized either at the end or beginning of each day's operations.

12. Packaging and containers.
 - a. Frozen desserts shall be packaged in commercial containers using packaging material that protects the product from contamination. The packaging, cutting, molding, dispensing, and other handling or preparation of frozen desserts and their ingredients shall be in a sanitary manner. Frozen dessert containers shall be filled at the place of pasteurization using approved mechanical equipment. Existing manual processes may be permitted if done in a manner that prevents all contact surface contamination and is approved by the Dairy Supervisor.
 - b. Multi-use containers for frozen desserts shall be kept clean and dry. If used for transporting frozen desserts, the containers shall be:
 - i. Rinsed immediately after emptying,
 - ii. Cleaned upon return to the plant, and
 - iii. Protected from contamination during storage.
 - c. Metal cans and containers shall be free from rust and corrosion.
 - d. Paper and plastic containers, liners, covers, or other materials coming in contact with frozen desserts shall be free from contamination.
 - e. Single-service containers shall not be reused.

B. Personnel.

1. Plant employees shall wash their hands before beginning work and upon returning to work after using toilet facilities, eating, smoking, or otherwise soiling their hands. Employees shall keep their hands clean and follow good hygienic practices while on duty. Expecting or using tobacco in rooms or compartments where frozen desserts or ingredients are exposed is prohibited. Clean, white, or light-colored, washable outer garments shall be worn by all employees engaged in handling dairy products, mix or frozen desserts. Hair coverings for head and facial hair shall be worn by all employees engaged in the processing, pasteurizing, packaging, handling, and storage of frozen desserts, product containers, and utensils.
2. Frozen desserts shall be handled so that there is no direct contact between an employee's hands and the product.
3. A person who has a discharging or infected wound, sore or lesion on hands, arms or other exposed portions of the body shall not work in any plant processing or packaging room or in any capacity resulting in contact with milk products or frozen desserts or equipment used in the processing or handling of milk products or frozen desserts. An employee returning to work following illness from a communicable disease shall provide a certificate from a physician attesting to the employee's complete recovery before processing or handling milk products or frozen desserts.

C. Quality standards.

1. Milk products used in the manufacture of frozen desserts shall meet the following standards:

Product	Standard Plate Count Not to Exceed
Raw Milk	500,000 per ml.
Pasteurized Milk	50,000 per ml.
Raw Cream	500,000 per ml.
Pasteurized Cream	100,000 per ml.

2. Butter, 80% cream, plastic cream, mixtures of butterfat, sugar or sweetening agent, moisture and flavoring, condensed milk, mixes and all other similar products shall meet the following standards:

Bacterial Standards	Not to Exceed
Standard Plate Count	50,000 per gram
Coliform Count	20 per gram
Yeast Count	50 per gram
Mold Count	50 per gram

3. Powdered non-fat dry milk, dry whey, and dry buttermilk shall meet the PMO standards.
4. Fats and oils other than from milk shall meet the standards of the United States Food, Drug and Cosmetic Act as amended, or those of any applicable state regulation for fats and oils of food grade standards.
5. Frozen desserts in broken or opened containers or in containers from which the product has been partially used may be returned to the plant for examination but shall not be used or sold for making frozen desserts.
6. All reconstituted frozen desserts shall be pasteurized before packaging.

D. Labeling.

1. All packages of frozen desserts, including cans or other containers of frozen desserts mix but not including frozen desserts packaged in accordance with a customer's request and in the presence of the customer, shall be labeled as prescribed in the federal Food, Drug and Cosmetic Act, as amended.
2. Each frozen dessert package shall contain:
 - a. The code number assigned by the Dairy Supervisor, identifying the specific manufacturing plant; or
 - b. The name and address of the frozen dessert manufacturer.

- E. License suspension.** The Dairy Supervisor may suspend the license of a frozen dessert plant whenever the bacteria count, coliform determination, yeast or mold count exceeds the quality standards for frozen desserts in three out of the last five samples taken on separate days. In addition, the Dairy Supervisor may suspend the permit of a frozen dessert plant for failure to comply with any of the provisions of this Section.

Historical Note

Adopted effective December 7, 1976 (Supp. 76-5).
 Amended effective December 5, 1977 (Supp. 77-6). Section R3-2-807 renumbered from R3-5-07 (Supp. 91-4).
 Amended effective December 2, 1998 (Supp. 98-4).
 Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

Table 1. Pasteurization

Batch (Vat) Pasteurization	
Temperature	Time
69°C (155°F)	30 minutes
Continuous Flow (HTST) Pasteurization	
Temperature	Time
80°C (175°F)	25 seconds
83°C (180°F)	15 seconds
Continuous Flow (HHST) Pasteurization	
89°C (191°F)	1.0 seconds
90°C (194°F)	0.5 seconds
94°C (201°F)	0.10 seconds
96°C (204°F)	0.05 seconds

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100°C (212°F)	0.01 seconds
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Historical Note

Table 1 made by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2). Table 1 heading added for clarity (Supp. 21-3).

R3-2-808. Frozen Desserts Reconstituted from Powdered Mixes

Except for R3-2-807(A)(8), retail establishments that reconstitute frozen desserts from powdered mixes and dispense the desserts on the premises shall comply with the requirements prescribed in R3-2-807 and the following standards:

1. All equipment, containers, and utensils shall be washed and air-dried after each use and shall be sanitized before each use, in accordance with the sanitation standards established in subsection R3-2-807(A)(7)(b).
2. When not in use, all equipment, utensils, and containers shall be stored above the floor in a clean, dry location free from dust, moisture, insects, rodents, or other possible sources of contamination.
3. Excess quantities of the reconstituted frozen dessert shall not be made from the powdered mix in advance and stored outside the dispensing machine.
4. Frozen desserts shall be reconstituted according to the directions provided by the powdered mix manufacturer.

Historical Note

Adopted effective May 11, 1977 (Supp. 77-3). Section R3-2-808 renumbered from R3-5-08 (Supp. 91-4). Section R3-2-808 renumbered to Section R3-2-809; new Section R3-2-808 adopted effective December 2, 1998 (Supp. 98-4). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-809. Medicinal, Chemical, and Radioactive Residues in Milk

A. All dairies shall comply with the following procedures to exclude medicinal, chemical, and radioactive residues from milk intended for human consumption:

1. Identify all cows that have been treated with or have consumed medicinal, chemical, and radioactive agents capable of being secreted in milk;
2. Maintain a written record of the date of treatment, type, and quantity of the medicine or chemical administered to each cow;
3. Milk all treated cows last, or with separate equipment to prevent contamination of the wholesome milk supply;
4. Clean and sanitize all equipment, utensils, and containers used in the handling of milk from the treated cows before the equipment is used in the handling of any milk intended for human consumption; and
5. Discard all milk from the treated cows for the period of time recommended by the attending veterinarian or as indicated on the package or label of the medicine used in the treatment of the cow.

B. Enforcement.

1. When the residue of a chemical, medicinal, or radioactive agent is found in the milk of a dairy and the Dairy Supervisor determines that the residue may be deleterious to human health, the Director shall immediately suspend the dairy from further selling, offering for sale, or distributing milk for human consumption until:
 - a. The Dairy Supervisor determines that the practice causing the contamination of the milk has been corrected and the dairy is in compliance with the procedures established in subsection (A);

- b. Any milk that has not been excluded from human consumption as required by subsection (A) is appropriately discarded; and
- c. The first milk shipment following suspension indicates negative test results for medicinal, chemical, or radioactive residues.

2. If the Dairy Supervisor determines that a dairy is not in compliance with the procedures established in subsection (A), the Dairy Supervisor may suspend the dairy until the prescribed procedures are observed.

Historical Note

Section R3-2-809 renumbered from R3-2-808 and amended effective December 2, 1998 (Supp. 98-4).

R3-2-810. License Fees

During fiscal year 2022, an applicant shall pay the following fee to obtain or renew a dairy license:

1. For a license to operate a milk distributing plant or business: \$300 plus \$2,500 per pasteurizer.
2. For a license to operate a manufacturing milk processing plant: \$100.
3. For a license to engage in the business of producer-distributor as an interstate milk shipper listed facility: \$150 plus \$2,500 per pasteurizer.
4. For a license to engage in the business of producer-distributor: \$150.
5. For a license to engage in the business of producer-manufacturer: \$25.
6. For a license to engage in the manufacture of trade products: \$100.
7. For a license to engage in the business of selling at wholesale milk or dairy products, or both: \$100.
8. For a license to sample milk or cream: an initial fee of \$50 and a renewal fee of \$30.

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 1331, effective June 29, 2010 (Supp. 10-2). Amended by exempt rulemaking at 17 A.A.R. 1756, effective July 20, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 2060, effective August 2, 2012 (Supp. 12-3). Amended by exempt rulemaking at 18 A.A.R. 2060, effective August 2, 2012 (Supp. 12-3). Amended by exempt rulemaking at 19 A.A.R. 3127, effective September 14, 2013 (Supp. 13-3). Amended by exempt rulemaking at 20 A.A.R. 2449, effective July 24, 2014 (Supp. 14-3). Amended by exempt rulemaking pursuant to Laws 2015, Ch. 10, § 14, at 21 A.A.R. 2404, effective July 3, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 23 A.A.R. 1937, effective August 9, 2017 (Supp. 17-2). Amended by final exempt rulemaking at 24 A.A.R. 2219, effective August 3, 2018 (Supp. 18-3). Amended by final exempt rulemaking at 25 A.A.R. 2081, effective August 27, 2019 (Supp. 19-3). Amended by final exempt rulemaking at 26 A.A.R. 1471, effective August 25, 2020 (Supp. 20-3). Amended by final exempt rulemaking at 27 A.A.R. 1264, effective September 29, 2021 (Supp. 21-3).

R3-2-811. Dairy Farm Permit

A. A dairy farm, as defined in the PMO, may apply for a PMO milk producer permit by submitting the following information about the dairy farm on a form provided by the Department:

1. Legal name,
2. Physical and mailing address,
3. Telephone number,
4. Owner's name,
5. Herd size,

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6. Daily milk production,
 7. Water source,
 8. Waste water disposal system,
 9. Number of bulk storage tanks, and
 10. Certification that the dairy farm facilities comply with Grade A requirements.
- B.** An applicant for a dairy farm permit shall demonstrate compliance with the minimum standards set out in the PMO by a Department inspection.
- C.** A permittee shall maintain compliance with the minimum standards set out in the PMO and shall be subject to inspection by the Department in accordance with the PMO.
- D.** The Department may suspend a permit for a permittee's failure to comply with the minimum standards and may revoke a permit if the permittee fails to correct deficiencies within a reasonable time.
- E.** Dairy farm permits are not transferable.

Historical Note

New Section made by emergency rulemaking at 20 A.A.R. 1134, effective May 2, 2014, for 180 days (Supp. 14-2). Emergency expired; new Section made by exempt rulemaking at 21 A.A.R. 2407, effective September 22, 2015 (Supp. 15-3).

ARTICLE 9. EGG AND EGG PRODUCTS CONTROL**R3-2-901. Definitions**

In addition to the definitions provided in A.R.S. §§ 3-701, 3-703 and 3-704, the following shall apply to this Article:

“Check” means an individual egg that has a broken shell or crack in the shell but with its shell membranes intact and its contents do not leak. A “check” is considered to be lower in quality than a “dirty.”

“Dirty” means a shell that is unbroken and that has dirt or foreign material adhering to its surface, which has prominent stains, or moderate stains covering more than 1/32 of the shell surface if localized, or 1/16 of the shell surface if scattered.

“Leaker” means an individual egg that has a crack or break in the shell and shell membranes to the extent that the egg contents are exuding or free to exude through the shell.

“Lot” means any quantity of two or more eggs.

“Lot Consolidation” means the removal of damaged eggs from cartons labeled by a producer or producer dealer and replacement of the damaged eggs with eggs of the same grade, size, brand, expiration date and source.

“Pasteurized in-shell eggs” means eggs that have been pasteurized with the shell intact by any method approved by the Federal Food and Drug Administration or the Department.

“Repacking” means changing the identity of a lot of eggs by removing them from the original container labeled by a packer and placing them into another container not labeled by the packer at the point of origin with the same grade, size, lot number, source and/or brand.

“Spot-check” sample means any sample less than a representative sample described in the chart in R3-2-903(B).

“Ultimate consumer” means a person consuming eggs or egg products and a restaurant using eggs in the preparation of a meal.

“United Egg Producers Animal Husbandry Guidelines” means the United Egg Producers Animal Husbandry Guidelines for U.S. Egg Laying Flocks, 2017 Edition. This material is incorporated by reference, does not include any later amendments

or editions, and is available for inspection at the Department of Agriculture, 1688 W. Adams St., Phoenix, AZ 85007, or the United Egg Producers at 1720 Windward Concourse, Ste. 230, Alpharetta, GA 30005.

“United Egg Producers Certified” means a company that has achieved United Egg Producers Certified status pursuant to the requirements prescribed by the United Egg Producers Animal Husbandry Guidelines.

“United Egg Producers Certified logo” means the official symbol and accompanying language used to identify eggs produced by United Egg Producers Certified companies.

Historical Note

Former Rule 1; Amended as an emergency effective November 18, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-6). Former Section R3-6-01 amended as an emergency now adopted and amended as a permanent rule effective February 19, 1982. Section renumbered as R3-2-901 (Supp. 82-1). Section R3-6-101 renumbered to R3-2-901 (Supp. 91-4). Section repealed, new Section adopted effective July 13, 1995 (Supp. 95-3). Amended by final rulemaking at 15 A.A.R. 863, effective October 1, 2009 (Supp. 09-2). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-902. Standards, Grades, and Weight Classes for Eggs; Pasteurized In-Shell Eggs

- A.** Standards for Eggs. All standards, grades, and weight classes of quality for chicken eggs in the shell shall meet the grades for eggs as prescribed in AMS 56, United States Standards, Grades, and Weight Classes for Shell Eggs, revised as of July 20, 2000. This material is incorporated by reference, does not include any later amendments or editions, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007 and the United States Department of Agriculture, Agricultural Marketing Service, Poultry Programs, STOP 0259, Room 3944-South, 1400 Independence Ave., S.W., Washington, DC 20250-0259, or online at www.ams.usda.gov/grades-standards/eggs. “AMS” means Agricultural Marketing Service, United States Department of Agriculture.
- B.** Standards for Pasteurized In-Shell Eggs. It is unlawful for a producer, producer dealer, dealer, or retailer to sell, offer for sale, or expose for sale pasteurized in-shell eggs that are packed for human consumption unless both of the following conditions are met:
1. Quality and weight classes:
 - a. The eggs used to produce pasteurized in-shell eggs shall meet Consumer Grades A or AA and Weight Classes for Eggs of subsection (A).
 - b. At destination:
 - i. Pasteurized in-shell eggs shall contain no more than 7 percent (9 percent for Jumbo size) Checks and not more than 1 percent Leakers, Dirties, or Loss (due to meat or blood spots) in any combination, except that such Loss may not exceed 0.30 percent. Other types of Loss are not permitted.
 - ii. In lots of two or more cases, no individual case may exceed 10 percent Checks.
 - c. Pasteurized in-shell eggs shall meet the weight classes as indicated in Table I. Weight Classes for Pasteurized In-Shell Eggs.
 2. Labeling requirements. Except as provided in subsection (B)(2)(j), it is unlawful for an egg producer, producer dealer, dealer or retailer to sell, offer for sale, or expose

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for sale pasteurized in-shell eggs that are packed for human consumption unless each container intended for sale to the ultimate consumer is labeled on one outside top, side, or end with all of the following:

- a. The consumer container is conspicuously labeled "KEEP REFRIGERATED" or with words of similar meaning as approved by the Department. Consumer container labeling that complies with the safe handling instructions required by Section 101.17 of Title 21 of the Code of Federal Regulations shall be deemed to comply with this subsection.
- b. The consumer container is conspicuously labeled "produced from" in conjunction with the appropriate consumer grade in letters no smaller than 1/2 size of the labeled consumer grade. The use of the consumer grade without the qualifier "produced from" is not permitted.
- c. The words "Best By", or "Use by" immediately followed by the month and day in bold type. Months shall be abbreviated Jan, Feb, Mar, Apr, May, Jun, Jul, Aug, Sep, Oct, Nov or Dec. The "Use by," or "Best before" date shall not exceed 75 days from the date on which the pasteurized in-shell eggs were pasteurized, excluding the date of pasteurization. Processors of in-shell eggs that subject the eggs to the pasteurization process shall establish a sell-by date by completion of an appropriate shelf stability study that includes public health and safety criteria. The processor shall retain the study on file at the processing plant and make it available to the Department upon request.

- d. If the pasteurized in-shell eggs are repacked, the original "Best By" or "Use by" date shall apply.
- e. A Julian pack date which is the consecutive day of the year on which the pasteurized in-shell eggs were pasteurized.
- f. The identification number of the plant of origin.
- g. A conspicuous identification of the eggs as "pasteurized."
- h. All state and federal labeling requirements.
- i. This Section does not apply to pasteurized in-shell eggs that are packaged for export.
- j. Subsection (B) does not apply to pasteurized in-shell eggs that are packaged for interstate commerce or pasteurized in-shell eggs that are packaged for military sales if exported to a state or federal agency that requires a different format for the sell-by or best-if-used-by date on pasteurized in-shell eggs, and the processor is utilizing that format.

Historical Note

Former Rule 2; Amended as an emergency effective November 18, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-6). Former Section R3-6-02 amended as an emergency now adopted and amended as a permanent rule effective February 19, 1982. Section renumbered as R3-2-902 (Supp. 82-1). Section R3-6-102 renumbered to R3-2-902 (Supp. 91-4). Section repealed, new Section adopted effective July 13, 1995 (Supp. 95-3). Amended by final rulemaking at 9 A.A.R. 2089, effective August 2, 2003 (Supp. 03-2). Amended by final rulemaking at 14 A.A.R. 892, effective May 3, 2008 (Supp. 08-1). Amended by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

Table I. Weight Classes for Pasteurized In-Shell Eggs

Weight Classes for Pasteurized In-Shell Eggs			
Size or weight class	Minimum net weight per dozen (ounces)	Minimum net weight 30 per dozen (pounds)	Minimum net weight for individual eggs at rate per dozen (ounces)
Jumbo	30	56	29
Extra large	27	50 1/2	26
Large	24	45	23
Medium	21	39 1/2	20

*A lot average tolerance of 3.3 percent for individual eggs in the next lower weight class is permitted as long as no individual case within the lot exceeds 5 percent.

Historical Note

Table I. Weight Classes for Pasteurized In-Shell Eggs made by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-903. Sampling: Schedule and Methods for Evidence

- A. An inspector may conduct random spot-check sampling of a lot of eggs to determine whether the lot meets minimum quality and weight standards and is in compliance with R3-2-907(B).
- B. Representative egg sampling, under A.R.S. § 3-710(G), shall be based on Table II. A lot that does not meet minimum quality or weight standards or is not in compliance with R3-2-907(B) shall receive a warning notice hold tag.
 - 1. An inspector may draw additional samples to determine whether the lot meets the minimum requirements.
 - 2. When loose eggs are out of the case, the sample shall be based on a carton.
 - 3. Eggs shall be sampled on a 30-dozen-case basis. When eggs are packed in other lot quantities, an inspector shall

convert the quantity of eggs to the equivalent 30-dozen-case basis to establish the official sample size.

Historical Note

Former Rule 3; Amended effective March 17, 1976 (Supp. 76-2). Amended as an emergency effective November 18, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-6). Former Section R3-6-03 amended as an emergency now adopted and amended as a permanent rule effective February 19, 1982. Section renumbered as R3-2-903 (Supp. 82-1). Section R3-6-103 renumbered to R3-2-903 (Supp. 91-4). Section repealed, new Section R3-2-903 renumbered from R3-2-906 and amended effective July 13, 1995 (Supp. 95-3). Amended by final rulemaking at 9 A.A.R. 2089, effective August 2, 2003 (Supp. 03-2). Amended by final rulemaking at 15 A.A.R. 863, effective October 1, 2009 (Supp. 09-2).

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Table II. Minimum Number of Cases and Cartons Comprising a Representative Sample

Lot size of cartons	Minimum eggs for inspection	Lot size of 30 doz. per case	Minimum cases for inspection ¹
1 - 4 cartons	All	1 case	1 case
5 - 30 cartons inclusive	50	2 - 10 cases inclusive	2 cases
31 - 120 cartons inclusive	100	11 - 25 cases inclusive	3 cases
120 - 210 cartons inclusive	200	26 - 50 cases inclusive	4 cases
211 - 315 cartons inclusive	300	51 - 100 cases inclusive	5 cases
		101 - 200 cases inclusive	8 cases
		201 - 300 cases inclusive	11 cases
		301 - 400 cases inclusive	13 cases
		401 - 500 cases inclusive	14 cases
		501 - 600 cases inclusive	16 cases
		For each additional 50 cases or fraction of a case in excess of 600 cases	1 case

¹An inspector shall take 100 eggs from each case for inspection.

Historical Note

Table II was made under new Section R3-2-903 renumbered from R3-2-906 and amended effective July 13, 1995 (Supp. 95-3); it was last amended by final rulemaking at 9 A.A.R. 2089, effective August 2, 2003 (Supp. 03-2). The table and historical notes were moved out of R3-2-903 to maintain the numbering codification scheme of tables made at 26 A.A.R. 781 (Supp. 20-2).

R3-2-904. Quarterly Report Periods

Quarterly reports are due as prescribed in A.R.S. § 3-716(D). The quarterly report periods for inspection fees are:

1. July 1 to September 30,
2. October 1 to December 31,
3. January 1 to March 31, and
4. April 1 to June 30.

Historical Note

Former Rule 4; Amended effective March 17, 1976 (Supp. 76-2). Amended as an emergency effective November 18, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-6). Former Section R3-6-04 amended as an emergency now adopted and amended as a permanent rule effective February 19, 1982. Section renumbered as R3-2-904 (Supp. 82-1). Section R3-6-104 renumbered to R3-2-904 (Supp. 91-4). Section repealed, new Section R3-2-904 renumbered from R3-2-907 and amended effective July 13, 1995 (Supp. 95-3).

R3-2-905. Inspection Fee Rate

- A. All dealers, producer-dealers, manufacturers, and producers shall pay an inspection fee at the rate of 3.0 mills (.00300) per dozen on all shell eggs sold as prescribed in A.R.S. § 3-716(A).
- B. All dealers, producer-dealers, manufacturers, and producers shall pay an inspection fee at the rate of 3.0 mills (.00300) per pound on all egg products sold as prescribed in A.R.S. § 3-716(A).

Historical Note

Former Rule 5; Former Section R3-6-05 renumbered as Section R3-2-905 (Supp. 82-1). Section R3-6-105 renumbered to R3-2-905 (Supp. 91-4). Section repealed, new Section R3-2-905 renumbered from R3-2-908 and amended effective July 13, 1995 (Supp. 95-3). Amended by emergency rulemaking at 12 A.A.R. 4063, effective October 1, 2006 for 180 days (Supp. 06-4). Emergency renewed at 13 A.A.R. 1509, effective April 9, 2007 for 180 days (Supp. 07-2). Amended by final rulemaking at

13 A.A.R. 1639, effective June 30, 2007 (Supp. 07-2).

R3-2-906. Violations and Penalties

A. A dealer, producer-dealer, manufacturer, producer, or retailer, at each individual location, is subject to the penalties in subsection (B) for any of the following violations:

1. Category A:
 - a. Making a false or misleading statement relating to advertising or selling eggs and egg products;
 - b. Acting as a dealer, producer-dealer, producer, or manufacturer without a valid license;
 - c. Selling shell eggs with an incorrect or incomplete expiration date, or without an expiration date;
 - d. Selling grade AA or grade A eggs after the expiration date on the carton, case, or container. Selling pasteurized in-shell eggs without or past the “Best By” or “Use by” date;
 - e. Failing to maintain records and reports required by this Article;
 - f. Failing to label a carton, case, or container with one size, one grade, one brand name, or, if applicable under R3-2-907(B), the United Egg Producer Certified logo;
 - g. Moving eggs or an egg case, carton, or container with a warning tag or notice, or removing a warning tag or notice without permission from the Director;
 - h. Refusing to submit egg or egg product, an egg case, carton, container, subcontainer, lot, load, or display of eggs to inspection; or
 - i. Refusing to stop, at the request of an authorized representative of the Department, any vehicle transporting eggs or egg products;
 - j. Selling eggs that have not been produced in accordance with the standards prescribed under R3-2-907(B);
 - k. Failing to raise egg-laying hens in this state in accordance with the standards prescribed under R3-2-907(A).
2. Category B:
 - a. Extending the expiration date of shell eggs as defined in A.R.S. § 3-701(13); or

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- b. Advertising, representing, or selling out-of-state eggs as local eggs.
- 3. Category C:
 - a. Failing to ensure that shell eggs for human consumption are kept refrigerated at an ambient temperature not higher than 45° F;
 - b. Failing to ensure that frozen egg products for human consumption, labeled for storage at 0° F or below, are kept under refrigeration at a temperature of 0° F or lower;
 - c. Failing to ensure that liquid egg products for human consumption are kept refrigerated at a temperature not higher than 40° F; or
 - d. Failing to meet the sanitary standards egg processing of R3-2-908.
- B. Any violation of this Article or of A.R.S. Title 3, Chapter 5, Article 1 not listed in subsection (A) is subject to a Category A civil penalty.
- C. Under A.R.S. § 3-739, the civil penalty for a violation of subsection (A) is in Table III.

Historical Note

Former Rule 6; Amended effective February 19, 1982. Former Section R3-6-06 renumbered as Section R3-2-906 (Supp. 82-1). Section R3-6-106 renumbered to R3-2-906 (Supp. 91-4). Former Section R3-2-906 renumbered to R3-2-903, new Section adopted effective July 13, 1995 (Supp. 95-3). Amended by final rulemaking at 5 A.A.R. 4058, effective October 7, 1999 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 2089, effective August 2, 2003 (Supp. 03-2). Amended by final rulemaking at 15 A.A.R. 863, effective October 1, 2009 (Supp. 09-2). Amended by made by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

Table III. Violations and Penalties

Number of Violations	Category A	Category B	Category C
1	Warning	Warning	Warning
2	\$50	\$50	\$100
3	\$100	\$100	\$200
4		\$150	\$400
5		\$200	\$500
6		\$250	
7		\$300	

Historical Note

Table III made by made by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2). Heading added for clarity (Supp. 21-3).

R3-2-907. Poultry Husbandry; Standards for Production of Eggs and Biosecurity Requirements

- A. All egg-laying hens in this state shall be raised according to United Egg Producers Animal Husbandry Guidelines.
- B. All eggs sold in this state produced by hens shall be from hens raised according to the United Egg Producers Animal Husbandry Guidelines. All eggs shall display the United Egg Producers Certified logo on their cases, cartons, and containers, or the egg dealer shall annually provide the Department with a copy of a current independent third-party audit that demonstrates that the eggs were produced by hens raised according to UEP Animal Husbandry Guidelines.
- C. Subsections (A) and (B) do not apply to egg producers operating or controlling the operation of one or more egg ranches

- each having fewer than 20,000 egg-laying hens producing eggs. Subsections (A) and (B) also do not apply to any hens that are raised cage-free or any eggs produced by hens that are raised cage-free.
- D. All producers and producer dealers with operations within the state shall have a written biosecurity plan in place. At a minimum each producer and producer dealer shall:
 - 1. Restrict access to all areas where poultry are housed or kept.
 - 2. Take steps to ensure that contaminated material is not transported into any poultry barns.
 - 3. Cover and secure feed in a manner that prevents wild bird, rodents or other animals from accessing the feed.
 - 4. Cover and properly contain poultry carcasses, used litter, or other disease-containing organic materials that prevents wild birds, rodents or other animals from accessing the material and movement of the materials by the wind.
 - 5. Keep houses in good repair and all areas to which the birds have access should be kept free of materials hazardous to the birds.
- E. The biosecurity plan shall contain the following:
 - 1. Methods for the disposal and handling of poultry manure.
 - 2. Procedures for prevention, control and eradication of vectors for poultry diseases.
 - 3. Procedures for the detection, control and treatment of poultry diseases.
 - 4. Methods for the disposal and handling of culled birds and entire flocks under normal cyclic operations and following emergency depletion as a result of disease.
 - 5. A facility poultry disease control and prevention plan which includes standard operating procedures with respect to specific measures to control and prevent disease including but not limited to structural and operational disease control and prevention provisions.
 - 6. Procedures to prevent cross contamination between nest run and in line eggs.
 - 7. Procedures to prevent the introduction and transmittal of diseases by vehicles and any other forms of transportation.
 - 8. Signed agreements with all employees containing biosecurity procedures regarding contact with outside poultry and wild birds.
- F. A producer and producer dealer shall allow the Department to enter the premises during normal working hours to inspect the biosecurity plan documents and the biosecurity that is implemented.

Historical Note

Former Rule 7; Former Section R3-6-07 renumbered as Section R3-2-907 (Supp. 82-1). Section R3-6-107 renumbered to R3-2-907 (Supp. 91-4). Section R3-2-907 renumbered to R3-2-904 effective July 13, 1995 (Supp. 95-3). New Section made by final rulemaking at 15 A.A.R. 863, effective October 1, 2009 (Supp. 09-2). Amended by made by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-908. Sanitary Standards; Egg Processing

- A. All egg producers and retail locations where lot consolidation is conducted in this state shall meet the facility and sanitary operation requirements prescribed by the Regulations Governing the Voluntary Grading of Shell Eggs, 7 CFR 56, effective March 30, 2008. This material is incorporated by reference, does not include any later editions, and is available for inspection at the Department of Agriculture, 1688 W. Adams St., Phoenix, AZ 85007.

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- B. No person other than a producer or producer dealer shall repack eggs. All eggs sold to the ultimate consumer must be pre-packaged with all required labeling requirements of this Article and A.R.S. Title 3 Chapter 5. A producer, producer dealer shall not pack or repack eggs that have been in retail distribution channels.
- C. A retailer may lot consolidate eggs labeled for the ultimate consumer by a packer. A daily log with lot information is required and shall include volume consolidated, grade, size, brand, lot and source.

Historical Note

Former Rule 8; Amended effective October 1, 1979 (Supp. 79-5). Former Section R3-6-08 renumbered as Section R3-2-908 (Supp. 82-1). Amended effective January 1, 1985 (Supp. 84-6). Amended effective December 30, 1987 (Supp. 87-4). Amended effective March 23, 1990 (Supp. 90-1). Section R3-6-108 renumbered to R3-2-908 (Supp. 91-4). Section R3-2-908 renumbered to R3-2-905 effective July 13, 1995 (Supp. 95-3). New Section made by final rulemaking at 15 A.A.R. 863, effective October 1, 2009 (Supp. 09-2). Amended by made by final rulemaking at 26 A.A.R. 781, effective June 8, 2020 (Supp. 20-2).

R3-2-909. Repealed**Historical Note**

Former Rule 9; Former Section R3-6-09 renumbered as Section R3-2-909 (Supp. 82-1). Section R3-6-109 renumbered to R3-2-909 (Supp. 91-4). Section repealed effective July 13, 1995 (Supp. 95-3).

ARTICLE 10. AQUACULTURE**R3-2-1001. Definitions**

In addition to the definitions provided in A.R.S. § 3-2901, the following shall apply unless the context otherwise requires:

1. "Certificate of Aquatic Health" is an official document from an issuing state or an equivalent form published by the United States Fish and Wildlife Service or the United States Department of Agriculture attesting that the live aquatic animals described thereon have been inspected and are free of the diseases and causative agents set forth in R3-2-1009.
2. "Department" means the Arizona Department of Agriculture.

Historical Note

Adopted effective May 3, 1993 (Supp. 93-2).

R3-2-1002. Fees for Licenses; Inspection Authorization and Fees

- A. License fees are established as follows:
1. Aquaculture facility: \$100 annually.
 2. Fee fishing facility: \$100 annually.
 3. Aquaculture processor: \$100 annually.
 4. Aquaculture transporter: \$100 annually.
 5. Special licenses: \$10 annually.
- B. An expired license may be renewed within 90 days after expiration by payment of a \$50 late fee.
- C. Upon request of the licensee, the Department shall assess the licensed facility and, if applicable, certify the facility is free from infectious diseases and causative agents listed in R3-2-1009 before issuing a Certificate of Aquatic Health. All expenses properly incurred in the certification procedure of the inspection, including time, travel, and laboratory expenses, shall be paid to the Department by the licensee requesting certification.

Historical Note

Adopted effective May 3, 1993 (Supp. 93-2). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3).

R3-2-1003. General Licensing Provisions

- A. An applicant for a license to operate an aquaculture facility or a fee fishing facility, or to operate as an aquaculture processor or aquaculture transporter shall provide the following information on a form furnished by the Department:
1. Whether the applicant is an individual, corporation, partnership, cooperative, association, or other type of organization;
 2. The name and address of the applicant;
 3. A corporation shall specify the date and state of incorporation;
 4. The principal name of the business, and all other business names that may be used;
 5. The name, mailing address, and telephone number of the applicant's authorized agent;
 6. The street address or legal description of the location of the facility to be licensed; and
 7. The signature of the person designated in subsection (A)(5), and the date the application is completed for submission to the Department.
- B. The Department shall grant a license when all conditions are met and assign a Department establishment number to each facility.
- C. All licenses expire on December 31 for the year issued.
- D. A licensee shall advise the Department in writing of any change in the information provided on the application during the license year. This information shall be provided within 30 calendar days of the change.
- E. To prevent the spread of diseases and causative agents listed in R3-2-1009, the Department may inspect and take samples from any facility or shipment being transported. A licensee shall notify the Department within 72 hours of becoming aware of the presence of any disease or causative agent listed in R3-2-1009. Aquatic animals found to be infected with a disease or causative agent listed in R3-2-1009 are prohibited from interstate or intrastate movement without prior written Department approval.
- F. The Department shall quarantine or seize aquatic animals, alive or dead, plants, or products for examination or diagnostic study when there is a potential for spread of a disease or causative agent listed in R3-2-1009, or any other disease or causative agent that could constitute a threat to aquatic animals or plants of the state. The Department shall issue a written notice to the licensee specifying:
1. The reason for the Department's action; and
 2. The licensee's right to request a hearing as prescribed in A.R.S. § 3-2906.
- G. A licensee shall conspicuously mark all quarantined aquatic products and quarantined areas in a manner specified by the Department.
- H. A licensee shall pay all diagnostic, quarantine, and destruction costs.

Historical Note

Adopted effective May 3, 1993 (Supp. 93-2). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3).

R3-2-1004. Specific Licensing Provisions; Aquaculture Facility; Fee Fishing Facility; Special License Facility

- A. In addition to the application requirements in R3-2-1003, an applicant for a license to operate an aquaculture facility, a fee fishing facility, or a special license facility under A.R.S. § 3-

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2908(A) shall provide the following information on a form provided by the Department:

1. Water sources, transmission, and conveyances;
 2. Method used to dispose of tailing waters and solid wastes;
 3. Number and size of ponds, raceways, and tanks, if applicable;
 4. Whether hatchery facilities are included;
 5. A list of all animals and plants to be authorized under the license by genus, species, and common name.
- B.** An application to culture or possess an aquatic animal or plant that has not previously occurred in the drainage where the facility is located shall be accompanied by a written proposal. The applicant's proposal shall include:
1. Anticipated benefits from introducing the species;
 2. Anticipated adverse effects from introducing the species, as it may affect indigenous or game fish, including hybridization;
 3. Anticipated diseases inherent to introducing the species;
 4. Suggestions for post-introduction evaluation of status and impacts of the introduced species; and
 5. Structural and operational methods implemented to prevent escape of the species, if applicable.
- C.** Each body of water serving a facility shall be contained within the boundaries of the land owned or leased by the licensee.
- D.** A facility using public waters having natural or artificial inlets, rivers, creeks, washes, or canals shall provide mechanical screening approved by the Department to prevent live aquatic animals and plants, including eggs and fry, from escaping beyond the aquaculture facility boundaries or into public bodies of water.
- E.** An applicant for a special license under A.R.S. § 3-2908(A) shall also provide the following information to the Department at the time of application:
1. A written narrative describing the project in detail, the project purpose, the hypothesis, and the project duration; and
 2. The proposed disposition of the aquatic animals or plants upon completion of the project.
- F.** The Department shall consider the recommendations of the Arizona Game and Fish Department, under A.R.S. § 3-2903, when determining whether to issue a license or an import permit under R3-2-1010. The Department may issue a license excluding some of the aquatic animal or plant species listed in the application.

Historical Note

Adopted effective May 3, 1993 (Supp. 93-2). Amended by final rulemaking at 10 A.A.R. 673, effective April 3, 2004 (Supp. 04-1).

R3-2-1005. Fee Fishing Facility

A licensee shall not allow an aquatic animal to be removed from a fee fishing facility unless:

1. The aquatic animal is dead, and
2. The licensee provides the person removing the aquatic animal with written proof of sale identifying the:
 - a. Facility, by name, address, and Department establishment number issued under R3-2-1003(B);
 - b. Date of harvest; and
 - c. Number and species of aquatic animals transported from the facility.

Historical Note

Adopted effective May 3, 1993 (Supp. 93-2). Amended by final rulemaking at 10 A.A.R. 673, effective April 3,

2004 (Supp. 04-1).

R3-2-1006. Processor License

- A.** In addition to complying with the application requirements of R3-2-1003, applicants for a license to operate as an aquaculture processor as defined in A.R.S. § 3-2901(12) shall provide the following information on a form furnished by the Department:
1. Water sources, transmission, conveyances, and annual consumption in gallons or acre feet;
 2. Method used to dispose of tailing waters and solid wastes;
- B.** A processing facility shall operate in a clean and sanitary condition during all periods of operation. The following are the minimum requirements for such establishments.
1. Each establishment shall have sanitary floors and walls impervious to water.
 2. All outside windows and doors shall be screened.
 3. There shall be a supply of potable water.
 4. There shall be a sewage disposal system of such a type as not to be a breeding place for insects and not to constitute a hazard or to endanger public health.

Historical Note

Adopted effective May 3, 1993 (Supp. 93-2).

R3-2-1007. Transporter License; Transport; Delivery

- A.** In addition to the application requirements in R3-2-1003, an applicant for a license to operate as an aquaculture transporter of live aquatic animals as defined in A.R.S. § 3-2901(15) shall, on a form provided by the Department:
1. Designate whether the license is for interstate or intrastate transport, or both;
 2. List aquatic transporting equipment to be used, including tanks and vehicles, and vehicle license number; and
 3. State prior year volume or anticipated annual tonnage of live aquatic animals transported.
- B.** A transporter shall ensure that the aquatic transporting equipment has adequate water and oxygen at a temperature and in a quantity normal for the health of the live aquatic animals and shall be clearly marked, "Live Fish."
- C.** In addition to a copy of the Certificate of Aquatic Health, a transporter shall transport each container of live aquatic animals within the state with a document identifying:
1. Consignor's name, address, and telephone number;
 2. Consignee's name, address, and telephone number;
 3. Quantity and size of the aquatic animal being transported;
 4. Genus, species, and common name of the aquatic animal being transported;
 5. Date of shipment; and
 6. Department establishment number.
- D.** A transporter shall deliver live aquatic animals only to a retail outlet, as prescribed at A.R.S. § 3-2907(J) or to a person listed in R3-2-1010(B).

Historical Note

Adopted effective May 3, 1993 (Supp. 93-2). Amended by final rulemaking at 10 A.A.R. 673, effective April 3, 2004 (Supp. 04-1).

R3-2-1008. Repealed**Historical Note**

Adopted effective May 3, 1993 (Supp. 93-2). Section repealed by final rulemaking at 10 A.A.R. 673, effective April 3, 2004 (Supp. 04-1).

R3-2-1009. Disease Certification

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- A. A licensee requesting and receiving a Certificate of Aquatic Health shall have their facility inspected and all live aquatic animals, fertilized eggs and milt shall be found free of, but not limited to, the following diseases and causative agents:
1. Causative agent: Egtved Virus. Disease: VHS, Viral Hemorrhagic Septicemia of Salmonids.
 2. Causative agent: Infectious Hematopoietic Necrosis Virus. Disease: IHN, Infectious Hematopoietic Necrosis of Salmonids.
 3. Causative agent: Infectious Pancreatic Necrosis Virus. Disease: IPN, Infectious Pancreatic Necrosis of Salmonids.
 4. Causative agent: *Ceratomyxa shasta*. Disease: Ceratomyxosis of Salmonids.
 5. Causative agent: *Rhabdovirus carpio*. Disease: Spring Viremia of carp. Certification is required in this case only when the original origin of the shipment is from outside the United States.
 6. Causative agent: *Renibacterium salmoninarum*. Disease: BKD, Bacterial Kidney Disease of Salmonids.
 7. Causative agent: *Aeromonas salmonicida*. Disease: Furunculosis.
 8. Causative agent: *Myxobolus cerebralis*. Disease: Whirling Disease of Salmonids.
- B. The Department may require inspection for any disease or causative agent not listed in subsection (A) when there is evidence that the disease or causative agent may constitute a threat to aquatic animals or plants, aquatic wildlife or the aquaculture industry. The Department shall send written notice to all licensees pursuant to this Chapter when implementing this subsection, naming the disease or causative agent of concern. Action to quarantine or seize aquatic animals or plants pursuant to this subsection shall not be subject to delay pending such written notice.

Historical Note

Adopted effective May 3, 1993 (Supp. 93-2).

R3-2-1010. Importation of Aquatic Animals

- A. The owner, or owner's agent, importing live aquatic animals into the state shall ensure the animals are accompanied by the following:
1. A Certificate of Aquatic Health as defined in R3-2-1001, based upon an inspection of the originating facility within the 12 months preceding the shipment;
 2. A transporter license issued under R3-2-1007; and
 3. An import permit number issued by the Department under this Section, legibly written or typed on the certificate of aquatic health.
- B. The owner, or owner's agent, of live aquatic animals, except those imported by a retail outlet as prescribed in A.R.S. § 3-2907(J), shall ensure that the animals are consigned to or in the care of:
1. An Arizona resident;
 2. An aquaculture facility, fee fishing facility, or special license holder licensed by the Department;
 3. A holder of an aquatic wildlife stocking permit issued by the Arizona Game and Fish Department; or
 4. A holder of any aquatic animal license issued by the Arizona Game and Fish Department.
- C. The owner, or owner's agent, may obtain an import permit number from the Department, Office of the State Veterinarian, by providing the following information:
1. Consignor's name, address, and telephone number;
 2. Consignee's name, address, and telephone number;
 3. Consignee's Department establishment number issued by the Department or a copy of an aquatic wildlife stocking

permit or the license issued by the Arizona Game and Fish Department;

4. Origin of the shipment;
5. Genus, species, and common name of aquatic animals to be imported; and
6. Quantity and size classification of aquatic animals to be imported.

- D. An import permit number remains valid for 15 calendar days from the date of issuance by the Department.
- E. The Department shall refuse entry to any shipment that does not comply with this rule.
- F. The Department shall quarantine and require destruction of any shipment, after its arrival, that it determines is infected with or was previously exposed to any causative agent or disease listed in R3-2-1009.

Historical Note

Adopted effective May 3, 1993 (Supp. 93-2). Amended by final rulemaking at 8 A.A.R. 4043, effective November 9, 2002 (Supp. 02-3).

ARTICLE 11. VOLUNTARY EGG GRADING PROGRAM**R3-2-1101. Definitions**

For the purpose of this Article, unless the context otherwise requires, the terms in this Section shall have the following meaning:

"Acceptable" means suitable for the purpose intended.

"Administrator" means the supervisor as defined in A.R.S. § 3-701.

"Ambient temperature" means the air temperature maintained in an egg storage facility or transport vehicle.

"AMS" means Agricultural Marketing Service, United States Department of Agriculture.

"Applicant" means any person or entity who requests any grading service.

"Appeal grading" means a re-grading requested by a recipient who is dissatisfied with an initial grading decision.

"Associate Director" means the associate director of the animal service division.

"Auditing services" means the act of providing independent verification of written quality assurance and value added standards for production, processing and distribution of eggs. Auditing services are performed by graders authorized by the Administrator to perform such audits and the service provided will be in accordance with the provisions of this Article for grading services, as appropriate.

"Cage mark" means any stain-type mark caused by an egg coming in contact with a material that imparts a rusty or blackish appearance to the shell.

"Case" means, when referring to containers, an egg case, as used in commercial practice in the United States, holding 30 dozens of eggs.

"Class" means any subdivision of a product based on essential physical characteristics that differentiate between major groups of the same size, kind, species, or method of processing.

"Chick papers" means the papers in which chicks are delivered.

"Condition" means any condition (including, but not being limited to, the state of preservation, cleanliness, soundness,

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wholesomeness, or fitness for human food) of any product which affects its merchantability.

“Consumer grades” means U.S. Grade AA, A, and B.

“Controlling person” means a person at least 21 years of age legally accountable for operations and management of the egg production plant.

“Department” or “AZDA” means the Arizona Department of Agriculture.

“Director” means the Director of the Arizona Department of Agriculture.

“Egg grading service” means the personnel who are actively engaged in the administration, application, and direction of egg grading programs and services pursuant to this Article.

“Eggs” means eggs of domesticated chickens.

“Eggs of current production” means eggs that are no more than 21 days old.

“Grademark” means the official identification symbol used to identify eggs officially graded by AZDA in accordance with this Article.

“Grader” means any employee assigned by AZDA to investigate and certify in accordance with this Article, the class, quality, quantity, or condition of products.

“Grading or grading service” means the determination by a grader that a product meets the standards of this Article regarding the class, quality, quantity, or condition of the product for the purpose of issuing a grade or grading certificate. Such determination may be performed by examining all product units or representative samples drawn by the grader; may be performed as a temporary, resident or non-resident grading service; and includes regrading performed in response to an appeal of a previous grading decision.

“Grading certificate” means a statement, either written or printed, issued by a grader pursuant to this Article, relative to the class, quantity, quality, or condition of products.

“Holiday or legal holiday” means the legal public holidays specified by State of Arizona Accounting Manual (SAAM).

“Identify” means to apply a grademark to products or the containers thereof.

“Interested party” means any person financially interested in a transaction involving any grading, appeal grading, or regrading of any product.

“Office of grading” means the office of any resident grader at the plant.

“Official AZDA certificate” means any form of certification, either written or printed, used under this Article to certify with respect to the sampling, class, grade, quality, size, quantity, or condition of products (including the compliance of products with applicable specifications).

“Official AZDA memorandum” means any initial record of findings made by an authorized person in the process of grading or sampling pursuant to this Article, any processing or plant-operation report made by an authorized person in connection with grading or sampling under this Article, and any report made by an authorized person of services performed pursuant to this Article.

“Official AZDA mark” means the grademark and any other mark, or any variations in such marks approved by the Admin-

istrator and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product, stating that the product was graded, or indicating the appropriate U.S. grade or condition of the product, or for the purpose of maintaining the identity of products graded under this Article, including but not limited to, those set forth in R3-2-1111.

“Official identification” means any AZDA standard designation of class, grade, quality, size, quantity, or condition specified in this Article or any symbol, stamp, label, logo, or seal indicating that the product has been officially AZDA graded and/or indicating the class, grade, quality, size, quantity, or condition of the product approved by the Supervisor and authorized to be affixed to any product, or affixed to or printed on the packaging material of any product.

“Official plant” means the facilities used for a shell egg operation that has been approved by AZDA for grading purposes.

“Origin grading” means a grading made on a lot of eggs at a plant where the eggs are graded and packed.

“Packaging” means the primary or immediate container in which eggs are packaged and which serves to protect, preserve, and maintain the condition of the eggs.

“Packing” means the secondary container in which the primary or immediate container is placed to protect, preserve, and maintain the condition of the eggs during transit or storage.

“Person” means any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not.

“Plant” means the facilities used for a shell egg operation.

“Potable water” means water that has been approved by the State health authority or agency or laboratory acceptable to the Administrator as safe for drinking and suitable for food processing.

“Product or products” means eggs of the domesticated chicken.

“Quality” means the inherent properties of any product which determine its relative degree of excellence.

“Quality assurance inspector” means any designated company employee other than the plant owner, manager, foreman, or supervisor, authorized by the State supervisor to examine product and to supervise the labeling, dating, and lotting of officially graded eggs and to assure that such product is packaged under sanitary conditions, graded by authorized personnel, and maintained under proper inventory control until released by an employee of the Department.

“Recipient” means the individual or entity whose application for grading services has been approved by the Department.

“Resident grading service” means continuous supervision, in an official plant, of the handling or packaging of any product.

“Sampling” means the act of taking samples of any product for grading or certification.

“SE” means *Salmonella* Enteritidis.

“Shell protected” means eggs which have had a protective covering such as oil applied to the shell surface. The product used shall be acceptable to the Food and Drug Administration.

“Shipped for retail sale” means eggs that are forwarded from the processing facility for distribution to the ultimate consumer.

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“State supervisor” means the immediate supervisor of a Grader.

“Washed ungraded eggs” means eggs which have been washed and that are either sized or unsized, but not segregated for quality.

Historical Note

Section R3-2-1101 recodified from R3-2-101 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3). New Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1102. General Provisions

- A.** Administration. The Administrator shall perform such duties as the Associate Director may require in the enforcement or administration of the provisions of this Article. The Administrator is authorized to waive for limited periods any particular provisions of this Article to permit experimentation so that new procedures, equipment, and processing techniques may be tested to facilitate definite improvements and at the same time to determine full compliance with the spirit and intent of this Article. The AZDA and its officers and employees shall not be liable in damages through acts of commission or omission in the administration of this Article.
- B.** Basis of grading service.
1. Grading service with respect to the determination of the quality of products shall be on the basis of the United States Standards, Grades, and Weight Classes for shell eggs. However, grading service may be rendered with respect to products which are bought and sold on the basis of institutional contract specifications or specifications of the recipient; and such service, when approved by the Administrator, shall be rendered on the basis of such specifications. The supervision of packaging shall be in accordance with such instructions as may be approved or issued by the Administrator.
 2. Whenever grading service is performed on a representative sample basis, such sample shall be drawn and consist of not less than the minimum number of cases as indicated in:
 - a. R3-2-903 for stationary lots; or
 - b. QAD 700 Shell Egg Graders Handbook Section 8 on-line sampling of Shell Eggs (8-30-2016).
 3. Accessibility of product. Each product for which grading service is requested shall be so conditioned and placed as to permit a proper determination of the class, quality, quantity, or condition of such product.
- C.** Prerequisites to grading. Grading of products shall be rendered pursuant to this Article and under such conditions and in accordance with such methods as may be prescribed or approved by the Administrator.
- D.** Supervision. All plant grading service shall be subject to supervision at all times by an AZDA grader. Such service shall be rendered in accordance with instructions issued by the Administrator where the facilities and conditions are satisfactory for the conduct of the service and the requisite graders are available.
- E.** Other applicable regulations. Compliance with this Article shall not excuse failure to comply with any other applicable Federal, State, or local laws or regulations.

Historical Note

Section R3-2-1102 recodified from R3-2-102 (Supp. 97-1). Amended effective October 8, 1998 (Supp. 98-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R.

3755, effective May 10, 2002 (Supp. 02-3). Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1103. Equipment and Facilities for Graders

Equipment and facilities to be furnished by the recipient for use of graders in performing service on a resident basis shall include, but not be limited to, the following:

- A.** An accurate metal stem thermometer.
- B.** An accurate means to determine pH level of wash water.
- C.** Test kits for checking the concentration level of the solution used for sanitizing eggs and monitoring the concentration level of potable water treatment compounds in plants having chlorinators. The kit must be designed for testing the compound being used.
- D.** Protective equipment including, general purpose gloves and safety glasses to all egg graders who are monitoring the strength of potable water treatment compounds and egg sanitizing solutions, unless plant employees are trained to perform the testing under the direct supervision of the grader.
- E.** Electronic digital-display scales graduated in increments of 1/10-ounce or less for weighing individual eggs and test weights for calibrating such scales. Plants packing product based on metric weight must provide scales graduated in increments of one gram or less.
- F.** Electronic digital-display scales graduated in increments of 1/4-ounce or less for weighing the lightest and heaviest consumer packages packed in the plant and test weights for calibrating such scales.
- G.** Scales graduated in increments of 1/4-pound or less for weighing shipping containers and test weights for calibrating such scales.
- H.** Test weights sufficient in size to verify the accuracy of the lightest and heaviest unit of measurement weighed on any given scale located in the plant.
- I.** Two candling lights that provide a sufficient combined illumination through both the aperture and downward through the bottom to facilitate accurate interior and exterior quality determinations.
- J.** A candling booth adequately darkened and located in close proximity to the work area that is reasonably free of excessive noise. The booth must be sufficient in size to accommodate two graders, two candling lights, and other necessary grading equipment.
- K.** If deemed necessary by the supervisor, a cart or method of conveyance for the transportation of samples to and from the candling booth.
- L.** Furnished office space, suitable wireless internet connection, a desk and file or storage cabinets (equipped with a satisfactory locking device), suitable for the security and storage of official supplies, and other facilities and equipment as may otherwise be required. Such space and equipment must meet the approval of the Administrator.

Historical Note

Section R3-2-1103 recodified from R3-2-103 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3). Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1104. Schedule of Operation of Official Plants

Grading operating schedules for services performed pursuant to this Article shall be requested in writing and be approved by the Administrator. Normal operating schedules for a full week consist of a continuous eight-hour period per day (excluding not to exceed one hour for lunch), five consecutive days per week, within the admin-

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istrative workweek, Saturday through Friday, for each shift required. Less than eight-hour schedules may be requested and will be approved if a grader is available. Clock hours of daily operations need not be specified in the request, although as a condition of continued approval, the hours of operation shall be reasonably uniform from day to day. Graders are to be notified by management one day in advance of any change in the hours grading service is requested.

Historical Note

Section R3-2-1104 recodified from R3-2-104 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3). Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1105. Application for Grading Service

- A.** An application for AZDA grading service may be made by egg producer or a producer dealer with operations located in Arizona.
- B.** Form of application. Each application for grading or sampling a specified lot of any product shall include such information as may be required by the Administrator in regard to the product and the premises where such product is to be graded or sampled. The applicant shall designate the employees of the applicant who will be authorized to provide information to the AZDA grader or graders as may be necessary for the performance of the grading service.
- C.** Application for grading service in official plants; approval. Any person desiring to process and pack products in a plant under grading service must receive approval of such plant and facilities as an official plant prior to the rendition of such service. When a signed application for service has been received, the State supervisor or the supervisor's assistant shall complete a plant survey pursuant to this Article. An application for grading service shall be approved when the application has been filed for grading service; a successful plant survey is completed; and all required facility or equipment modifications are completed.
- D.** Denial of service. An application for grading service may be denied by the Administrator when:
1. The applicant fails to meet the requirements of this Article prescribing the conditions under which the service is made available.
 2. The product is owned by or located on the premises of a person currently denied the benefits of this Article.
 3. Any individual holding office or a responsible position with or having a substantial financial interest or share in the applicant is currently denied the benefits of the Act or was responsible in whole or in part for the current denial of the benefits of this Article to any person or entity.
 4. The Administrator determines that the application is an attempt on the part of a person currently denied the benefits of this Article to obtain grading services.
 5. The applicant, after an initial survey has been made in accordance with this Article, fails to bring the grading facilities and equipment into compliance with this Article within a reasonable period of time.
 6. Notwithstanding any prior approval whenever, before initiation of service, the applicant fails to fulfill commitments concerning the initiation of the service.
 7. It appears that performing the services specified in this Article would not be in the best interests of the public welfare or of the Government.
 8. It appears to the Administrator, in his sole discretion, that prior commitments of the Department or lack of resources necessitate denial of service.
- E.** Debarment. An applicant may be permanently debarred for the following reasons:
1. The giving or offering, directly or indirectly, of a bribe, or any money, loan, gift, or anything of value to an employee of the Department to obtain any benefit or special treatment;
 2. Taking any action that falsely brings the Department in disrepute or that creates the appearance of impropriety;
 3. Knowingly making a false or misleading statement of a material fact to the Department;
 4. Using any official identification, grademark, stamp, symbol, label, seal, or identification without authority from the Department;
 5. Forging, counterfeiting, or falsely simulating any grading certificate, symbol, stamp, label, seal, or identification authorized pursuant to this Article;
 6. Use of an official grademark, certificate, symbol, stamp, label, seal, or identification without authority;
 7. Failure to make an official plant or product accessible for grading service;
 8. Interference with the performance of duty of an AZDA grader, licensee, contractor, or employee.
 9. Failure to pay a Department invoice within 30 days after issuance of the invoice; or
 10. Any other violation of any provision of the statutes, rules and regulations of the Department that threatens the health, safety, or welfare of the public.
- F.** Notification. An applicant shall be promptly notified of the reasons for a denial of service. A written petition for reconsideration of such denial may be filed by the applicant with the Administrator if postmarked or delivered within 10 days after the receipt of notice of the denial. Such petition shall state specifically the errors alleged to have been made by the Administrator in denying the application. Within 20 days following the receipt of such a petition for reconsideration, the Administrator shall approve the application or notify the applicant of the reasons for the denial thereof. Service of notice may be accomplished by regular mail and/or email.
- G.** Withdrawal of application. An application for grading service may be withdrawn by the applicant at any time before the service is performed, provided that the applicant pays all expenses incurred by the AZDA in connection with such application.

Historical Note

Section R3-2-1105 recodified from R3-2-105 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3). Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1106. Authority of Applicant

- A.** Proof that an authorized controlling person is applying for any grading service may be required at the discretion of the Administrator. Such proof may include, but is not limited to:
1. Documentation, as specified under A.R.S. § 41-1080(A), of the applicant's lawful presence in the U.S.
 2. Proof of business entity structure of the plant.
 3. Proof of ownership interest or position held in the plant.
 4. Documentation of designated authority from the business entity under which the plant operates.
- B.** The approved recipient of grading services must notify the Department of a change of control or ownership of the official plant within 15 days after such change is effective.

Historical Note

Section R3-2-1106 recodified from R3-2-106 (Supp. 97-

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1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3). Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1107. Order of Service

AZDA grading service shall be performed, insofar as practicable and subject to the availability of qualified graders, on a first-come, first-served basis, except that precedence may be given to an application for an appeal grading.

Historical Note

Section R3-2-1107 recodified from R3-2-107 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3). Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1108. Types of Grading Service

- A.** Scheduled continuous grading service on a resident basis and continuous grading service on a nonresident basis. Service on a resident basis has a scheduled tour of duty, while service on a nonresident basis has a nonscheduled tour of duty, but is of a reoccurring nature. Both of these services are performed when an applicant requests that an AZDA/inspector grader be stationed in the applicant's processing plant and grade eggs in accordance with U.S. Standards. The applicant agrees to comply with the facility, operating, and sanitary requirements of resident service. The charges for resident grading services are based on the hours of the regular tour of duty. Eggs graded under AZDA resident grading service are only eligible to be identified with the official grademarks shown in R3-2-1111 when processed and graded under the supervision of a grader/inspector, or quality assurance inspector as provided in R3-2-1114.
- B.** Unscheduled temporary grading service. Temporary grading service is performed when an applicant requests resident grading on a fee basis. The applicant must meet all of the facility, operating, and sanitary requirements of resident service. Charges or fees are based on the time and expenses needed to perform the work. Eggs graded under temporary grading service are only eligible to be identified with the official AZDA grademarks when they are processed and graded under the supervision of a grader or quality assurance inspector as provided in R3-2-1114.
- C.** Auditing service. Auditing service is performed when an applicant requests independent verification of written quality assurance and value added standards for production, processing, and distribution of eggs. Charges or fees are based on time, travel, and expenses needed to perform the work.
- D.** The Department shall determine the number of graders needed to perform grading services. Recipients shall not ask AZDA graders to assume plant managerial responsibilities.

Historical Note

Section R3-2-1108 recodified from R3-2-108 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3). Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1109. Suspension of Grading Service or Plant Approval for Correctable Cause

- A.** Provision of grading services is a privilege and not a right. Any plant approval of grading services given pursuant to this Article may be suspended by the Administrator for:
1. Failure to maintain grading facilities and equipment in a satisfactory state of repair, sanitation, or cleanliness.
 2. The use of operating procedures which are not in accordance with this Article;
 3. Alterations of grading facilities or equipment which have not been approved in accordance with this Article; or
 4. Any reasons listed under R3-2-1105(D) "Denial of Service," or required by any other need to protect public health, safety, or welfare.
- B.** Suspension may occur prior to the right to have a hearing in cases in which immediate suspension is required to protect public health, safety, or welfare. Whenever it is feasible to do so, written notice in advance of such suspension of plant approval shall be given to the person concerned and shall specify a reasonable period of time in which corrective action must be taken. If advance written notice is not given, the action shall be promptly confirmed in writing after the suspension and the reasons therefor shall be stated, except in instances where the person has already corrected the deficiency. During such period of suspension, grading service shall not be rendered. After appropriate corrective action is taken, grading service will be restored immediately, or as soon thereafter as a grader can be made available.
- C.** If the grading facilities or methods of operation are not brought into compliance within a reasonable period of time as specified by the Administrator, the Administrator shall send formal notice of the suspension pursuant to A.R.S. Title 41, Chapter 6, Article 10. Any suspension shall continue in effect pending the outcome of a hearing unless otherwise ordered by the Administrator.
- D.** Upon suspension of grading service, all grademarks (labels, seals, tags, or packaging material bearing other official identification), shall, under the supervision of a person designated by the AZDA, be destroyed, obliterated, or sequestered in a manner acceptable to the AZDA.
- E.** In any case where grading service is suspended under this Section, the person concerned may thereafter apply for grading service once the conditions giving rise to the suspension or withdrawal have been remediated.

Historical Note

Section R3-2-1109 recodified from R3-2-109 (Supp. 97-1). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 3755, effective May 10, 2002 (Supp. 02-3). Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1110. Authority to Use Official Insignia

- A.** Authority to use official AZDA grademarks. Authority to use an AZDA grademark on products is granted only to recipients who utilize the services of a grader or quality assurance inspector in accordance with this Article. Packaging materials bearing official identification marks shall be approved pursuant to R3-2-1110 to R3-2-1111, inclusive, and shall be used only for the purpose for which approved and prescribed by the Administrator. Any unauthorized use or disposition of approved labels or packaging materials which bear any official AZDA identification may result in cancellation of grading service, denial of the permission to use of labels or packaging materials bearing official identification, or denial of other benefits of the Act pursuant to the provisions of R3-2-1105 D.
- B.** Approval of official identification. No label, container, or packaging material which bears official identification may

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contain any statement that is false or misleading. No label, container, or packaging material bearing official identification may be printed or prepared for use until the printers' or other final proof has been approved by the Administrator in accordance with this Article. It is the recipient's responsibility to ensure label compliance with the Federal Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act, and the regulations promulgated under this Article. The use of finished labels must be approved as prescribed by the Administrator. A grader may apply official identification stamps to shipping containers if they do not bear any statement that is false or misleading. If the label is printed or otherwise applied directly to the container, the principal display panels of such container shall for this purpose be considered as the label. The label shall contain the name, address, and ZIP Code of the packer or distributor of the product, the name of the product, a statement of the net contents of the container, and the AZDA grademark.

- C. Nutritional labeling. Nutrition information must be included on the labeling of each unit container of consumer packaged eggs in accordance with the General Regulations for the Enforcement of the Federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act, located at 21 CFR §§ 101.1 to 101.108. The nutrition information included on labels is subject to review by the Food and Drug Administration prior to approval by the Department.
- D. Refrigeration labeling. All containers bearing official AZDA "Grade AA" or "Grade A" identification shall be labeled to indicate that refrigeration is required, for example, "Keep refrigerated," or words of similar meaning.

Historical Note

Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1111. Form of AZDA Grademark and Information Required

- A. Form of official identification symbol and grademark. The logo set forth in Illustration 1 shall be the official identification symbol for purposes of this Article and when used, imitated, or simulated in any manner in connection with eggs, shall be *prima facie* evidence that the product has been officially graded in compliance with this Article.
- B. Eggs with consumer grades. Except as otherwise authorized, the AZDA grademark used to officially identify AZDA consumer-graded eggs shall be of the form and design indicated in Illustrations 2 through 4. The logo shall be of sufficient size so that the printing and other information contained therein is legible and in approximately the same proportion as shown in these figures. No variation may be used for the color scheme of Illustration 4.
- C. The "Produced From" AZDA grademark. The Illustration 5 grademark may be used to identify products for which there are no official U.S. grade standards (for example, pasteurized shell eggs, and/or hard boiled eggs), provided that these products are approved by the Department and are prepared from AZDA compliant Consumer Grade AA or A eggs. The Illustration 5 grademark may utilize any one of the designs shown in Illustrations 2 through 4. The "Produced From" text outside the symbol shall be conspicuous, legible, and in approximately the same proportion and close proximity to the symbol as shown in Illustration 5.
- D. Information required on AZDA grademark. Except as otherwise authorized by the Administrator, each AZDA grademark shall include the letters "AZDA" and the U.S. grade of the product it identifies, such as "Grade AA," as shown in Illustration 2. Such information shall be printed with the symbol and

the wording within the symbol in contrasting colors in a manner such that the design is legible and conspicuous on the material upon which it is printed.

- E. Product class. The size or weight class of the product, such as "Large," may appear within the grademark as shown in Illustration 3. If the size or weight class is omitted from the grademark, it must appear prominently on the main panel of the carton.
- F. Plant number. The plant number of the official plant preceded by the letter "P" must be shown on each carton or packaging material.

Historical Note

Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

Illustration 1. AZDA



Historical Note

Illustration 1 made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

Illustration 2. AZDA Grade AA



Historical Note

Illustration 2 made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

Illustration 3. AZDA Grade AA Large



Historical Note

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Illustration 3 made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

Illustration 4. AZDA AA Grade**Historical Note**

Illustration 4 made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

Illustration 5. AZDA Grade AA Produced From Shell Eggs

Produced From



Shell Eggs

Historical Note

Illustration 5 made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-4-1112. Lot Marking of Officially Identified Eggs

Each carton identified with the AZDA grademarks shown in R3-2-1111 shall be legibly lot-numbered on the consumer package and the carton, and may also be shown on the individual egg. The lot number shall be the consecutive day of the year (Julian date) on which the eggs were packed (for example, 132), except other lot-numbering systems may be used when submitted in writing and approved by the Administrator.

Historical Note

Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1113. Retention Directives

A grader may use retention tags or other devices and methods as approved by the Administrator for the identification and control of eggs which are not in compliance with this Article or are held for further examination, and for any equipment, utensils, rooms or

compartments which are found unclean or otherwise in violation of this Article. Any such item shall not be released until in compliance with this Article and retention identification shall not be removed by anyone other than a grader.

Historical Note

Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1114. Prerequisites to Packaging Eggs Identified with Grademarks

Quality assurance inspector required. The official grademark identification of any product as provided in this Article shall be done only under the supervision of a grader or quality assurance inspector. The grader or quality assurance inspector shall have supervision over the use and handling of all material bearing any official grademark identification.

Historical Note

Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1115. Grading Requirements of Eggs Identified with AZDA Grademarks

- A. Eggs to be identified with the AZDA grademarks illustrated in R3-2-1111 must be individually graded by a grader.
- B. In order to be officially identified with an AZDA consumer grademark, eggs shall:
 1. Be of current production;
 2. Be produced and processed within the borders of Arizona;
 3. Not possess any undesirable odors or flavors;
 4. Not have previously been shipped for retail sale;
 5. Meet consumer Grade A or Grade AA, as prescribed in AMS 56, United States Standards, Grades, and Weight Classes for Shell Eggs, revised as of July 20, 2000, which is incorporated by reference, does not include any later amendments or editions of the incorporated matter, is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007, and can be found online at https://www.ams.usda.gov/sites/default/files/media/Shell_Egg_Standard%5B1%5D.pdf;
 6. Be produced and packaged in a facility in accordance with the Food and Drug Administration, Department of Health and Human Services' requirements for the Production, Storage, and transportation of Shell Eggs as specified in 21 CFR §§ 118.1 to 118.12, revised as of April 1, 2011, which is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007;
 7. Be produced and packaged in a facility that meets the Regulations Governing the Inspection of Eggs under the Egg Products Inspection Act (EPIA), as specified in 7 CFR §§ 57.1 to 57.970, revised as of April 12, 2006, which is incorporated by reference, does not include any later amendments or editions of the incorporated matter, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007;
 8. Be produced in a facility that has implemented a SE environmental monitoring program which includes testing for SE in chick papers and in the house environment when the pullets are 14-16 weeks of age, 40-45 weeks of age, four to six weeks post-molt, and pre-depopulation.
 9. Be produced in a facility that has implemented and maintained a vaccination program to protect against SE infec-

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tion, which includes a minimum of two attenuated live vaccinations and one killed or inactivated vaccination, or an alternative vaccination program that has been approved by the Department after having been demonstrated in the Department's estimation to be equally effective.

- C. Management at an official plant is responsible for notifying the AZDA grader whenever contaminated or adulterated eggs are present in the official plant. Any eggs identified as contaminated or adulterated must be properly labeled and controlled by plant management. This includes eggs originating from a layer house with an SE-positive environment or eggs testing positive for the presence of SE. Failure to control, detain and/or notify the grader of the presence of contaminated or adulterated eggs in the official plant will constitute a violation of this Article. Department employees are authorized to inspect lay houses and review plant documents to determine compliance with this Article.

Historical Note

Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1116. Payment of Fees and Charges

- A. Fees and charges for any grading service shall be paid by the recipient by check, draft, or money order payable to the "Arizona Department of Agriculture Egg Program." AZDA may require that fees and charges shall be paid in advance, and shall include travel, per diem, or other expenses incurred by the Department in connection with providing grading services.
- B. The cost of an appeal grading or review of a grader's decision shall be borne by the appellant on a unscheduled temporary basis at rates set forth in R3-2-1117, plus travel, per diem, or other expenses. If the appeal grading or review of a grader's decision discloses that a material error was made in the original determination, no fee or expenses will be charged for the regrading.
- C. Invoices for services previously rendered will be issued no later than the 10th day following the end of the period in which the service was rendered and are payable in full upon receipt.

Historical Note

Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1117. Charges for Grading Service

- A. Scheduled continuous grading service. The following rates apply to continuous grading service on a resident basis and continuous grading service on a nonresident basis per grader:
1. Regular rate: \$38.00/hour
 2. Overtime rate: \$57.00/hour
 3. Holiday rate: \$58.00/hour
- B. Plant survey, unscheduled temporary, auditing and appeal grading services. The following rates apply to temporary and auditing service per grader:
1. Regular rate: \$57.00/hour
 2. Overtime rate: \$85.00/hour
 3. Holiday rate: \$87.00/hour
- C. Reapplication after termination of service by recipient. If a recipient causes termination under R3-2-1105(D), and reapplies within 12 months from the date of termination, there will be an additional re-application fee of \$300 in addition to the above fees.
- D. Extra charges. The following extra charges shall be assessed:
1. All hours worked by an assigned grader or another grader in excess of the approved tour of duty, worked on a non-

scheduled workday, or worked on a State holiday outside of the approved tour of duty, will be considered as overtime, at the rate of time and one-half.

2. For all hours of work performed in a plant without an approved tour of duty, the charge will be the temporary grading service.
- E. No charges. No charges will be assessed:
1. Solely because of a change in name or ownership of the official plant, unless the recipient of services fails to notify the Department within the time limit specified in R3-2-1105, in which case the above charges will apply.
 2. When the assigned grader is temporarily reassigned by AZDA to perform grading service for another service recipient.

Historical Note

Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1118. Termination by Recipient

Grading services under this Article shall be unilaterally terminated by the recipient of such service when:

- A. Service is not installed within six months from the date the application is filed due to inaction by the applicant or recipient on Department requirements.
- B. Service remains inactive for a period of more than six months due to a recipient's request for removal of a grader and the recipient does not accept reassignment of another grader by the Department.
- C. The recipient is terminated for cause based on violations listed in R3-2-1105(D).

Historical Note

Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1119. Mutual Termination

- A. The Department and the recipient of service may mutually agree to termination of the service, under the following terms:
- B. Previously paid fees will not be returned to the service recipient.
- C. Pending charges will be paid in full for completed work of the Department.
- D. A pending application will be considered terminated, but a new application may be filed at any time, without penalty.
- E. Termination shall not take effect until the end of a 30-days' notice period, unless the parties agree otherwise.
- F. The mutual decision to terminate and any related agreements are documented in writing.

Historical Note

Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1120. Appeals

- A. Appeal grading. An appeal grading may be requested by any recipient or authorized designee or other interested party ("appellant") who is dissatisfied with the determination by a grader of the class, quality, quantity, or condition of any product as evidenced by the AZDA grademark and accompanying label, or as stated on a grading certificate.
1. The appeal shall be filed with the original grader's immediate supervisor.
 2. Initial review of the appeal shall be made by the original grader's immediate supervisor, or by one or more

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licensed graders assigned by the immediate supervisor to review the appeal.

2. An appeal may be made orally or in writing. If made orally, written confirmation is required. The appellant shall clearly state the reasons for requesting the appeal grading and a description of the product, or the decision which is questioned. If such appeal request is based on the results stated on an official certificate, the original and all available copies of the certificate shall be provided to the grader assigned to perform the appeal grading.
 3. The appellant's request for the appeal grading may be refused when it appears to the reviewer that the reasons given in the request are frivolous or not substantial, the quality or condition of the product has undergone a material change since the original grading, the original lot has changed in some manner, or the appellant has not materially complied with the requirements of this Article. In such case, the appellant shall be promptly notified of the reason or reasons for such refusal.
 4. If an appeal grading is granted, it shall be performed by a grader other than the original grader. Whenever practical, an appeal grading shall be conducted jointly by two independent graders.
 5. The following procedures shall be used for appeal grading:
 - a. The appeal sample shall consist of product taken from the original sample container plus an equal number of samples selected at random.
 - b. When the original samples are not available or have been altered, such as the removal of undergrades, the appeal sample size for the lot shall consist of double the samples required in R3-2-1102.
 - c. Eggs shall not have been moved from the original place of grading and must have been maintained under adequate refrigeration.
 6. Immediately after an appeal grading is completed, an appeal certificate shall be issued to show that the original grading was upheld, modified, or rejected. Such certificate shall supersede any previously issued certificate for the product involved and shall clearly identify the number and date of the superseded certificate. The issuance of the appeal certificate may be withheld until any previously issued certificate and all copies have been returned when such action is deemed necessary to protect the interest of the Department. When the appeal grader assigns a different grade to the lot, the existing AZDA grademark shall be changed or obliterated as necessary. When the appeal grader assigns a different class or quantity designation to the lot, the labeling shall be corrected.
- B.** Appeal for suspension, termination or denial of service or debarment. Any person whose grading service is suspended, terminated, denied service, or debarred, may request a hearing before an administrative law judge pursuant to A.R.S. Title 41, Chapter 6, Article 10. The decision of the administrative law judge is subject to review by the Director as provided by A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1121. AZDA Grading Certificates

- A.** Forms. AZDA grading certificates and sampling report forms (including appeal grading certificates and regrading certificates) shall be issued on forms approved by the Administrator.
- B.** Issuance.

1. Resident grading basis. Certificates will be issued only upon request therefor by the applicant or AZDA. When requested, a grader shall issue a certificate covering product graded by such grader. In addition, a grader may issue a grading certificate covering product graded in whole or in part by another grader when the grader has knowledge that the product is eligible for certification based on personal examination of the product or official grading records.
 2. Other than resident grading. Each grader shall, in person or by the grader's authorized agent, issue a grading certificate covering each product graded by such grader. A grader's name may be signed on a grading certificate by a person other than the grader, if such person has been designated as the authorized agent of such grader by the Administrator, provided that:
 - a. The certificate is prepared from an official memorandum of grading signed by the grader; and
 - b. A notarized power of attorney authorizing such signature has been issued to such person by the grader and is on file in the office of grading. In such case, the authorized agent shall sign both the agent's name and the grader's name, for example, "John Doe by Mary Roe."
- C.** Disposition. The original and required or requested copies of the grading certificate, immediately upon issuance, shall be delivered, mailed, or electronically submitted to the recipient or the recipient's designee. One copy is required to be sent and the recipient may request additional copies. Other copies shall be filed and retained in accordance with the disposition schedule for grading program records.

Historical Note

Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1122. Minimum Facility and Operating Requirements for Egg Grading and Packing Plants

- A.** For grading services that are provided on a resident or temporary basis, QAD 700 Shell Egg Graders Handbook Section 02 through Section 08, revised as of August 30, 2016. This material is incorporated by reference, does not include any later amendments or editions of the incorporate matter, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007; and the following minimum facility and operating conditions will be required:
- B.** Applicants must comply with all applicable Federal, State and local government occupational safety and health regulations.
- C.** Processing facilities are required to have a documented and implemented Quality Management System that meets Title 21, Part 117 of the U.S. Code of Federal Regulations "Current Good Manufacturing Practice, Hazard Analysis, and Risk-based Preventive Controls for Human Foods," revised as of April 1, 2018. This material is incorporated by reference, does not include any later amendments or editions of the incorporate matter, and is on file with the Department at 1688 W. Adams St., Phoenix, AZ 85007.
- D.** General requirements for premises, buildings and plant facilities.
 1. The outside premises shall be free from refuse, rubbish, waste, unused equipment, and other materials and conditions which constitute a source of odors or a harbor for insects, rodents, and other vermin.
 2. The outside premises adjacent to grading, packing, cooler, and storage rooms must be constructed to provide

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- proper drainage to prevent conditions that may constitute a source of odors or propagate insects or rodents.
3. Buildings shall be of sound construction so as to prevent, insofar as practicable, the entrance or harboring of vermin.
 4. Grading and packing rooms shall be of sufficient size to permit installation of necessary equipment and conduct grading and packing in a sanitary manner. These rooms shall be kept reasonably clean during grading and packing operations and shall be thoroughly cleaned at the end of each operating day.
 5. The floors, walls, ceilings, partitions, and other parts of the grading and packing rooms including benches and platforms shall be constructed of materials that are readily cleanable, maintained in a sanitary condition, and impervious to moisture in areas exposed to cleaning solutions or moist conditions. The floors shall be constructed as to provide proper drainage.
 6. Adequate toilet accommodations that are conveniently located and separated from the grading and packing rooms are to be provided. Handwashing facilities shall be provided with hot and cold running water, an acceptable handwashing detergent, and a sanitary method for drying hands. Toilet rooms shall be ventilated to the outside of the building and be maintained in a clean and sanitary condition. Signs shall be posted in the toilet rooms instructing employees to wash their hands before returning to work. In new or remodeled construction, toilet rooms shall be located in areas that do not open directly into processing rooms.
 7. A separate refuse room or a designated area for the accumulation of trash must be provided in plants which do not have a system for the daily removal or destruction of such trash.
 8. Adequate packing and packaging storage areas are to be provided that protect packaging materials and are dry and maintained in a clean and sanitary condition.
- E. Grading and packing room requirements.**
1. The egg grading or candling area shall be capable of adequate darkening to make possible the accurate quality determination of the candled appearance of eggs. There shall be no light source or reflection of light that interferes with, or prohibits the accurate quality determination of eggs in the grading or candling areas.
 2. The grading and candling equipment shall provide adequate light to facilitate quality determinations. When needed, other light sources and equipment or facilities shall be provided to permit the detection and removal of stained and dirty eggs or other undergrade eggs.
 3. The grading and candling equipment must be sanitarly designed and constructed to facilitate cleaning. Such equipment shall be kept reasonably clean during grading and packing operations and be thoroughly cleaned at the end of each operating day.
 4. Egg weighing equipment shall be constructed of materials to permit cleaning; operated in a clean, sanitary manner; and shall be capable of ready adjustment.
 5. Adequate ventilation, heating, and cooling shall be provided where needed.
- F. Cooler room requirements.**
1. Cooler rooms holding eggs that are identified with a consumer grade shall be refrigerated and capable of maintaining an ambient temperature no greater than 45 °F (7.2 °C).
 2. Accurate thermometers shall be provided for monitoring cooler room temperatures.
 3. Cooler rooms shall be free from objectionable odors and from mold, and shall be maintained in a sanitary condition.
- G. Egg protecting operations.**
1. Egg protecting (oil application) operations shall be conducted in a manner to avoid contamination of the product and maximize conservation of its quality.
 2. Component equipment within the egg protecting system, including holding tanks and containers, must be sanitarly designed and maintained in a clean and sanitary manner, and the application equipment must provide an adequate amount of oil for shell coverage of the volume of eggs processed.
 3. Eggs with excess moisture on the shell shall not be shell protected.
 4. Oil having any off odor, or that is obviously contaminated, shall not be used in egg protection operations. Oil is to be filtered prior to application.
 5. The component equipment of the application system shall be washed, rinsed, and treated with a bactericidal agent each time the oil is removed.
 6. Adequate coverage and protection against dust and dirt shall be provided when the equipment is not in use.
- H. Egg cleaning operations.**
1. Egg washing equipment must be sanitarly designed, maintained in a clean and sanitary manner, and thoroughly cleaned at the end of each operating day.
 2. Egg drying equipment must be sanitarly designed and maintained in a clean and sanitary manner. Air used for drying purposes must be filtered. These filters shall be cleaned or replaced as needed to maintain a sanitary process.
 3. The temperature of the wash water shall be maintained at 90 °F (32.2 °C) or higher, and shall be at least 20 °F (6.7 °C) warmer than the internal temperature of the eggs to be washed. These temperatures shall be maintained throughout the cleaning cycle. Accurate thermometers shall be provided for monitoring wash water temperatures.
 4. Approved cleaning compounds shall be used in the wash water.
 5. Wash water shall be maintained at a measurable pH level of 11 or higher. Accurate testing equipment shall be provided and accessible to the grader. If continuous monitoring of pH is not possible, the applicant should devise a monitoring system for documenting pH with a frequency that has been validated.
 6. Wash water shall be changed approximately every four hours or more often if needed to maintain sanitary conditions, and at the end of each shift. Remedial measures shall be taken to prevent excess foaming during the egg washing operation.
 7. Replacement water shall be added continuously to the wash water of washers. Chlorine or quaternary sanitizing rinse water may be used as part of the replacement water, provided, they are compatible with the washing compound. Iodine sanitizing rinse water may not be used as part of the replacement water.
 8. Only potable water may be used to wash eggs. Each official plant shall submit certification to the office of grading stating that their water supply is potable. An analysis of the iron content of the water supply, stated in parts per million, is also required. When the iron content exceeds two parts per million, equipment shall be provided to reduce the iron content below the maximum allowed level. Frequency of testing for potability and iron content

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shall be determined by the Administrator. When the water source is changed, new tests are required.

9. Waste water from the egg washing operation shall be piped directly to drains.
 10. The washing, rinsing, and drying operations shall be continuous and shall be completed as rapidly as possible to maximize conservation of the egg's quality and to prevent sweating of eggs. Eggs shall not be allowed to stand or soak in water. Immersion-type washers shall not be used.
 11. Prewetting eggs prior to washing may be accomplished by spraying a continuous flow of water over the eggs in a manner which permits the water to drain away or other methods which may be approved by the Administrator. The temperature of the water shall be the same as prescribed in this Section.
 12. Washed eggs shall be spray-rinsed with water having a temperature equal to, or warmer than, the temperature of the wash water. The spray-rinse water shall contain a sanitizer that has been determined acceptable for the intended use by the supervisor and of not less than 100 PPM nor more than 200 PPM of available chlorine or its equivalent. Alternate procedures, in lieu of a sanitizer rinse, may be approved by the Administrator.
 13. Test kits shall be provided and used to determine the strength of the sanitizing solution.
 14. During non-processing periods, eggs shall be removed from the washing and rinsing area of the egg washer and from the scanning area whenever there is a buildup of heat that may diminish the quality of the egg.
 15. Washed eggs shall be reasonably dry before packaging and packing.
 16. Steam, vapors, or odors originating from the washing and rinsing operation shall be continuously and directly exhausted to the outside of the building.
- I. Requirements for eggs officially identified with a grademark.**
1. Eggs that are officially identified with an AZDA grademark shall be placed under refrigeration at an ambient temperature no greater than 45 °F (7.2 °C) promptly after packaging.
 2. Eggs that are to be officially identified with the AZDA grademark shall be packed only in new packaging materials that are clean, free of mold, mustiness and off odors, or clean and sanitized packaging material designed to be reused, and must be of sufficient strength and durability to adequately protect the eggs during normal distribution. When packed in other than fiber packing material, the containers must be of sound construction and maintained in a reasonably clean manner.
- J. Use of approved chemicals and compounds.**
1. All egg washing and equipment cleaning compounds, defoamers, destainers, sanitizers, inks, oils, lubricants, or any other compound that comes into contact with the eggs shall be approved by the national supervisor for their specified use and handled in accordance with the manufacturer's instructions.
 2. All pesticides, insecticides, and rodenticides shall be approved for their specified use and handled in accordance with the manufacturer's instructions.
- K. Marking individual eggs.** The marking of individual eggs may be requested by processors as part of a specification requirement or for other marketing purposes.
1. Stamping eggs. Recognizing the difficulty in clearly stamping the rounded surface of an egg, a lot average tolerance of 10-percent for individual eggs with partial, illegible, or no marks in any combination is permitted with no individual case exceeding 20-percent. These tol-

erances may be applied as a moving average when performing online sampling or as a lot average while performing stationary lot gradings. If more than 50% of the image or letter or letters is missing, the symbol is illegible. Stamped eggs are not classified as stains or dirty. They are to be graded without regard to marking. An official grade cannot be assigned to a mixed lot of eggs that contains individually marked and unmarked eggs. If requested, the lot may be graded for all factors except ink stains. Lot averages may be shown on the certificate. The section "Official Grade and Size" shall state "No AZDA Grade." The following statement shall also be placed in the "Remarks" section: "Lot contains marked and unmarked eggs. Eggs graded for all factors except ink stains." Individual eggs with ink blotches or smears from dating devices are to be classified as stains or dirty, depending on the intensity and/or area of the stain [guidance not clear]. Inks used in marking individual eggs which will be officially graded are to be approved by the Administrator prior to their use. The request for approval should be accompanied with a copy of the ink formula, the name of the product, and the name and address of the manufacturer.

2. Laser etching (marking eggs). The use of a laser etching system to mark information is subject to joint review by the Food and Drug Administration (food safety impact evaluation) and AZDA (quality impact evaluation). Only approved laser etching systems may be used to identify eggs to be officially graded and identified with an AZDA grademark. The amount of the shell surface available for laser etching and the information etched on the shell is subject to review by the resident grader and the supervisor. The information etched on the shell must not interfere with the graders ability to evaluate the quality attributes of the egg.
3. When an individual egg is marked, whether an applied ink or laser etched, the information must be consistent with the information on the label, for example, any marketing claims, production code, or packer identity. If this information is not consistent throughout the lot, the eggs are not eligible to be identified with an AZDA grademark.

Historical Note

Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1123. Health and Hygiene of Personnel

- A. No person known to be affected by a communicable or infectious disease shall be permitted to come in contact with the product.
- B. Plant personnel coming into contact with the product shall wear clean clothing.

Historical Note

Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1124. Use of the "Produced From" Labeling

- A. Use of the wording "Produced From" in conjunction with the AZDA grademark, is limited to products derived from AZDA Grade AA or Grade A eggs for which there are no U.S. grade standards (for example, pasteurized eggs or hard-cooked eggs). The following guidelines are to be used when monitoring the official grade identification of these types of products.

CHAPTER 2. DEPARTMENT OF AGRICULTURE - ANIMAL SERVICES DIVISION

1. Approval. Applicants interested in utilizing the “Produced From” labeling must submit a written proposal to the Administrator. The proposal is to include the type or types of product to be labeled and the applicant’s plan for controlling the use and labeling of officially identified product. After review by the supervisor, the supervisor is to forward the request to the Administrator for final review and approval. Upon approval, the supervisor is to reconfirm all of the requirements with the applicant prior to any actual grade identification.
 2. Verification visits. To assure that only officially graded eggs are being used, the processing, packing, and packaging must be closely monitored. Each verification visit shall include a review of records, product inventory, processing procedures, packing, packaging, storage, and shipping practices to confirm that the applicant is following the protocol outlined in their approved plan. In plants with resident service, the supervisor or Administrator is to be present during the initial production period to monitor the process and verify compliance. The grader will conduct all subsequent monitoring and verification activities with oversight from the supervisor. In temporary or fee locations, plant management must notify the supervisor each time the “produced from” labeling will be used or, alternatively, provide the supervisor with a projected production schedule. At these locations, compliance will be based on the applicant’s established history of compliance as outlined in the following schedule:
 - a. Level 1 - The supervisor or administrator is to monitor and verify the process on the initial day of production. The supervisor or a grader will conduct subsequent visits. At least one additional verification visit is to be conducted during the next 10 production days. If no discrepancies are noted, one visit is to be conducted for each 30 days of production until three consecutive satisfactory visits have been completed. Once this verification period has ended without any noted program non-conformance, monitoring may proceed to Level 2.
 - b. Level 2 - Supervisor or a grader is to conduct quarterly verification visits provided the applicant continues to meet all program requirements. If any nonconformance is noted during these visits, monitoring reverts back to Level 1. Misuse of the labeling will result in cancellation of the approval.
- B. Recordkeeping.** Recipients shall maintain, and make available for review, all invoices or applicable Grading Certificates covering product received, produced, and shipped. At a minimum, these records must include the name and address of original packer, amount received, quantity produced, brand names, lot numbers, quantity shipped and name and address of receivers. Records must be maintained for two years.
- C. Cost.** There will be no additional charge to resident plants when graders monitor product labeling during their normal grading activities. When graded product is shipped from official plants to other processing locations for re-packaging that are not under continuous AZDA supervision, time and expenses associated in conducting the verification visits will be charged to the recipient at the current Temporary grading and auditing service rate.

Historical Note

Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

R3-2-1125. Specification Grading

- A.** Applicants may request for additional specifications to be certified that exceed the standards of this Chapter. The requested specifications must be submitted in writing to the administrator for approval. The approving official will review the information for approval or advise the applicant of the reason or reasons for disapproval. If the specification is approved, a letter enclosing a copy of the approved application and specification will be returned to the applicant with a request to provide copies of the specification to each supplier and applicable AZDA grader. Each page of the approved specification will have an approval stamp bearing the date of approval and the signature of the approving official. Additionally, each page will be sequentially numbered such as page 1 of 5, page 2 of 5, etc.
- B.** Plant management is responsible for advising graders when they are preparing to pack eggs in accordance with an approved specification. However, each grader must be familiar with the approved specification list and, to the extent practically possible, be aware when products with approved specifications are being packed at the duty location. When a plant packs product requiring compliance with an approved specification, the grader shall obtain a copy of the specification from plant management and assure that all provisions of the specification are met. As applicable, product that meets specification requirements will be identified in accordance with procedures outlined in the approved specification. When the specification requires the issuance of a grading certificate, the following statement is to be placed in the remarks section of the certificate: “Product covered by this certificate meets specification requirements for _____.”

Historical Note

Section made by final exempt rulemaking at 26 A.A.R. 916, with an immediate effective date of April 9, 2020 (Supp. 20-2).

3-107. Organizational and administrative powers and duties of the director

A. The director shall:

1. Formulate the program and policies of the department and adopt administrative rules to effect its program and policies.
2. Ensure coordination and cooperation in the department in order to achieve a unified policy of administering and executing its responsibilities.
3. Subject to section 35-149, accept, expend and account for gifts, grants, devises and other contributions of money or property from any public or private source, including the federal government. All contributions shall be included in the annual report under paragraph 6 of this subsection. Monies received under this paragraph shall be deposited, pursuant to sections 35-146 and 35-147, in special funds for the purpose specified, which are exempt from the provisions of section 35-190 relating to lapsing of appropriations.
4. Contract and enter into interagency and intergovernmental agreements pursuant to title 11, chapter 7, article 3 with any private party or public agency.
5. Administer oaths to witnesses and issue and direct the service of subpoenas requiring witnesses to attend and testify at or requiring the production of evidence in hearings, investigations and other proceedings.
6. Not later than September 30 each year, issue a report to the governor and the legislature of the department's activities during the preceding fiscal year. The report may recommend statutory changes to improve the department's ability to achieve the purposes and policies established by law. The director shall provide a copy of the report to the Arizona state library, archives and public records.
7. Establish, equip and maintain a central office in Phoenix and field offices as the director deems necessary.
8. Sign all vouchers to expend money under this title, which shall be paid as other claims against this state out of the appropriations to the department.
9. Coordinate agricultural education efforts to foster an understanding of Arizona agriculture and to promote a more efficient cooperation and understanding among agricultural educators, producers, dealers, buyers, mass media and the consuming public to stimulate the production, consumption and marketing of Arizona agricultural products.
10. Employ staff subject to title 41, chapter 4, article 4 and terminate employment for cause as provided by title 41, chapter 4, article 5.
11. Conduct hearings on appeals by producers regarding the assessed actual costs of the plow up and the penalty of one hundred fifty per cent for unpaid costs pursuant to section 3-204.01. The director may adopt rules to implement this paragraph.
12. 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.

B. The director may:

1. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

2. Construct and operate border inspection stations or other necessary facilities in this state and cooperate by joint agreement with an adjoining state in constructing and operating border inspection stations or other facilities within the boundaries of this state or of the adjoining state.
3. Cooperate with agencies of the United States and other states and other agencies of this state and enter into agreements in developing and administering state and federal agricultural programs regarding the use of department officers, inspectors or other resources in this state, in other states or in other countries.
4. Cooperate with the office of tourism in distributing Arizona tourist information.
5. Enter into compliance agreements with any person, state or regulatory agency. For the purposes of this paragraph, "compliance agreement" means any written agreement or permit between a person and the department for the purpose of enforcing the department's requirements.
6. Abate, suppress, control, regulate, seize, quarantine or destroy any agricultural product or foodstuff that is adulterated or contaminated as the result of an accident at a commercial nuclear generating station as defined in section 26-301, paragraph 1. A person owning an agricultural product or foodstuff that has been subject to this paragraph may request a hearing pursuant to title 41, chapter 6, article 10.
7. Engage in joint venture activities with businesses and commodity groups that are specifically designed to further the mission of the department, that comply with the constitution and laws of the United States and that do not compete with private enterprise.
8. Sell, exchange or otherwise dispose of personal property labeled with the "Arizona grown" trademark. Revenues received pursuant to this paragraph shall be credited to the commodity promotion fund established by section 3-109.02.

3-214. Failure to stop at inspection station

It is unlawful for a person in possession or in control of a vehicle to fail to stop the vehicle at a properly signed border inspection station, or upon demand of a plant quarantine officer, for the purpose of determining whether any quarantine established pursuant to the provisions of law is being violated or whether the vehicle may harbor pests or diseases associated with a quarantine.

3-603. Powers and duties; state dairy supervisor; qualifications; production of papers; formal requirements of complaints

A. The associate director, with the approval of the director, shall employ a state dairy supervisor to enforce the provisions of this article. The supervisor shall recommend to the director for adoption rules deemed necessary or advisable to carry out the provisions thereof.

B. The supervisor shall be a person who has experience in the dairy industry and must possess technical and educational qualifications or practical experience in producing, handling and testing milk and in other matters relating to the dairy industry.

C. If the production of papers, books and records relating to any matter under investigation is deemed advisable, the director may apply to the superior court in any county for an order requiring the production of the papers, books and records. If the court is satisfied that the papers, books and records are pertinent to and helpful in the matter under investigation, their production shall be ordered.

D. A complaint filed with the department charging noncompliance with or violation of any provision of this article shall be in writing and signed by the complainant, but a complaint by a producer relating to the accuracy of a butterfat, bacterial or other test directly affecting the price received by the complainant need not be in writing.

3-605. Federal milk ordinance; health and sanitation provisions; exemption

- A. Unless inconsistent with this chapter, the production, transportation, handling and sale of milk and milk products and the inspection of dairy herds, dairies and milk plants shall be regulated in accordance with the terms of the federal milk ordinance.
- B. The words "health authority" when used in the federal milk ordinance means the director or the director's authorized representative.
- C. Powers and duties in the federal milk ordinance relating to health and sanitation are vested in the director. In addition, the director shall adopt rules necessary to assure that all milk and milk products sold or distributed for human consumption are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measurements governing the production, processing, labeling, storing, handling and transportation of milk and milk products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any dairy or other facility and in any truck or other vehicle in which milk or milk products are produced, processed, handled or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with rules and minimum standards. This subsection and the rules prescribed pursuant to this subsection do not apply to dispensing and selling frozen desserts at retail.
- D. The provisions of the federal milk ordinance apply to this state.
- E. The department is exempt from the rulemaking requirements of title 41, chapter 6 for the purpose of adopting and implementing the federal milk ordinance.

3-607. Annual licenses; inspections; revocation; fees; exceptions

A. A person shall not operate a milk distributing plant or a manufacturing milk processing plant, engage in the business of producer-distributor or producer-manufacturer, or engage in the business of selling at wholesale milk or dairy products, or both, without a license. This section does not require:

1. An Arizona dairy farm producing raw milk for sale to be processed to secure a license to operate.
2. A retailer or wholesaler to secure a license from the division to convert a pasteurized mix into frozen dessert.
3. A food establishment regulated by the department of health services to secure a license from the division to manufacture frozen desserts using pasteurized milk or pasteurized milk-based products if the frozen dessert is manufactured and sold at the same food establishment for consumption on the premises and the food establishment has submitted a plan for approval to the regulatory authority under title 36 demonstrating that the manufacturing process complies with the rules adopted pursuant to section 36-136, subsection I, including pasteurization as defined in rule. The division or the regulatory authority under title 36 may require a food establishment that manufactures frozen desserts using pasteurized milk or pasteurized milk-based products to provide samples of the frozen dessert to verify that the frozen dessert is pasteurized.

B. An application for a license shall be in writing in the form the associate director prescribes and shall be accompanied by the required filing fee. On receipt of an application, the associate director or an authorized representative shall examine the premises in which the applicant proposes to do business, and if it appears that the applicant has complied with all provisions of law, the license shall be issued.

C. After issuance of the first annual license, a license may be issued on inspection of the premises and payment not later than February 1 of each year of the required fee. The inspection shall be made by the associate director or an authorized representative to determine whether the premises are maintained in compliance with law. A written report of the inspection shall be filed in the division office. An annual license is valid for the period beginning January 1 and ending December 31 of each year, and a license that is not renewed on or before February 1 of each year is void.

D. An application for a license to produce grade A milk for human consumption shall be made in the manner prescribed by subsections A and B of this section. The license shall be valid until revoked for failure to comply with the provisions of this article relating to the production of milk. The associate director may suspend a license pending correction of deficiencies that violate this article. If the identified deficiencies are not corrected within a reasonable time after the licensee is notified, the associate director may proceed to revoke the license. Notice of a pending revocation shall be in writing, stating the cause, and setting a time during which the licensee may correct the cause for revocation. If the cause for revocation is not corrected within the time specified, the associate director, after a hearing and three days' notice of intention, may revoke the license. The director shall review the associate director's action on request of any person adversely affected by the action. A person holding a permit issued by a governmental agency operating outside of this state whose requirements are substantially the same as the requirements of this state shall be deemed to have a license meeting the requirements of this article, provided the facilities have first been inspected and approved also by a resident Arizona inspector, if in the opinion of the associate director such an inspection should be made. Any expense incurred for such an inspection shall be at the expense of the licensee.

E. Fees shall be paid as follows:

1. For a license or renewal of a license to operate a milk distributing plant or business, \$50.
2. For a license or renewal of a license to operate a manufacturing milk processing plant, \$50.
3. For a license or renewal of a license to engage in the business of producer-distributor or producer-manufacturer, \$25.

4. For a license or renewal of a license to engage in the business of selling at wholesale milk or dairy products, or both, \$25.

F. The associate director or dairy inspectors are authorized to inspect premises affected by this article and located outside of this state, and they shall receive subsistence and travel expenses in the amount provided for state officers, which shall be paid to the inspector by the owner of the premises inspected.

G. This section does not apply to a producer of raw milk.

3-611. Tuberculin testing of dairy herds; veterinarian's certificate; other diseases; exclusion of animals from herds

A. Except as otherwise provided by law, a tuberculin test of all dairy herds shall be made before milk therefrom is sold. Thereafter, testing shall be conducted and reactors disposed of as prescribed by chapter 12, article 3 of this title. A certificate signed by a licensed veterinarian and filed with the state veterinarian shall be evidence of the test required by this section.

B. A cow showing upon physical examination an extensive or entire induration of one or more quarters of the udder, whether or not secreting abnormal milk, shall be permanently excluded from the milking herd. A cow giving bloody, stringy or otherwise abnormal milk, but with only a slight induration of the udder, shall be excluded from the herd until re-examination shows the milk to have become normal.

C. The associate director, on the recommendation of the state veterinarian, may, for a disease not otherwise provided for, prescribe the tests and examinations to be used. He shall prescribe the times at which the tests shall be given and the methods to be used and shall provide for the disposition of animals reacting to the tests.

3-612. Dairy cows suspected of disease; quarantine; examination

The associate director may direct the state veterinarian to establish a quarantine of cows, and make an examination thereof to determine the presence of tuberculosis, anthrax or other diseases dangerous to human life, and he shall examine such cows as the associate director directs. If a cow is found to be diseased, the state veterinarian shall proceed as directed by law for the eradication of tuberculosis among cattle.

3-665. Plant licensing

- A. It is unlawful to engage in the manufacture of trade products unless a license for the then current calendar year for each separate plant or place used for such business is issued by the associate director pursuant to this section.
- B. Each application for a license shall be in such form as the associate director prescribes, and shall be accompanied by a fee of one hundred dollars. Where trade products are manufactured in a milk distributing plant, the fee paid to license such plant shall be applied to reduce the fee prescribed in this subsection.
- C. The associate director shall issue to each applicant that satisfies the requirements of this chapter a license which entitles the applicant to manufacture, sell, or distribute trade products for the then current calendar year, unless the license is sooner revoked or suspended.
- D. The license shall expire at the end of each calendar year, but shall remain in force during the month of January of the next succeeding year or such part of the month as may be necessary for the renewal of the license.
- E. It is unlawful for any person to sell, give away or deliver any trade product which has been produced in a plant that is in an insanitary condition.
- F. Grounds for revocation or suspension of such license shall be the manufacture of trade products under unhealthful or insanitary conditions or in any manner which violates the provisions of this chapter.

3-667. Rules and orders; delegation of duties; regulation of interstate products

- A. The director shall adopt rules and orders that are necessary to carry out the purposes of this article, and that he determines are necessary to protect the public health and welfare, and to prevent deception or confusion among consumers. For labeling purposes only, the associate director may divide into categories the various trade and real milk products as being fluid milk, manufactured milk or food-predominantly-milk products. Any duties vested in the associate director by this article and delegable under law may be delegated by him to duly authorized employees or agents.
- B. Notwithstanding any other provisions of this article, the director shall by rule make provisions for the transportation into the state and subsequent sale of trade products produced outside the state and labeled in accordance with federal law.
- C. Notwithstanding any other provisions of this article, the director may by rule waive any of the provisions of this article as they apply to trade products manufactured for sale and distribution exclusively outside of this state, provided that the rules contain provisions ensuring that the products will not be made available or sold to consumers in this state.
- D. All rules shall be adopted by the director only after open hearing at which interested parties shall be permitted to be heard. Any person desiring actual notice of the proposed enactment of rules shall notify the department in writing that he desires such notice. Twenty days prior to the date of a hearing on any proposed rule, the director shall send, by certified mail, a copy of the notice prescribed in section 41-1022 to each such person at the address supplied to the department.

3-705. Standards of quality

The standards of quality for chicken eggs in the shell as determined by candling shall be established by rule adopted by the director.

3-706. Grade tolerances

The tolerance for eggs in a case, half-case, container or carton as determined by count shall conform to the specifications of the grades established by rules adopted by the director.

3-707. Allowances of tolerances

Within the maximum tolerance permitted allowances to be made at receiving points or on lot quantities shall be established by rules adopted by the director.

3-708. Standards of size; determination by weight

As used in this article with relation to chicken eggs, the standards of size as determined by weight shall be established by rules adopted by the director.

3-710. Powers and duties; state preemption; egg promotion program

- A. The department may acquire and distribute to interested persons useful information relative to preparing for market, handling, purchasing, transporting, storing and marketing eggs and egg products, including demonstrating how to classify eggs and egg products in accordance with the uniform standards and grades prescribed pursuant to this chapter.
- B. The department may issue in booklet form copies of this article containing complete descriptive terms as to shell, aircell, white, yolk and germ, and may change definitions of terms and grades as they are made and promulgated by the United States department of agriculture.
- C. On request of the United States government, and others, the director may negotiate and sign cooperative agreements to provide inspection and grading services and charge and receive payment for the reasonable cost of such services. The monies received for such services shall be deposited in the state egg inspection trust fund established by section 3-717.
- D. When the production of papers, books and records relating to any matter under investigation is deemed advisable, the director may apply to the superior court in any county for an order requiring the production of the papers, books and records. If the court is satisfied that the papers, books and records are pertinent to the matter under investigation, their production shall be ordered.
- E. A complaint filed with the department charging a noncompliance with or violation of any provision of this article shall be in writing and signed by the complainant.
- F. The supervisor and inspectors shall enforce this article in conformity with rules adopted by the director. The refusal of an officer authorized under this article to carry out the orders and directions of the director in the enforcement of this article or prosecutions under this article is neglect of duty. The director shall make and enforce such rules as the director deems necessary to carry out this article.
- G. An inspector may enter and inspect any place or conveyance within this state over which the inspector has supervision where eggs are produced, candled, incubated, stored, packed, delivered for shipment, loaded, shipped, transported or sold, and may inspect all invoices and eggs and the cases and containers of the eggs and equipment found in the places or conveyances, and may take for inspection representative samples of the invoices, eggs and cases or containers for the purpose of determining whether or not any provision of this article has been violated.
- H. An inspector, while enforcing this article, may seize and hold as evidence an advertisement, sign, placard, invoice, case or container of eggs or egg products or all or any part of any pack, load, lot consignment or shipment of eggs or egg products packed, stored, delivered for shipment, loaded, shipped, transported or sold in violation of any provisions of this article.
- I. The department may prescribe minimum standards for egg processing plants and sanitary standards for processing shell eggs. The department shall establish these standards by rule. Chemicals used in egg processing plants, sanitizers used in egg processing, egg soaps, egg oil and other substances used in processing shell eggs are subject to the approval of the director.
- J. The director shall adopt rules for poultry husbandry and the production of eggs sold in this state. This subsection does not apply to egg producers operating or controlling the operation of an egg ranch that has fewer than twenty thousand egg-laying hens producing eggs.
- K. Consistency of poultry husbandry practices for the production of eggs is a statewide matter. The regulation of poultry husbandry practices related to the production of eggs is not subject to further regulation by a county, city, town or other political subdivision of this state.
- L. The director may:

1. Establish an egg promotion program to provide certification, inspection and grading services and may prescribe, by rule, fees for those services. Except as provided in paragraph 3 of this subsection, monies collected from the fees shall be deposited, pursuant to sections 35-146 and 35-147, in the state egg inspection trust fund established by section 3-717.
2. Adopt rules to administer the egg promotion program, including participation guidelines, use requirements for department trademarks and certification marks and other rules the director deems necessary.
3. Conduct inspections to ensure compliance with the trademark and certification mark rules adopted pursuant to this subsection. The monies collected from fees for an inspection conducted pursuant to this paragraph shall be deposited, pursuant to sections 35-146 and 35-147, in the state egg inspection trust fund established by section 3-717.

3-712. Sampling; methods; sample as evidence

The director shall prescribe methods in conformity with the United States department of agriculture specifications of selecting samples of lots, cases or containers of eggs or egg products which shall be reasonably calculated to produce fair representations of the entire lots or cases and containers sampled. Any sample taken shall be prima facie evidence in any court in this state of the true condition of the entire lot, case or container of eggs or egg products in the examination of which the sample was taken.

3-716. Inspection fees; report and payment by dealers; exception; penalty; collection

- A. An inspection fee of not more than three mills per dozen on shell eggs and three mills per pound on egg products shall be paid by a dealer, producer-dealer, manufacturer or producer on all eggs and egg products regardless of origin, sold to a retailer, hotel, hospital, bakery, restaurant, other eating place or consumer for human consumption within this state. Inspection fees on eggs used for the purpose of breaking, freezing or drying shall be paid by the manufacturer, dealer or distributor if sold or offered for sale to retailers or consumers for human consumption within this state.
- B. If it appears that the revenue derived from inspection fees is more than is required for the administration of this article, the director may decrease the inspection fee and at any time thereafter may increase or decrease the inspection fee, but at no time shall it exceed an amount of three mills per dozen on shell eggs or three mills per pound on egg products.
- C. All manufacturers, dealers, producer-dealers and producers shall file:
1. A quarterly report with the department showing the name and address of the manufacturer, dealer, producer-dealer or producer.
 2. The number of dozen of eggs or pounds of egg products sold or delivered for the period to retail stores, hotels, hospitals, bakeries, restaurants, other eating places or consumers for human consumption within this state.
- D. The report shall be accompanied by check or money order covering the inspection fee total of a value equal to the inspection fee in force at that time on all eggs or egg products shown on such report within thirty days following the close of quarterly report periods.
- E. The records shall be retained for a period of one year and shall be open at all times to the inspection of the department.
- F. Notwithstanding the requirements of this section, twenty-five cases per year of nest run eggs as provided in section 3-715 may be sold by any person to retailers or consumers without being subject to the report and inspection fee as provided by this section.
- G. In addition to the inspection fees prescribed by this section, a penalty of ten per cent shall be added for the delinquent filing of any report or the delinquent payment of any inspection fee, and if the report and payment are not made within ten days after notification of delinquency, the penalty shall be twenty-five per cent of the inspection fee. Persons filing a false report shall be penalized fifty per cent of the amount due for inspection fees. The penalties prescribed by this section shall be deposited in the state egg inspection trust fund.
- H. Such inspection fees and penalties shall be collected by civil action filed by the county attorney.

3-1203. General powers and duties; civil penalties

A. The director or the director's authorized representative shall exercise general supervision over the livestock interests of the state, protect the livestock industry from theft and the livestock and poultry industries from contagious and infectious diseases and protect the public from diseased and unwholesome meat products.

B. The director, with the advice of the state veterinarian, may make rules to control and govern:

1. Importation of animals and poultry into the state, establishment of quarantine and its boundaries, notice of quarantine and accomplishment of all things necessary to effect the object of the quarantine and to protect the livestock and poultry industries from and prevent the spread of contagious or infectious diseases.
2. Slaughter of animals and poultry affected by contagious or infectious diseases and disposition of carcasses of animals and poultry so slaughtered, when the action appears necessary to prevent the spread of contagion or infection among livestock and poultry.
3. Importation, manufacture, sale, distribution or use within the state of serums, vaccines and other biologics intended for diagnostic or therapeutic treatment of animals and poultry, and the importation, manufacture or use of virulent blood or living virus of diseases affecting animals and poultry.

C. The director may:

1. Enter into agreements with neighboring states, including agreements regarding the use of livestock officers or livestock inspectors or other agency resources for the purpose of enforcement of livestock laws within this state or within border areas of neighboring states.
2. Waive inspections, service charges or inspection fees under this chapter in cases the director deems advisable.
3. Direct employees or peace officers to execute the director's orders under this chapter.

D. The director may adopt by rule a mandatory self-inspection program for moving livestock from one location to another, and may provide for the private treaty sale of self-inspected livestock. The associate director shall monitor compliance with the requirements of the self-inspection program and shall periodically examine self-inspection records, including livestock inventory records that verify the origin, shipment or sale of livestock. For just cause the director may suspend or modify the self-inspection authorization of feedlots, dairies and producers. A person who knowingly violates the requirements of the self-inspection program shall be placed on administrative probation by the director for a period of one year. If a subsequent violation occurs during the period of probation, the person shall be brought before an administrative law judge and is subject to a civil penalty of two hundred dollars per violation, and the self-inspection authorization shall be revoked for a period of three years. The director may review any order of the administrative law judge and shall review each order involving subsequent violations during a period of probation pursuant to title 41, chapter 6, article 10. The period of a sanction imposed under this subsection begins on the date of determination of the violation at a hearing. Civil penalties imposed under this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

E. The director may establish a central investigation group to investigate reports of crimes related to livestock and other violations of this title and rules adopted pursuant to this title. Livestock officers and other employees of the department shall report all cases of apparent crimes related to livestock to the associate director. The investigation group shall cooperate and coordinate its activities with appropriate federal, state and local law enforcement agencies in apprehending and prosecuting violators of livestock laws.

3-1204. Powers and duties relating to the sheep and goat industries

A. The director or his authorized representative shall exercise general supervision over the sheep and goat industries of the state and shall do all things practicable to protect the industries from and to prevent disease among sheep and goats.

B. The director shall prepare and adopt necessary rules:

1. Governing the importation of sheep and goats into the state by carrier or trail to insure that the animals are free from infection.
2. For quarantine and dipping of sheep and goats infected with or which have been exposed to scab or scabies, or other infectious or contagious disease.
3. For the speedy and effective suppression and eradication of disease among sheep or goats.
4. To prevent spreading or contracting of infectious or contagious diseases among sheep and goats, including requirements for inspection of sheep or goats shipped or transported, or to be shipped or transported by common carrier, contract carrier, private carrier or in any other manner whatever, whether the shipping or transporting is in interstate or intrastate commerce, or both, and to require an owner, before moving sheep or goats in such manner, to furnish an inspection certificate in the form required by the director.

C. The director may establish as and declare to be an infected district any district wherein diseased or infected sheep or goats are found or have recently been grazed or driven. The director may order sheep or goats in the infected district or which are exposed to be moved, treated, disinfected or cured under quarantine regulations provided for by this title.

3-1205. Control of animal diseases; violation; classification

- A. When advised of the occurrence of a disease of animals or poultry which constitutes a threat to the livestock or poultry industries, the director may issue lawful orders and adopt rules he deems necessary.
- B. The state veterinarian may enter any place where a suspected animal or poultry may be and take custody of the animal or poultry for the purpose of determining the presence of a contagious, infectious or communicable disease.
- C. The director may direct the state veterinarian and agency employees to:
1. Establish quarantines and define their boundaries.
 2. Destroy animals or poultry when necessary to prevent the spread of any infectious, contagious or communicable disease.
 3. Appoint appraisers for the purpose of indemnifying owners of animals or poultry destroyed.
 4. Control the movement of animals or poultry, animal or poultry products and agricultural products which may be directly related to dissemination of diseases affecting the livestock or poultry industries.
- D. Any person who violates any lawful order or rule issued pursuant to the provisions of subsection A, or breaks any quarantine established by the state veterinarian for the prevention and control of disease among livestock or poultry, is guilty of a class 2 misdemeanor.

3-1206. Suspension, revocation or termination of licenses and agreements; hearing

A. Any license issued by the division may be suspended or revoked for violation or noncompliance with:

1. Any provision of this title.
2. Any rule issued pursuant to this title.
3. Any condition of the license.

B. A license or agreement may be suspended, revoked or otherwise terminated or a civil penalty or other administrative sanction may be imposed only after an opportunity for a hearing conducted pursuant to, or as otherwise allowed by, title 41, chapter 6, article 10.

3-1207. Cooperation with the United States; limitations

A. In addition to other powers and duties conferred by law, the director may cooperate with the animal and plant health inspection service of the United States department of agriculture, or other agency of the United States vested with similar powers and duties, in:

1. The control of contagious or infectious diseases of animals, and contagious or infectious diseases of poultry.
2. The national animal identification system.

B. Inspectors of the animal and plant health inspection service may exercise all rights and authority granted to livestock officers, but they do not have enforcement powers granted to livestock officers.

C. Premises registration data, animal identification data and animal tracking data collected by the director from voluntary participants pursuant to the national animal identification system are not subject to disclosure pursuant to title 39.

D. The director may not submit to the federal government any premises registration data, animal identification data, animal tracking data, producer information or other information relating to animal identification unless the submission is either:

1. Required by state law.
2. Authorized by a voluntary participant in the national animal identification system.

3-1208. Officers and inspectors; conditions of employment

- A. An officer or inspector must have knowledge of animal husbandry and livestock laws.
- B. Within twelve months after employment, a livestock officer must successfully complete the law enforcement training course prescribed by the Arizona peace officer standards and training board in order to achieve permanent state employee status. This subsection does not apply to animal health and welfare inspectors.
- C. The director may authorize employment of livestock inspectors to inspect livestock on a full-time, part-time or seasonal basis. Livestock inspectors may exercise all rights and authority granted to livestock officers, but they do not have enforcement powers granted to livestock officers except as specifically provided by law.
- D. The director may assign personnel from the office of inspections to perform any of the inspections prescribed by this chapter under the direction of the associate director.
- E. Livestock officers and inspectors shall take the oath of office on employment.

3-1209. Counterfeiting

A. No brand manufacturer, printer, or other person, firm or corporation shall cast, print, lithograph or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the department.

B. No person, firm, or corporation shall:

1. Forge any official device, mark or certificate.

2. Without authorization from the department use any official device, mark, or certificate or simulation thereof, or alter, detach, deface or destroy any official device, mark or certificate.

3. Contrary to the rules prescribed by the director, fail to use or detach, deface or destroy any official device, mark or certificate.

4. Knowingly possess, without promptly notifying the department or its representative, any official device or any counterfeit, simulated, forged or improperly altered official certificate or any device or label or any carcass of any animal or part or product thereof bearing any counterfeit, simulated, forged or improperly altered official mark.

5. Knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the rules prescribed by the director.

6. Knowingly represent that any article has been inspected and passed or exempted under this chapter when in fact it has not been so inspected and passed or exempted.

3-1210. Disposition of monies

Monies collected under the provisions of this title relating to livestock, except those collected for acknowledgments, shall be paid to the department and deposited, pursuant to sections 35-146 and 35-147, in the state general fund, unless otherwise specifically provided.

3-1211. State veterinarian; qualifications

A. The associate director, with the approval of the director and after consulting with the division council, shall employ a state veterinarian pursuant to title 41, chapter 4, article 4.

B. The person employed shall be a skilled veterinarian who is a graduate of a recognized school of veterinary medicine and licensed to practice veterinary medicine in this state.

3-1212. Private practice prohibited

The state veterinarian shall devote his entire time to the duties of his office and shall not engage in private practice.

3-1213. Acquisition and use of sodium pentobarbital or sodium pentobarbital derivative by county and local pounds

The state veterinarian, in consultation with the director, shall establish procedures for county, city and town animal pounds that do not have a licensed veterinarian on the staff to obtain and administer sodium pentobarbital or a derivative of sodium pentobarbital.

3-1214. National animal identification system voluntary participation

The director, department or any other officer, agency or instrumentality of this state shall not mandate or force participation in the national animal identification system.

3-1233. Powers and duties of council

A. The council shall:

1. Receive and disburse funds under the provisions of this article to be used in administering the provisions of this article.
2. Annually elect a chairman from among its members. No chairman shall succeed himself more than once.
3. Elect a secretary-treasurer who may be from among its members.
4. Meet regularly every three months and at such other times as called by the chairman or when requested by five or more members of the council.
5. Keep a permanent record of its proceedings and prepare for the governor and the beef industry an annual report of its activities, receipts and expenditures.

B. The council may:

1. Conduct or contract for scientific research to discover and develop improved marketing methods for beef and beef products, including programs of consumer education and protection.
2. Disseminate reliable information, founded upon research; showing uses or probable uses of beef and beef products.
3. Study state and federal legislation with respect to tariffs, duties, reciprocal trade agreements, import quotas and other matters concerning the beef industry.
4. Sue and be sued as a council, without individual liability, for acts of the council within the scope of the powers and duties conferred upon it by this article.
5. Enter into contracts to carry out the purpose of the council as provided in this article, including contracts for promotion of beef and beef products and development of new markets through such promotion.
6. Appoint advisory groups composed of representatives from organizations, institutions or businesses related to or interested in the welfare of the beef industry.
7. Make grants to research agencies for financing special or emergency studies, or for purchase or acquisition of facilities necessary to carry out the purposes of the council.
8. Appoint subordinate officers and employees of the council and prescribe their duties and fix their compensation.
9. Cooperate with any local, state or nationwide organization or agency engaged in work or activities similar to or related to those of the council, and enter into contracts with such organizations or agencies for carrying on joint programs.
10. Act jointly and in cooperation with the state or federal government, or both, or any agency thereof in the administration of any program of the government or of a governmental agency deemed by the council as beneficial to the beef industry of this state, and expend funds in connection therewith.
11. Adopt rules and regulations necessary to carry out the provisions of this article.
12. Adopt, rescind, modify or amend all proper regulations, orders and resolutions for the exercise of its powers and duties.

3-1331. Inspection required; powers and duties of livestock officers

- A. Livestock officers and inspectors may authenticate bills of sale of livestock, brands and marks, deliver certificates of acknowledgment thereof under their hands and seals and take acknowledgments to applications for brands and marks. A fee of more than twenty-five cents shall not be asked or received for taking an acknowledgment.
- B. Livestock officers and inspectors shall not grant a certificate of inspection of unbranded hides of livestock or of hides or livestock upon which the marks and brands cannot be ascertained or which disclose ownership by some person other than the one seeking the certificate of inspection.
- C. A livestock officer or livestock inspector may stop any person who is in possession of and is conveying, shipping or transporting livestock or hides of livestock to examine brands, marks, certificates of brand inspection and bills of lading or bills of sale relating to the livestock in transit if the officer or inspector has probable cause or reasonable suspicion to believe that the person has violated any provision of this title or title 13 relating to livestock.
- D. Livestock officers and livestock inspectors may enter any premises where livestock are kept or maintained to examine brands or marks or other evidence of ownership or to determine the health or welfare of livestock. If admittance is refused and probable cause exists, the livestock officer may immediately request an administrative inspection warrant from the nearest court of competent jurisdiction to allow such entry.
- E. Livestock officers are peace officers, certified by the Arizona peace officer standards and training board, and shall pursue and arrest on probable cause any person who violates any provision of this title or title 13 relating to livestock.

3-1336. Inspection of livestock to be slaughtered, sold or transported; fee; violation; classification

A. Except as otherwise provided in this section, livestock, other than equines, swine and livestock inspected by movers of livestock or at feedlots or dairies pursuant to section 3-1337, shall not be slaughtered, sold, purchased, driven, transported, shipped or conveyed unless the animals have been inspected by a livestock officer or inspector for health, brands and marks before they are slaughtered, sold, purchased, driven, transported, shipped or conveyed and the inspection fee has been paid.

B. The owner or agent of the owner of the livestock to be slaughtered, sold, driven, transported, shipped or conveyed as provided in subsection A of this section shall notify the nearest livestock officer or inspector of that intention.

C. Equines consigned to either licensed Arizona livestock auctions or other special auctions approved by the department from out of state or from Indian reservations in this state or from other state or federal agencies without prior inspection shall be inspected on delivery at an auction.

D. All livestock other than equines sold at auctions shall be inspected out on an inspection certificate or auction invoice validated by the department.

E. The owner or producer of livestock excluding equines may slaughter or transport to another person to slaughter that livestock without having the animal inspected and without paying the inspection fee or service charge if the meat of the slaughtered livestock is solely for home consumption by the owner and if the owner contacts a livestock officer or inspector within a forty-eight-hour period before the slaughter and is able to establish proof of ownership either by a prior inspection certificate or by a recorded brand on the animal or proof that the animal was raised by said owner, and the hide is inspected as provided for in section 3-2011. If proof of ownership cannot be established to the satisfaction of the livestock officer or inspector, the livestock officer or inspector may require an inspection before the slaughter.

F. The associate director may waive an inspection for brands and marks before the slaughter of an animal if a federal or state meat inspector on the premises certifies on a form provided by the department that, as determined by an antemortem inspection, the animal is in a distressed condition and for humane reasons should be slaughtered immediately if it is otherwise fit for slaughter and if the hide, carcass and certification are segregated and held pending inspection for brands and marks. The associate director may waive inspections under this subsection only for individual animals, and a separate certification shall be made for each animal.

G. Livestock officers or inspectors shall not inspect livestock for health before they are slaughtered at an establishment that is subject to federal meat inspections as provided under chapter 13 of this title.

H. A person violating any provision of this section is guilty of a class 3 misdemeanor.

I. If a federal governmental entity seizes any privately owned animals subject to brand inspection pursuant to this chapter, the department or its authorized inspector shall not issue brand inspection certificates or permits to remove the animals or for the transfer of ownership of the animals by sale or otherwise unless one of the following occurs:

1. The department receives consent from the owner.

2. The owner is unknown.

3. Before the seizure, the federal governmental entity obtains approval for the seizure from a court of competent jurisdiction and submits a copy of the order approving the seizure to the department or its authorized inspector.

J. This section does not apply to:

1. A feral animal.

2. Wild free-roaming horses and burros, as defined in 16 United States Code section 1332.
3. A stray animal.
4. An animal that is seized by a governmental entity to protect the health and safety of the public or to prevent cruelty to the animal.

3-1337. Service charge and inspection fee; self-inspection

- A. Livestock officers and inspectors shall collect from the person in charge of cattle inspected a service charge of three dollars plus an inspection fee of twenty-five cents per head for making inspections for the transfer of ownership, sale, slaughter or transportation of cattle.
- B. Livestock officers and inspectors shall collect from the person in charge of sheep inspected a service charge of three dollars plus an inspection fee of five cents per head for making inspections for the transfer of ownership, sale, slaughter or transportation of sheep.
- C. Livestock officers and inspectors shall collect from the person in charge of dairy cattle inspected a service charge of three dollars plus an inspection fee of twenty-five cents per head for making inspections for the transfer of ownership, sale, slaughter or transportation of dairy cattle.
- D. The division may approve self-inspection by movers of livestock and feedlots and dairies pursuant to section 3-1203, subsection D. Movement shall be documented on simple and concise self-inspection forms that are provided by the department and that include only the following information:
1. The certificate number.
 2. The department contact information.
 3. For out-of-state shipments, official identification.
 4. For dairy cattle, back tag numbers.
 5. The amount collected pursuant to section 3-1236.
 6. The number and description of livestock.
 7. The livestock owner's or agent's name, signature and address.
 8. The transporter's name.
 9. The location of the place and date of shipment.
 10. The destination or buyer's name and address.
 11. For branded animals, the animal's registered brand, including brand number, location and expiration date.
- E. Movers of livestock and feedlots and dairies that utilize self-inspection shall purchase the self-inspection book from the department. The director, in consultation with the department of agriculture advisory council established pursuant to section 3-104, may establish a fee for the self-inspection book.
- F. Any fees collected by the livestock officers and inspectors and by movers of livestock and feedlots and dairies utilizing self-inspection shall be remitted to the division. Any fees incurred by movers of livestock and feedlots and dairies shall be remitted to the department within ten days after the end of the month in which the livestock were inspected.

3-1344. Ownership and hauling certificates for equines; inspection; exemption; cancellation; fees

- A. Except as otherwise provided in this article, owners or persons in charge of equines may obtain ownership and hauling certificates from the department.
- B. The director shall adopt inspection fees by rule pursuant to title 41, chapter 6, for the processing of ownership and hauling certificates and replacement ownership and hauling certificates. If a person requests an ownership and hauling certificate or a replacement ownership and hauling certificate, the department shall collect from the owner or person in charge of equines an inspection fee for deposit in the equine inspection fund pursuant to section 3-1345.01.
- C. Notwithstanding other provisions of this title, ownership and hauling certificates issued pursuant to subsection A of this section shall be valid for the life of the animal or until transferred pursuant to section 3-1345.
- D. An owner or the authorized agent of an owner of a thoroughbred that will be used solely for horse racing or race horse breeding purposes and that has a certificate of registration or a facsimile of a certificate of registration issued by the jockey club of Lexington, Kentucky or a predecessor organization or a quarter horse that will be used solely for horse racing or race horse breeding purposes and that has a certificate of registration or a facsimile of a certificate of registration issued by the American quarter horse association of Amarillo, Texas is exempt from this section and all other statutes and rules that require an ownership and hauling certificate issued under this section with respect to that horse. This subsection applies to an unweaned foal if his or her dam has the certificate of registration required by this subsection. On the sale or disposition of a horse that is exempt from the ownership and hauling certificate requirements under this subsection, the seller or an authorized agent of the seller shall either:
1. Properly execute and transfer the certificate of registration required under this subsection to the buyer.
 2. Complete and date an equine transfer request form issued by the department and give the form and a notarized bill of sale to the buyer. Within thirty days after the transfer of ownership, the buyer shall complete the buyer's portion of the equine transfer request form and shall comply with subsections A and B of this section.
- E. Ownership and hauling certificates issued with respect to any equine shall be surrendered to the department or its authorized representative if any of the following occurs:
1. The equine dies.
 2. The equine is sold and shipped out of state.
 3. The equine is sent to slaughter or is disposed of for humane reasons.

3-1345. Transfer or issuance of ownership and hauling certificates; fees

A. The seller of any equine who has a valid ownership and hauling certificate for such animal and the buyer of such animal, except a person who has been issued an equine trader's permit pursuant to section 3-1348, may both complete and date a transfer request form. One copy of the transfer request form shall be given to the seller.

B. Within thirty days of the transfer of ownership of any equine, provided for in subsection A of this section, the buyer may forward to the division the ownership and hauling certificate, the original copy of the completed transfer request form and the transfer fee. The director shall adopt transfer fees by rule pursuant to title 41, chapter 6, for processing transfer request forms. Upon receipt, the division shall deposit the fees in the equine inspection fund pursuant to section 3-1345.01 and issue a new ownership and hauling certificate to the transferee and a blank transfer request form. Such certificate shall be valid for the life of the animal or until sold.

C. An equine trader permittee who purchases an equine in this state must receive from the seller a bill of sale or the ownership and hauling certificate and the original and buyer's copy of a transfer request form with the seller's portion completed.

D. An equine trader permittee shall sign and enter his permit number on the transfer document when he transfers ownership of an equine.

3-1345.01. Equine inspection fund

The equine inspection fund is established consisting of fees collected pursuant to section 3-1344, subsection B and section 3-1345, subsection B. The department of agriculture shall administer the fund. Monies in the fund are continuously appropriated for the issuance of equine ownership and hauling certificates.

3-1346. Seasonal inspection for exhibition livestock; fee

A. Seasonal inspection certificates may be issued, under the self-inspection program, for exhibition livestock for any purpose other than slaughter, sale or trade. The fee for a seasonal brand inspection certificate is five dollars plus fifty cents per head of livestock in excess of ten.

B. The certificate shall state the date of issuance, the sex, color and breed, the brand or brands and their location and any other identifying marks and the name of the owner of the livestock. The words "seasonal brand inspection" shall be written across the face of the certificate.

C. The certificate is valid for twelve months after the date of issuance and shall accompany the livestock while in transit.

3-1350. Registry of equine rescue facilities; fees

A. The department shall establish and maintain a registry of equine rescue facilities and a public list of registered equine rescue facilities at department offices and on the department's official website.

B. To be registered under this section an equine rescue facility must:

1. Be incorporated as a nonprofit corporation in this state.
2. Meet minimum standards prescribed by the department for:

- (a) The physical condition of the facility.
- (b) Equine care and treatment at the facility.

C. The term of registration is one year from the initial date of registration, renewable annually.

D. For initial registration or annual renewal of registration, a person representing the facility must file with the department:

1. A letter from a licensed veterinarian, dated within fifteen days of filing, certifying that the facility meets the standards prescribed by the department for the physical condition of the facility and for the care of equines at the facility.
2. Documents demonstrating the facility's current status as a nonprofit corporation in good standing in this state.

E. The registry shall include the documents filed for registration or renewal of registration under subsection D of this section or a link to the facility's website where the documents are displayed.

F. The director may:

1. Assess and collect fees for registering and renewing the registration of equine rescue facilities under this section. Revenues from the fees shall be deposited in the livestock custody trust fund established by section 3-1377.
2. Adopt rules to implement this section.

3-1452. Feed lot operator's license; applications; fees; exemption

- A. It is unlawful for any person, except as provided in subsection B of this section, to operate a feed lot within the state without having first obtained a license from the division authorizing and permitting such operation.
- B. The owner or operator of any beef cattle feed lot having less than five hundred head of beef cattle at any one time may apply for and obtain a license for feed lot operations if he chooses and elects to come under the terms and provisions of this article, but the licensing for operations of less than five hundred head shall not be required.
- C. Application for a beef cattle feed lot license shall be filed with the division on a form prescribed and furnished by the department. Upon the filing of such an application and upon payment of the required fees, the division shall issue a beef cattle feed lot license to such applicant, provided the application discloses information assuring the division that the operation of such feed lot will be conducted in accordance with the standards set forth in this article, and with rules adopted by the director.
- D. Feed lot licenses shall be issued for the term of one year, to expire on June 30 following the date of issuance. An application for an initial license and for renewal of a license shall be accompanied by a fee in accordance with the following schedule:
1. Under five hundred head of beef cattle, twenty-five dollars.
 2. From five hundred to not exceeding three thousand head of beef cattle, fifty dollars.
 3. Three thousand one to not exceeding ten thousand head of beef cattle, one hundred dollars.
 4. More than ten thousand head of beef cattle, one hundred fifty dollars.
- E. If an original feed lot license is to expire within six months after date of issuance, only fifty per cent of the license fee prescribed in this section shall be required.

3-1741. Federal cooperation and agreements

A. The director may, for the purpose of eradicating tuberculosis of cattle in the state, cooperate with the animal and plant health inspection service of the United States department of agriculture. The director may, on behalf of the state, accept cooperative agreements promulgated by the Arizona department of agriculture under authority of the acts of Congress to effect the eradication of tuberculosis in cattle.

B. The associate director may, as necessary to effectuate the terms of cooperative agreements, appoint veterinary inspectors to act with and under direction of the state veterinarian.

3-1742. Entry upon premises to inspect animals; condemnation of diseased animals

A. The state veterinarian and inspectors may enter any place where an animal may be and take custody of the animal to examine it for contagious disease, including tuberculosis. Custody may be retained for the purpose of applying the tuberculin test to the animal.

B. If the animal reacts to the test, the inspecting officer may immediately condemn the animal and order it destroyed.

3-1771. Definitions

In this article, unless the context otherwise requires:

1. "Associate director" means the associate director of the division.
2. "Calfhood vaccination" means an official vaccination given to a female dairy or beef type animal at the age prescribed by the director.
3. "Dairy herd" means one or more dairy animals.
4. "Division" means the animal services division of the Arizona department of agriculture.
5. "Official vaccination" means a calfhood vaccination that is registered with the division, with a vaccine approved by the director on the state veterinarian's recommendation, and properly identified as such, given to a dairy type or beef animal at the age prescribed by the director and administered by a licensed veterinarian.
6. "Person" includes an individual, firm, corporation, company or association.
7. "Reactor" means an animal afflicted with brucellosis as determined by a test approved by the director, except an officially calfhood vaccinated animal under the age prescribed by the director on the state veterinarian's recommendation.
8. "Ultimate consumer" means the person drinking or consuming milk or milk products.

3-1772. Raw milk; registering and testing herd of producer

A. A person producing raw milk or raw milk products for sale to the ultimate consumer for human consumption shall register with the division the location and number of dairy cattle or goats supplying raw milk or milk products.

B. Cows or goats producing raw milk as prescribed in subsection A of this section shall be tested for tuberculosis at least annually, and the milk from such cows or goats shall be tested for brucellosis by the ring test method at least once each month, and all adult animals shall be blood tested for brucellosis annually. Cows or goats which do not test negative for tuberculosis or brucellosis as provided in this section shall be dealt with by the division as provided in sections 3-1205, 3-1742 and 3-1773.

C. The testing provided for in subsection B of this section shall be at the expense of the owner of the cows or goats.

3-1773. Brucellosis test and vaccinations

- A. Female dairy and beef calves may be officially vaccinated at the age prescribed and as directed by the director.
- B. All dairy herds of cattle and goats shall be tested for brucellosis at intervals as prescribed by the director.
- C. The testing as provided for in subsection B shall be made at the expense of the owner of the stock to the extent of the ordinary labor involved in the testing of the cattle. The remainder of expense for veterinary and laboratory services performed by state or federal agencies shall be the obligation of the state or federal government as funds are made available.

3-1774. Disposition of reactors

A reactor shall be identified by having a "B" brand at least two inches square on the left jaw and by official reactor tag in the left ear and may be disposed of as follows:

1. Sold for slaughter at an establishment having municipal, state or federal meat inspection.
2. Shall be sold for interstate movement under existing rules and regulations of the U.S. department of agriculture.

3-1775. Enforcement

The director shall enforce the provisions and rules of this article.

3-1776. Violations; classification

A person who commits any of the following acts is guilty of a class 2 misdemeanor and punishable as provided by law:

1. Offers for sale, trade or other disposition a known brucellosis reactor except as provided in this article.
2. Removes or causes to be removed a reactor brand or tag.
3. Violates any provision of this article.

3-2002. Application for license to slaughter

Every person, including an exempt slaughterer, before he begins or carries on the slaughter of livestock, sheep, goats or swine for compensation, shall make written application to the division for a license to slaughter, stating that the applicant will comply with the law and will not slaughter animals, or sell, exchange, or expose for sale the meat thereof, except in conformity with the law relating thereto and the rules of the director.

3-2003. Grant of licenses; fees; expiration date

A. The division may grant a license to slaughter livestock, sheep, goats or swine as set forth in the license issued upon payment of the fees and presentation of proof that the applicant is law-abiding, trustworthy and of good moral character.

B. The fees shall be as follows:

1. For not to exceed forty-five head of livestock, and not to exceed fifty-five head of sheep, goats or swine in one calendar year, five dollars.
2. For more than forty-five and not to exceed one hundred fifty head of livestock and more than forty-five and not to exceed one hundred sixty head of sheep, goats or swine in one calendar year, fifteen dollars.
3. For more than one hundred fifty head of livestock and more than one hundred sixty head of sheep, goats or swine in any one calendar year, eighty dollars.

C. Licenses issued under the provisions of this section shall expire on December 31 of the year in which issued.

3-2046. Meat inspection rules; violation; classification

A. The director shall adopt reasonable rules necessary to assure that all meat and meat products subject to inspection under this article which are to be sold or distributed for human consumption are free from unwholesome, poisonous or other foreign substances and filth, insects or disease causing organisms. The rules shall provide reasonably necessary measures governing the production, processing, labeling, storing, handling and transportation of such products. The rules shall prescribe minimum standards for the sanitary facilities and conditions which shall be maintained at any plant, packing house or abattoir and in any truck or other vehicle in which meat or meat products are produced, processed, stored, handled or transported.

B. The director upon the advice of the chief veterinary meat inspector shall adopt reasonable rules, including, but not limited to, what the antemortem and postmortem inspection shall consist of, to carry out the purposes of this chapter. The rules shall conform so far as possible to the rules governing meat inspection of the United States department of agriculture. To the extent deemed appropriate by the director the rules may incorporate by reference existing federal meat inspection regulations, but in no case shall the rules exceed the requirements of the United States department of agriculture. All rules adopted to implement this section shall be adopted in compliance with title 41, chapter 6.

3-2049. Inspection fees

A. The cost of inspection shall be borne by this state, except as provided in section 3-2015 and except that the cost of overtime and holiday work performed in establishments subject to the provisions of this chapter, at such rates as the division may determine, shall be borne by such establishments. Sums received by the department in reimbursement for sums paid out by it for such premium pay work shall be available to carry out the purposes of this section.

B. Any slaughtering establishment or meat processor may request in writing a hearing to determine the reasonableness or unreasonableness of the inspection fees required. A hearing officer shall conduct these hearings.

C. Inspection of meat and meat by-products for animal food which require a certificate or seal may be performed after payment of a reasonable fee.

D. All monies collected by the department shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

3-2050. Requirements for exempt processors

All exempt processors shall be licensed by the division pursuant to section 3-2003 and shall operate in a clean and sanitary condition during all periods of operation. The following are the minimum requirements for such establishments:

1. Each establishment shall have sanitary floors impervious to water.
2. All outside windows and doors shall be screened adequately and effectively.
3. There shall be an adequate supply of potable water and it shall conform with the minimum requirements of the department of health services.
4. There shall be an adequate sewage disposal system of such a type as not to be a breeding place for flies and not to constitute a hazard or to endanger public health and it shall conform with the minimum requirements of the department of health services.
5. The establishment shall be kept in a sanitary condition during all periods of slaughter.

3-2051. Requirements for slaughtering establishments with state meat inspection service

A. All slaughtering establishments licensed by this state to slaughter cattle, sheep, swine, goats, horses, mules or other equines and which operate under state meat inspection service shall be kept in a clean and sanitary condition during all periods of operation. The following are the minimum requirements for such slaughtering establishments:

1. There shall be ample potable hot and cold water with adequate facilities for its distribution in the plant and it shall conform with the minimum requirements of the department of health services. The hot water shall be not less than one hundred eighty degrees Fahrenheit and shall be furnished and used for the cleaning of inspection equipment and other equipment, floors and walls.
2. There shall be an efficient drainage and plumbing system for the plant and there shall be an adequate sewage disposal system of such a type as not to be a breeding place for flies and not to constitute a hazard or to endanger public health. Both systems shall conform with the minimum requirements of the department of health services.
3. The floors, walls, ceilings, partitions, posts, doors and other parts of all structures shall be of such materials, construction and finish as will make them susceptible of being readily and thoroughly cleaned. The floors shall be tile, cement or a type to be impervious to water and shall have adequate drainage.
4. All outside windows and doors shall be adequately and effectively screened.
5. There shall be adequate lighting, natural or artificial, of good quality and well-distributed and sufficient ventilation for all rooms to insure sanitary conditions.
6. The slaughtering establishment shall be kept free from flies, rats, mice and other vermin. Dogs and cats shall be excluded from the plants.
7. There shall be provided tables, benches and other equipment on which inspection is performed so as to enable inspectors to conduct their inspection in an efficient, clean manner. Racks, receptacles, paunch trucks or other suitable devices for retaining such parts as the head, tongue, tail, thymus gland and viscera to enable the inspectors to properly conduct a postmortem examination shall also be provided.
8. Each slaughtering establishment shall have sufficient numbers of beef shrouds so that they may be laundered and cleaned between each use.
9. Each slaughtering establishment shall have a bleeding rail and hoist of such a construction that there will result proper bleeding after slaughter.
10. Each slaughtering establishment shall provide toilets, wash basins, towels, hot and cold running water and soap for their employees with separate facilities when both sexes are employed. Toilets and wash basins shall be kept in a sanitary condition. The rooms in which the toilet facilities are located shall be properly ventilated and shall be separated from the rooms in which animals are slaughtered and meat or meat food products are prepared.
11. Slaughtering establishments shall meet the requirements prescribed by this section and in addition shall comply with the building requirements of the federal meat inspection service.

B. All slaughtering establishments engaged in the sale of meat for human consumption shall be under the inspection service of either this state or the federal government.

3-2081. Licenses for sale or exchange of meat or poultry; fee; records kept by licensee; expiration of license; violation; classification

A. A person, firm or corporation that engages in the business of meat or poultry processing, wholesaling, storing in or for intrastate commerce, transporting in intrastate commerce, distributing, jobbing or brokering other than canned meat or poultry or canned meat or poultry products, except a home consumer, shall, before offering such meat or poultry or meat or poultry food products for sale or exchange, after complying with the minimum requirements of the director, procure a license from the division, for which he shall pay an annual license fee of ten dollars for each place of business, store, stand, market or vehicle in or from which the meat is to be sold or exchanged and shall keep a record of the name and address of each person from whom the licensee obtained such meat or meat food products, the date of purchase, quantity and kind of meat purchased and time and place of purchase. Upon request by an inspector or peace officer, the licensee shall exhibit the record to him. The record shall be retained for one year.

B. All licenses issued under the provisions of this article shall expire on December 31 of the year in which issued.

C. The following persons, firms and corporations shall keep such records as will fully and correctly disclose all transactions involved in their businesses and all persons, firms and corporations subject to such requirements shall at all reasonable times upon notice by a duly authorized representative of the department afford such representative access to their places of business and opportunity to examine the facilities and inventory and to take reasonable samples of their inventory upon payment of the fair market value:

1. Any persons, firms or corporations that engage in the business of slaughtering any cattle, sheep, swine, goats, horses, mules or other equines or preparing, freezing, packaging or labeling any carcasses or parts or products of carcasses of any such animals for use as human food or animal food.

2. Any persons, firms or corporations that engage in the business of buying or selling as meat brokers, wholesalers or otherwise or transporting or storing or importing any carcasses or parts or products of carcasses of any such animals.

3. Any persons, firms or corporations that engage in business as renderers or engage in the business of buying, selling, transporting or importing any dead, dying, disabled or diseased cattle, sheep, swine, goats, horses, mules or other equines or parts of the carcasses of any such animals that died otherwise than by slaughter.

D. Any record required to be maintained by this section shall be maintained for such period of time as the director may by rules prescribe.

E. A person violating any provision of this section is guilty of a class 2 misdemeanor.

3-2161. Rules

A. The director may by rule prescribe conditions under which poultry products capable of use as human food, shall be stored or otherwise handled by any person engaged in the business of buying, selling, freezing, storing or transporting, in or for intrastate commerce, such articles, whenever the director deems such action necessary to assure that such articles will not be adulterated or misbranded when delivered to the consumer. Violation of any such rule is prohibited.

B. The director shall adopt such other rules as are necessary.

C. When opportunity is afforded for submission of comments by interested persons on proposed rules, it shall include opportunity for oral presentation of views.

3-2168. Cost of inspection

The cost of inspection shall be borne by this state, except as provided in section 3-2152 and except that the cost of overtime and holiday work performed in establishments subject to the provisions of this article, at such rates as the director may determine, shall be borne by such establishments. Sums received by the department in reimbursement for sums paid out by it for such premium pay work shall be available without fiscal year limitation to carry out the purposes of this section.

3-2662. Administration and enforcement

The director shall adopt rules deemed necessary to carry out the purposes of this article, and the director or his authorized representative shall enforce the rules.

3-2663. Revocation or refusal of permit

Upon determination that any person having a permit under this article, or who has applied for a permit hereunder has violated or failed to comply with any of the provisions of this article, or any of the rules adopted under this article, the associate director may revoke such permit or refuse to issue a permit to such applicant.

3-2664. Permit to feed garbage to swine; exception

A. No person shall feed garbage to swine without first obtaining a permit from the associate director. All permits shall be renewed during January of each year.

B. This article shall not apply to any person who feeds only his own household garbage to swine which are raised for his own use.

3-2665. Application for permit; fee

Any person desiring to obtain a permit to feed garbage to swine shall make written application to the associate director in accordance with the requirements prescribed by the director. At the time of filing the application the applicant shall pay to the department a permit fee in the sum of five dollars. All money derived from fees shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

3-2666. Permit for removal of swine from premises

Before removal of any swine from the premises where swine are fed on garbage, a permit shall be obtained from the state veterinarian or his authorized representative for the removal of the swine. A permit for the removal of dead swine which are to be processed by rendering shall not be required.

3-2667. Cooking or other treatment of garbage

All garbage, regardless of previous processing, shall before being fed to swine be thoroughly heated to at least two hundred twelve degrees Fahrenheit or the boiling point for at least thirty minutes, unless treated in some other manner which shall be approved in writing as being equally effective for the protection of public health and the prevention of the spread of disease among livestock.

3-2668. Inspection and investigation of garbage treatment; records

A. An authorized representative of the director may enter at any time upon any private or public property for the purpose of inspecting and investigating conditions relating to the treating of garbage to be fed to swine as required by this article.

B. Any authorized representative of the director may examine any records or memoranda pertaining to the feeding of garbage to swine and may require maintenance of records relating to the operation of equipment for and procedure of treating garbage to be fed to swine. Copies of such records shall be submitted to the department on request.

3-2669. Violation; classification

A person who violates any provision of this article, fails to perform any duty imposed by it or violates any rule or regulation promulgated thereunder is guilty of a class 2 misdemeanor. In addition, such person may be enjoined from continuing such violation. Each day the violation occurs shall constitute a separate violation.

3-2695. Collecting dead stock by tallow and rendering companies

A. Any person, tallow company or rendering plant removing dead stock to its place of business shall make a report on a form provided by the department and pursuant to rules the director may prescribe to prevent the use of these animals or the products of these animals for human food purposes. On this report the driver or person in charge of the truck working out of the plant, or the person receiving the call to collect the dead stock, shall show the following information and any other information as the director may prescribe by rule:

1. Date of removal.
2. Name, address and telephone number, if any, of the person requesting removal of dead stock, and of the owner of the stock, if known.
3. Location and description of dead stock.
4. Name of the company receiving the dead stock.
5. Name of the person making the report.
6. Date of the report.

B. The original of the report shall be submitted to the department.

C. No meat or meat food product processed or packed by any rendering plant or tallow company shall be traded or sold for human or animal consumption except meat from dead livestock processed for use as animal food under rules prescribed by the director and sterilized meat scrap or tankage that may be used as animal feed supplement in compliance with federal regulations.

D. Notwithstanding title 36, chapter 8, article 1, prohibiting the use of meat from an animal that has died other than by slaughter for animal food, any such meat may be used for animal food if processed as provided in subsection C.

3-2903. Regulatory powers of the director

The director may:

1. Regulate the transportation, possession, sale, processing and fee fishing of aquatic animals and plants and establish licensing categories and programs for these activities as provided by this article.
2. Adopt rules as necessary to administer and enforce this article, including rules relating to:
 - (a) Container labels, bills of lading, bills of sale and similar documents that identify contents, quality and quantities of aquatic products, including the names, addresses and other identification of shippers, producers and buyers of aquatic products.
 - (b) Identification of aquatic animals that are transported whole by the consumer from a fee fishing facility.
3. Cooperate with agencies of the United States and of this state to promote the exchange of information and avoid unnecessary duplication of services and regulation. The director shall ensure that the rules adopted under this article shall not impair enforcement of restricted live wildlife rules as promulgated pursuant to title 17.
4. Cooperate with agencies of the United States and this state and universities and other academic and research institutions to promote research and the exchange of information to support and promote the interests of aquaculture.
5. Establish programs to publicize and promote the development of the aquaculture industry in this state.
6. Establish a schedule of fees to compensate for the expense of administering this article, including personnel costs. The amount of each fee shall be set according to the cost of the specific activity for which the fee is imposed.

3-2904. Quality and disease control

The director shall adopt rules and guidelines to control the quality of and diseases in aquatic animals and plants. The rules may include:

1. Routine monitoring and diagnostic procedures.
2. Criteria for quarantine, condemnation or destruction requirements.
3. Waiting periods between diagnosis and destruction.
4. Methods of destruction and sanitation.
5. Procedures and standards for compensation.

3-2905. Inspections and certification of facilities

A. The department shall establish a schedule of periodic inspections of all licensed facilities to determine and verify compliance with this article and the rules adopted under this article. By applying for and obtaining a license under this article, the licensee is deemed to consent to such periodic inspections. In addition, the director or the director's authorized representative may enter private property at any reasonable time to inspect, obtain factual data and otherwise ascertain compliance with or violations of this article. Inspections shall be on reasonable notice to the owner or manager of the facility unless reasonable grounds exist to believe that such notice would impair the enforcement of this article. If required by law, the director shall obtain a warrant for such unscheduled entry and inspection.

B. On request, and with payment of the prescribed fee, the department shall physically inspect an aquatic animal facility for infectious diseases and causative agents. The inspector shall be approved by the director. If the inspector determines that the facility is free of restrictive infectious diseases and causative agents, the inspector shall issue to the facility a certificate to that effect within ten days after completing the inspection. The certificate is valid for one year from the date of the inspection.

C. On request and without charge the department shall provide a certificate that an aquaculture facility has been inspected and certified free of restrictive diseases and causative agents within the preceding twelve months. Each shipment or lot shall be accompanied by a certificate identifying the shipment. This subsection does not apply to the transportation of live baitfish for personal use that complies with applicable rules of the game and fish commission.

3-2907. Licenses; fee; exemption

A. A person may not engage in any of the following activities relating to aquaculture unless the person possesses a current valid license issued by the division:

1. Aquaculture facility activities, including selling, trading, displaying, purchasing, exporting, possessing, propagating and rearing live aquatic animals or plants.
2. Transporting live aquatic animals to persons who are licensed to resell, process or stock aquatic animals.
3. Processing facility activities, including cleaning, reshaping or packing fresh or frozen aquatic animals or plants for distribution or resale.
4. Operating a fee fishing facility that permits the public to remove aquatic animals by any harvesting method from a privately controlled body of water as authorized by the direct or indirect payment of a fee.

B. This chapter does not apply to state or federal game and fish agencies.

C. Each facility or transporter must be separately licensed with the division including payment of the prescribed fee.

D. Each license issued under this section shall state the name and business address of the licensee, the name and address of the person designated as the licensee's agent to the division, the location of the premises for which it is issued, other than a transporter, and any other information deemed necessary by the director.

E. A licensee may not transfer or convey the license to any other person or entity. The license is valid only for the named licensee and for the particular premises identified on the license. If there is a transfer or change in the ownership of a licensee or the premises identified on the license, or a change in the licensee's agent, the licensee shall notify the division within thirty days.

F. A license is valid for one year from the date prescribed by the associate director. The license may be renewed by applying and paying the required renewal fee at any time within thirty days before the license expires. If a license expires, it may be renewed within ninety days after expiration by paying an additional prescribed fee increment. A license that has been expired for more than ninety days may not be renewed.

G. An application for an original or renewal license under this section shall be submitted to the division together with the appropriate fee on a form furnished by the department. An applicant shall furnish any additional information that may be required.

H. Within thirty days after receiving the completed application, the division shall either issue or deny the license. The division shall issue a license, in the name under which the applicant proposes to conduct business, to an applicant that has satisfied the licensing procedures and requirements of this article. If the applicant fails to meet the requirements for an original or renewal license under this article, the associate director shall notify the applicant by certified mail stating the reasons for the denial and advising the applicant of the right to request a hearing pursuant to title 41, chapter 6, article 10. The applicant must request the hearing in writing within thirty days after the date the notice is mailed. The associate director shall schedule the hearing to be held within thirty days after the request is received. If the record made at the hearing discloses that the applicant meets the qualifications and other requirements of this chapter, the hearing officer shall enter an order to that effect and direct that the appropriate license be issued. If the applicant is found to be unqualified or otherwise fails to meet the requirements of this article, the hearing officer shall enter an order to that effect.

I. The application for an original or renewal license shall be accompanied by a license fee set by the director according to the cost of administering this article, but not less than one hundred dollars.

J. A person who sells aquatic products at retail is exempt from the requirements of this section unless the person engages in any of the activities required to be licensed under subsection A.

3-2908. Special licenses

A. The division may issue special aquaculture licenses for purposes of education and research institutional needs pursuant to rules adopted by the director. Special aquaculture licenses are not renewable and may be issued for not more than three year terms.

B. The fee prescribed by the director for a special license shall not exceed one hundred dollars.

AGRICULTURAL EMPLOYMENT RELATIONS BOARD

Title 4, Chapter 2, Articles 1-4



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 2, 2022

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: June 30, 2022

SUBJECT: AGRICULTURAL EMPLOYMENT RELATIONS BOARD
Title 4, Chapter 2, Articles 1-4

Summary

This Five-Year Review Report (5YRR) from the Agricultural Employment Relations Board (Board) relates to rules in Title 4, Chapter 2, Articles 1-4, regarding the Agricultural Employment Relations Act. These rules relate to the rights of the employees and employers, unfair labor practices, and the agricultural employment relations board's appointments, powers, duties, and elections.

In the previous 5YRR for these rules, which was approved by the Council in 2016, the Board proposed changes to make the rules more consistent and accurate. The Board amended these rules with a rulemaking that was proposed and finalized on April 5, 2022.

Proposed Action

The Board does not propose any changes to these rules.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes, the Board cites both general and specific authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Board states that the economic impact of the rules has not differed from the Economic, Small Business and Consumer Impact Statement submitted with the Notice of Final Rulemaking in February 2022. Stakeholders include the Board, agricultural labor and employers.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Board believes the rules provide an adjudicatory forum for agricultural workers, which they otherwise would not have, to monitor labor elections and labor practices. They believe, therefore, that as determined by the Arizona Legislature, the benefits are greater than the cost to potential parties. The Board states that the parties that come before the Board may expend funds to proceed with adjudication, but there are no fees or costs imposed by the Board.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Board has not received any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Board indicates the rules are clear, concise and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes, the Board indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Board indicates the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Board states the rules are enforced as written.

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

No, the Board indicates that the rules are not more stringent than corresponding federal law.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The Board indicates the rules do not require a permit or license.

11. Conclusion

This Five-Year Review Report (5YRR) from the Agricultural Employment Relations Board relates to rules in Title 4, Chapter 2, Articles 1-4, regarding the Agricultural Employment Relations Act. The Board indicates the rules are generally clear, concise, understandable, consistent, effective and enforced as written.

Council staff finds the Board submitted a report that meets the requirements of A.R.S. § 41-1056. Council staff recommends approval of this report.

Agricultural Employment Relations Board

1688 W. Adams Street, Phoenix, Arizona 85007
(602) 542-3262 FAX (602) 542-5420

April 20, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Arizona Agricultural Employment Relations Board, A.A.C. Title 4, Chapter 2, Articles 1-4, Five Year Review Report

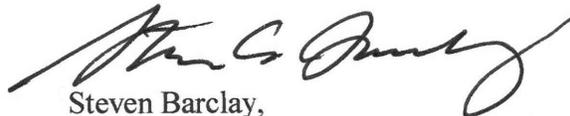
Dear Nicole Sornsin:

Please find enclosed the Five Year Review Report of Arizona Agricultural Employment Relations Board for A.A.C. Title 4, Chapter 2, Articles 1-4 which is due on April 29, 2022.

The Board hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Lisa James at 602-361-8720 or ljames@azda.gov.

Sincerely,



Steven Barclay,
Chairman

**ARIZONA AGRICULTURAL
EMPLOYMENT RELATIONS
BOARD**

5 YEAR REVIEW REPORT

A.A.C. TITLE 4, CHAPTER 2,

ARTICLES 1-4

APRIL 20, 2022

1. Authorization of the rule by existing statutes

All of the rules are authorized by A.R.S. § 23-1387(B).

In addition, R4-2-102 is authorized by A.R.S. § 23-1385(B)(6), R4-2-103 is authorized by A.R.S. §§ 23-1389 & 23-1390, R4-2-104 is authorized by A.R.S. § 23-1390(C), and R4-2-105 is authorized by A.R.S. §§ 23-1389 & 23-1390.

2. The objective of each rule:

Rule	Objective
R4-2-101.	Definitions This rule is necessary to set forth the definition of particular terms used within Chapter 2.
R4-2-102.	Strikes This rule is necessary to distinguish agricultural employers from neutral third parties during a strike, and prohibits secondary boycotts and strikes.
R4-2-103.	Notice of Appearance; Signing Pleadings and Documents; Filing Documents This rule is necessary to establish the procedure for a person to be recognized as representing a party and the process by which documents are deemed filed.
R4-2-104.	Service of Process and Legal Documents This rule is necessary to establish the procedure for service of process and legal documents.
R4-2-105.	Computation of Time This rule is necessary to prescribe the method to compute periods of time prescribed by this Chapter.
R4-2-201.	Contents of Petition for Election This rule is necessary to prescribe the contents of a petition for an election to certify or decertify a labor union.

R4-2-202.	<p>Withdrawal of Petition</p> <p>This rule is necessary to establish the procedure to withdraw a petition.</p>
R4-2-203.	<p>Challenge to Petition; Waiver</p> <p>This rule is necessary to prescribe the response of the Board if a challenge is filed. The rule also requires a respondent to file a timely challenge to the petition, or it is deemed waived.</p>
R4-2-204.	<p>Investigation of Petition</p> <p>This rule is necessary to prescribe the procedure by which the Board investigates a petition to determine if a question of representation exists as well as the confidentiality requirements that apply.</p>
R4-2-205.	<p>Time for Submission of Authorizations</p> <p>This rule is necessary to prescribe the time for filing authorizations and the timing of when additional authorizations must be signed.</p>
R4-2-206.	<p>Form and Content of Authorizations</p> <p>This rule is necessary to establish the form and content of authorizations.</p>
R4-2-207.	<p>Validity of Authorizations</p> <p>This rule is necessary to establish the requirements for an authorization to be deemed valid.</p>
R4-2-208	<p>Confidentiality of Authorizations</p> <p>This rule is necessary to establish the confidentiality of authorizations.</p>
R4-2-209.	<p>Showing of Interest Computation</p> <p>This rule is necessary to regulate which employees are counted when computing a showing of interest for an election to be held.</p>
R4-2-210.	<p>Existence of a Question of Representation</p> <p>This rule is necessary to establish the minimum percentage of workers necessary to determine that a question of representation exists.</p>
R4-2-211.	<p>Notice of Hearing</p> <p>This rule is necessary to require the Board to issue a Notice of Hearing whenever there is a question of representation following a petition for election. The rule also allows any person to request the Board to be personally notified whenever a Notice of Hearing is issued.</p>
R4-2-212.	<p>Intervention by a Subsequent Labor Organization</p> <p>This rule is necessary to establish the procedures for a second labor organization to try to get on an election ballot.</p>
R4-2-213.	<p>Peak Employment During Eligibility Period and Election</p> <p>This rule is necessary to establish the criteria for a Hearing Officer to determine if a bargaining unit is at peak and when an election can be held.</p>

R4-2-214.	<p>Election Procedures</p> <p>This rule is necessary to prescribe voting rights, the use of observers, challenges to ballots, and vote counting.</p>
R4-2-215.	<p>Objections to Election; Investigation</p> <p>This rule is necessary to establish the process by which challenges to the election are brought to the Board, the subsequent duties of the Board, and the actions the Board may take as a result of investigating objections to the election, including setting the matter for a hearing.</p>
R4-2-216.	<p>Run-off Elections</p> <p>This rule is necessary to prescribe the process under which a run-off election is held, and the remedies available upon conclusion of the run-off election.</p>
R4-2-217.	<p>Consent-election Agreements</p> <p>This rule is necessary to permit an agricultural employer and a union to enter into an agreement setting forth how the election will be held and who will vote.</p>
R4-2-301.	<p>Unfair Labor Practice Charges</p> <p>This rule is necessary to prescribe who may make an unfair labor practice charge and to the process to withdraw the charge.</p>
R4-2-302.	<p>Form and Contents of Charge</p> <p>This rule is necessary to establish the form and content of an unfair labor practice charge.</p>
R4-2-303.	<p>Investigation of Charge</p> <p>This rule is necessary to instruct the Board to serve a charge on the charged party, instruct the General Counsel to perform a preliminary investigation, list the General Counsel's options for proceeding following the preliminary investigation, and make investigative documents confidential.</p>
R4-2-304.	<p>Complaint</p> <p>This rule is necessary to prescribe the procedures followed by the General Counsel to issue, or withdraw, a formal complaint.</p>
R4-2-305.	<p>Refusal to Issue Complaint</p> <p>This rule is necessary to establish the right of the General Counsel to refuse to issue or withdraw a complaint, the charging party's right to request reconsideration of the decision, and the General Counsel's right to issue or reissue a complaint after refusing to issue or withdrawing it.</p>
R4-2-401.	<p>Hearings</p> <p>This rule is necessary to indicate that the Board will use A.R.S. § 41-1092 et seq. to conduct administrative hearings.</p>
R4-2-407.	<p>Rehearing or Review of Decision; Basis</p> <p>This rule is necessary to set out the basis for the Board to grant a rehearing and the procedure for granting a rehearing.</p>

3. **Are the rules effective in achieving their objectives?** Yes No
4. **Are the rules consistent with other rules and statutes?** Yes No
5. **Are the rules enforced as written?** Yes No
6. **Are the rules clear, concise, and understandable?** Yes No
7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

8. **Economic, small business, and consumer impact comparison:**

The economic impact of the rules has not differed from the Economic, Small Business and Consumer Impact Statement submitted with the Notice of Final Rulemaking in February 2022.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No

10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**

Yes. Based on changes suggested by the Governor’s Regulatory Review Council in 2016, and to make the rules more consistent and accurate, a rulemaking package was proposed and finalized on April 5, 2022.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The rules provide an adjudicatory forum for agricultural workers, which they otherwise would not have, to monitor labor elections and labor practices. Therefore, as determined by the Arizona Legislature, the benefits are greater than the cost to potential parties. The parties that come before the Board may expend funds to proceed with adjudication, but there are no fees or costs imposed by the Board.

12. **Are the rules more stringent than corresponding federal laws?** Yes No

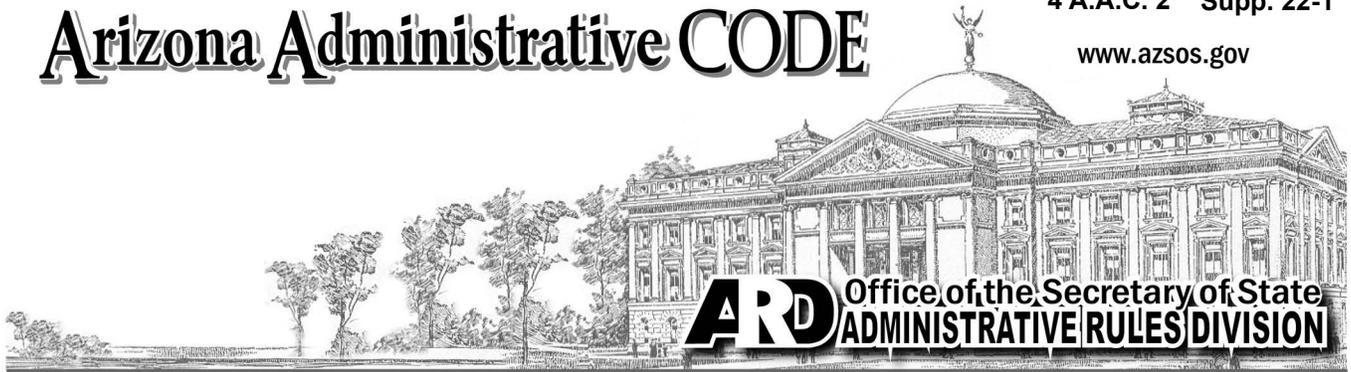
The Board’s statutes and rules are modeled after the National Labor Relations Act, which specifically excludes agricultural workers from its jurisdiction, See 29 U.S.C.A. § 152(3). The Arizona Legislature authorized the Agricultural Employment Relations Board to cover “persons, labor organizations or activities as are not within the jurisdiction of the national labor relations act or the jurisdictional guidelines established by the national labor relations board.” Ariz. Rev. Stat. Ann. § 23-1394. Aside from covering an industry that is specifically excluded by the corresponding Federal Law, these rules are not more stringent than those Federal Laws.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

These rules comply with A.R.S. § 41-1037. No licenses, permits, or authorizations are issued under the rules.

14. **Proposed course of action**

The Board does not propose any further action at this time, in view of the fact that the rules have just been amended.



TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 2. AGRICULTURAL EMPLOYMENT RELATIONS BOARD

The table of contents on page one contains links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

This Chapter contains rules that were filed to be codified in the *Arizona Administrative Code* between the dates of January 1 through March 31, 2022

R4-2-101.	Definitions	2	R4-2-212.	Intervention by a Subsequent Labor Organization	5
R4-2-102.	Strikes	2	R4-2-213.	Peak Employment During Eligibility Period and Election	5
R4-2-103.	Notice of Appearance: Signing Pleadings and Documents; Filing Documents	2	R4-2-215.	Objections to Election; Investigation	5
R4-2-104.	Service of Process and Legal Documents	2	R4-2-216.	Run-off Elections	6
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R4-2-202.	Withdrawal of Petition	3	R4-2-218.	Renumbered	6
R4-2-204.	Investigation of Petition	3	R4-2-302.	Form and Contents of Charge	6
R4-2-205.	Time for Submission of Authorizations	4	R4-2-303.	Investigation of Charge	6
R4-2-206.	Form and Content of Authorizations	4	R4-2-304.	Complaint	7
R4-2-207.	Validity of Authorizations	4	R4-2-305.	Refusal to Issue Complaint	7
R4-2-209.	Showing of Interest Computation	4	R4-2-407.	Rehearing or Review of Decision: Basis	8
R4-2-210.	Existence of a Question of Representation	5			

Questions about these rules? Contact:

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Phoenix, AZ 85007
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Name: Lisa James
Telephone: (602) 542-1164
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The release of this Chapter in Supp. 22-1 replaces Supp. 03-1, 1-7 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), Administrative Rules Division, accepts state agency rule notice and other legal filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into Titles. Titles are divided into Chapters. A Chapter includes state agency rules. Rules in Chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each Chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2022 is cited as Supp. 22-1. Supplements are traditionally released three to four weeks after the end of the quarter because filings are accepted until the last day of the quarter.

Please note: The Office publishes by Chapter, not by individual rule Section. Therefore there might be only a few Sections codified in each Chapter released in a supplement. This is why the Office lists only updated codified Sections on the previous page.

RULE HISTORY

Refer to the HISTORICAL NOTE at the end of each Section for the effective date of a rule. The note also includes the *Register* volume and page number in which the notice was published (A.A.R.) and beginning in supplement 21-4, the date the notice was published in the *Register*.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate Chapters of the Code in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* Chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, www.azleg.gov. An agency’s authority note to make rules is often included at the beginning of a Chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a Chapter can be found at the Secretary of State’s website, www.azsos.gov under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor’s notes at the beginning of a Chapter provide information about rulemaking Sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

PERSONAL USE/COMMERCIAL USE

This Chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

Rhonda Paschal, rules managing editor, assisted with the editing of this Chapter.



Administrative Rules Division
The Arizona Secretary of State electronically publishes each A.A.C. Chapter with a digital certificate. The certificate-based signature displays the date and time the document was signed and can be validated in Adobe Acrobat Reader.

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 2. AGRICULTURAL EMPLOYMENT RELATIONS BOARD

Authority: A.R.S. § 23-1381 et seq.

Supp. 22-1

Editor's Note: 4 A.A.C. 2, consisting of Sections R4-2-101 through R4-2-105, R4-2-201 through R4-2-219, R4-2-301 through R4-2-311, and R4-2-401 through R4-2-407, adopted effective December 26, 1995 (Supp. 95-4).

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CHAPTER 2. AGRICULTURAL EMPLOYMENT RELATIONS BOARD

ARTICLE 1. GENERAL PROVISIONS**R4-2-101. Definitions**

In addition to the definitions provided in A.R.S. § 23-1382, the following terms apply to this Chapter:

“Act” means the Agricultural Employment Relations Act, A.R.S. Title 23, Chapter 8, Article 5, § 23-1381, et seq.

“Administrative Law Judge” or “ALJ” means an individual, or the Board, who conducts and makes decisions regarding an administrative hearing in a contested case or an appealable agency action, according to A.R.S. Title 23, Chapter 8, Article 5, and these rules adopted thereunder.

“Authorization period” means the four pay periods immediately preceding the filing of a petition for election under A.R.S. § 23-1389(C).

“Bargaining unit” means those employees who share a community of interest with regard to wages and terms and conditions of employment as described in A.R.S. § 23-1389(B).

“Board agent” means any individual acting on behalf of the Board, including the Executive Secretary, the General Counsel, and investigators with whom the Board contracts to investigate issues relating to unfair labor practice charges and petitions for election.

“Calendar year” means the period beginning January 1 and ending December 31.

“Complete contact information” means mailing address, email address, phone number, and in the case of an organization or corporation, the name of the contact individual.

“Consent election” means an election held following the Board’s approval of a voluntary and complete consent election agreement submitted to the Board.

“Eligibility period” means the three pay periods immediately preceding the filing of a petition for election under A.R.S. § 23-1389(C).

“Executive Secretary” means the Executive Secretary appointed by the Board under A.R.S. § 23-1388.

“General Counsel” means the attorney representing the Board.

“Independent contractor” means an employer engaged in the business of supplying labor to a farm or ranch.

“Leave of absence” means an employment status determined by the employer and the employee permitting the employee to cease work for that employer for a specified period of time.

“Pay period” means the seven-day period used by an agricultural employer for payroll purposes. If the agricultural employer does not use a seven-day pay period, pay period means a seven-day period, Sunday through Saturday.

“Respondent” means the employer in a certification election or current representative in a decertification election.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1). Amended by final rulemaking at 28 A.A.R. 395 (February 18, 2022), effective April 5, 2022 (Supp. 22-1).

R4-2-102. Strikes

Employees or their representative may advertise their dispute with the agricultural employer and picket the employer. Employees or their representative shall not picket so as to interfere with the work

of a neutral employer or supplier who is not involved in the dispute. A dispute between an independent contractor and agricultural employees or their representative shall not be deemed to be a labor dispute involving the farm or ranch, or the owner, lessee, or operator of the farm or ranch.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1). Amended by final rulemaking at 28 A.A.R. 395 (February 18, 2022), effective April 5, 2022 (Supp. 22-1).

R4-2-103. Notice of Appearance; Signing Pleadings and Documents; Filing Documents

- A. The attorney of a party to a proceeding under investigation by the Board shall promptly file a notice of appearance with the Board. Once filed, the notice shall remain in effect for the duration of the proceeding, or until the Board is notified, in writing, that the attorney is not representing the party.
- B. A document filed with the Board shall be signed by the party or the party’s attorney. A signature constitutes a certification that the signer has read the document, has a good faith basis for submission of the document, and that it is not filed for the purpose of delay or harassment.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1). Amended by final rulemaking at 28 A.A.R. 395 (February 18, 2022), effective April 5, 2022 (Supp. 22-1).

R4-2-104. Service of Process and Legal Documents

- A. A person serving a petition for election, petition for decertification, objection to an election, or subpoena shall serve according to A.R.S. § 23-1391(C).
- B. Other than documents listed in subsection (A), or as provided in A.R.S. § 23-1391(C), documents may be filed with the Board electronically, by mail or personal delivery. Electronic document delivery to the Board shall be sent to the Executive Secretary email address listed on the AERB website at: <https://agriculture.az.gov/boards-councils/agricultural-employment-relations-board>. Documents shall be personally delivered or mailed to the Board’s principal office, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, with the exception of Arizona legal holidays. A document is considered filed on the date its signed copy is received by the Board.
- C. If an attorney enters a notice of appearance in a proceeding, service of motions and papers upon the attorney constitutes service upon the party.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1). Amended by final rulemaking at 28 A.A.R. 395 (February 18, 2022), effective April 5, 2022 (Supp. 22-1).

R4-2-105. Computation of Time

In computing any period of time prescribed by this Chapter, by order of the Board, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is not included. If the prescribed period of time is less than 11 days, intermediate Saturdays, Sundays, and Arizona legal holidays are not included in the computation. The last day of the period is included, unless it is a Saturday, Sunday, or Arizona legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or Arizona legal holiday.

CHAPTER 2. AGRICULTURAL EMPLOYMENT RELATIONS BOARD

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

ARTICLE 2. ELECTIONS**R4-2-201. Contents of Petition for Election**

- A.** A petition for certification election filed under A.R.S. § 23-1389(C) by an agricultural employee, a group of agricultural employees, an individual, or a labor organization acting on the employees' behalf, shall be signed under oath and shall contain the following information:
1. The name and complete contact information of the agricultural employer;
 2. A description of the bargaining unit that the petitioner claims to be appropriate;
 3. The approximate number of employees in the alleged appropriate unit;
 4. A brief statement that the employer declines to recognize the petitioner as a bargaining representative, or that the petitioner is currently recognized but desires certification under the Act;
 5. The name, affiliation, if any, and complete contact information of petitioner;
 6. The name and complete contact information of any other person who claims to represent an employee in the alleged appropriate bargaining unit;
 7. Whether a strike or picketing is in progress at the agricultural employer's establishment and, if so, the approximate number of employees participating, and the date the strike or picketing commenced;
 8. A statement that the petition for election is supported by 30% or more of the agricultural employees in the bargaining unit; and
 9. Any other relevant fact.
- B.** A petition for decertification election filed under A.R.S. § 23-1389(J) by an agricultural employee, a group of agricultural employees, a labor organization, or an individual acting on the employees' behalf, shall be signed under oath and contain the following information:
1. The name and complete contact information of the petitioner;
 2. A statement that:
 - a. A representative other than petitioner has been certified, or is currently recognized by the employer;
 - b. Petitioner desires to rescind the certification; and
 - c. Includes the unit claimed to be appropriate, a description of the unit, and the number of employees in the unit;
 3. The name, affiliation, if any, and complete contact information of the person whose recognition or certification the petitioner seeks to rescind;
 4. A statement whether the agricultural employer has a contract with any labor organization or other representative of its employees and, if so, the expiration date;
 5. Whether a strike or picketing is in progress at the agricultural employer's establishment and, if so, the approximate number of employees participating, and the date the strike or picketing commenced;
 6. A statement that the petition for decertification election is supported by 30% or more of the agricultural employees in the bargaining unit; and
 7. Any other relevant fact.
- C.** The Board shall not accept a petition for election that is submitted for filing if it does not contain all the information required by subsections (A) or (B).

- D.** The Executive Secretary shall, within 10 days after the filing of a petition for election with the Board, send a copy of the petition to the respondent named in the petition. If the Board certified a representative other than the petitioner, a copy of the petition shall also be sent to the certified representative.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1). Amended by final
rulemaking at 28 A.A.R. 395 (February 18, 2022), effective
April 5, 2022 (Supp. 22-1).

R4-2-202. Withdrawal of Petition

A petition for election that is filed with the Board may not be withdrawn unless the petitioner and the respondent stipulate to the withdrawal.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1). Amended by final
rulemaking at 28 A.A.R. 395 (February 18, 2022), effective
April 5, 2022 (Supp. 22-1).

R4-2-203. Challenge to Petition; Waiver

- A.** The Board is not required to investigate a challenge to a petition for election filed under A.R.S. § 23-1389(F).
- B.** If a respondent fails to file a timely challenge to the petition for election under A.R.S. § 23-1389(F), the right to challenge is waived.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective
January 21, 2003 (Supp. 03-1).

R4-2-204. Investigation of Petition

- A.** In addition to the notice of a petition sent under R4-2-201(D), the Board or its agent shall contact the agricultural employer by the most expeditious method within 10 days after a petition for election is filed; and, within seven days of notification, the agricultural employer shall furnish each employment record, payroll signature list, and other pertinent data requested by the Board or its agent to investigate the petition. The agricultural employer shall certify in writing and under oath that the information provided to the Board is true, complete, and accurate.
- B.** The Board shall review each authorization submitted under R4-2-205, as soon as practicable, to determine whether there is reasonable cause to believe a question of representation exists under A.R.S. § 23-1389 and R4-2-210.
- C.** The Board may conduct any investigation it deems necessary, following a review of the authorizations and pertinent employment data, to determine whether a question of representation exists including, but not limited to, a field investigation. In the event of any formal or informal interview during the investigation with an agricultural employee, the Board shall create and keep in its records a written investigative report, which shall include the name, affiliation, if any, complete contact information, and title of the agricultural employee interviewed and a summary of the agricultural employee's statements made during the interview. Any name, complete contact information, and statement recorded in such investigative report shall be subject to the confidentiality established under subsections (D) and (E) and R4-2-208.
- D.** The Board shall conduct an investigation in a manner that preserves the confidentiality of the identity of an agricultural employee and the employee's position regarding authorization.

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- E. Except as required by law, the Board or its agent shall not disclose to any person or party the number of authorizations filed; an investigative report; the identity of a person interviewed in conjunction with the investigation; or any other information concerning the investigation.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1). Amended by final rulemaking at 28 A.A.R. 395 (February 18, 2022), effective April 5, 2022 (Supp. 22-1).

R4-2-205. Time for Submission of Authorizations

- A. A petitioner shall submit every authorization with the petition for a certification or decertification election. Except as provided in subsection (B), the Board shall not accept an authorization after the petition for certification or decertification election is filed.
- B. If the Board or its agent initially determines that the showing of interest is insufficient to warrant a pre-election hearing, the Board shall notify the petitioner that additional authorizations may be filed with the Board within the next two business days. An additional authorization is not valid unless it is signed after the day the petition is filed; the individual signing the authorization was an agricultural employee at the time the authorization was signed; and the signing employee was employed during the eligibility period.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1). Amended by final rulemaking at 28 A.A.R. 395 (February 18, 2022), effective April 5, 2022 (Supp. 22-1).

R4-2-206. Form and Content of Authorizations

- A. An individual can show interest by completing an authorization card or signing a petition.
- B. An individual authorization card submitted to the Board as evidence of a showing of interest is not valid unless the card contains only one name, one signature, and the following legible information:
1. The employee's name, name of employer, and social security or employee identification number;
 2. The signature of the employee and date in the employee's own handwriting; and
 3. A statement that the employee is knowingly providing authorization that the petitioner may represent that employee for the purpose of collective bargaining in Arizona only, and authorization that the petitioner may file a petition for election under A.R.S. § 23-1389.
- C. A signature petition submitted as authorization to evidence a showing of interest is not valid unless it contains:
1. The signature of the employee, social security or employee identification number, and date in the employee's own handwriting; and
 2. The name of the employer and a statement that the employee is knowingly providing authorization that the petitioner may represent that employee for the purpose of collective bargaining in Arizona only, and authorization that the petitioner may file a petition for election under A.R.S. § 23-1389.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1). Amended by final

rulemaking at 28 A.A.R. 395 (February 18, 2022), effective April 5, 2022 (Supp. 22-1).

R4-2-207. Validity of Authorizations

- A. An authorization is valid if signed at any time during the authorization period by an individual who is an agricultural employee at the time of signing the authorization, or if signed as prescribed in R4-2-205(B).
- B. An authorization is valid even if the agricultural employee who signed that authorization also signed an authorization for another labor organization.
- C. An authorization signed by an agricultural employee hired after the date the petition is filed is not valid for the purpose of computing the showing of interest.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1). Amended by final rulemaking at 28 A.A.R. 395 (February 18, 2022), effective April 5, 2022 (Supp. 22-1).

R4-2-208. Confidentiality of Authorizations

An authorization and its contents are confidential except if subject to a lawful subpoena.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-209. Showing of Interest Computation

- A. The Board or its agent shall compute the showing of interest for any pay period within the eligibility period by taking the total number of agricultural employees employed in the bargaining unit during that pay period and determining how many of those employees signed a valid authorization as prescribed in this Article.
- B. To determine whether an individual is an agricultural employee, permanent, within the meaning of A.R.S. § 23-1382(1), six months means 132 work days.
- C. The Board shall not include in the bargaining unit for a pay period an agricultural employee who is eligible for unemployment benefits for the entire pay period.
- D. The Board shall not include in the bargaining unit for a pay period an agricultural employee who is on a leave of absence for the entire pay period unless the following conditions are met:
1. The employer produces a document, signed by the employee and notarized, stating that the employee was placed on leave of absence for a specified period of time;
 2. The date of the employee's projected return does not exceed six months from the date the petition for election is filed; and
 3. There is no substantial evidence establishing that the employee's leave of absence is a pretense or that the employee will not return from the leave of absence as scheduled.
- E. The Board shall not include in the bargaining unit an agricultural employee who is placed on workers' compensation leave, unless the following conditions are met:
1. The employer produces a document signed by a licensed physician stating the date the employee was placed on workers' compensation leave and the date of the employee's projected return;
 2. The date of the employee's projected return does not exceed six months from the date the petition for election is filed; and

CHAPTER 2. AGRICULTURAL EMPLOYMENT RELATIONS BOARD

3. There is no substantial evidence establishing that the employee's workers' compensation leave is a pretense or that the employee will not return from the workers' compensation leave of absence as scheduled.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1). Amended by final rulemaking at 28 A.A.R. 395 (February 18, 2022), effective April 5, 2022 (Supp. 22-1).

R4-2-210. Existence of a Question of Representation

A question of representation exists in the bargaining unit if there is a 30% showing of interest in the final pay period of the eligibility period and in either of the other two pay periods of the eligibility period.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1). Amended by final rulemaking at 28 A.A.R. 395 (February 18, 2022), effective April 5, 2022 (Supp. 22-1).

R4-2-211. Notice of Hearing

- A. The Board shall issue a Notice of Hearing as prescribed in Article 4 if a question of representation exists.
- B. A person may, by written request to the Board, receive notice of the filing of a petition for election and a related notice of hearing.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-212. Intervention by a Subsequent Labor Organization

- A. The ALJ may allow a subsequent labor organization to intervene only at the initial session of the pre-election hearing on a petition filed by the first labor organization and may place the subsequent labor organization on an election ballot only if the ALJ finds:
1. The subsequent labor organization filed with the Board a petition for certification election together with a sufficient number of signed authorizations to meet the 30% showing of interest required to establish a question of representation under R4-2-210; and
 2. The subsequent labor organization filed its petition and authorizations not later than seven days before the scheduled start of the initial session of the pre-election hearing.
- B. In determining the validity of an authorization filed by a subsequent labor organization, the Board shall use the same authorization period as that of the original petitioner.
- C. In determining the showing of interest for a subsequent labor organization, the Board shall use the same eligibility period as that of the original petitioner.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1). Amended by final rulemaking at 28 A.A.R. 395 (February 18, 2022), effective April 5, 2022 (Supp. 22-1).

R4-2-213. Peak Employment During Eligibility Period and Election

- A. The Board shall hold an election when the bargaining unit is at peak. A bargaining unit is at peak when the number of

employees in the unit is not less than 66 2/3% of the maximum number of employees who have been or will be employed in the bargaining unit during the current crop growing season. If peak does not occur at any time during the remainder of the current growing season, the Board shall hold the election at peak during the following growing season.

- B. In determining the total number of bargaining unit employees who have been or will be employed at any one time during the current growing season, the ALJ shall consider:
1. The employer's prior peak employment figures;
 2. The types of crops grown;
 3. The past and present acreage for the crop or crops in question;
 4. The number of employees at other farms with the same or similar crops and similar acreage; and
 5. Any other relevant fact.
- C. A question of representation exists in a bargaining unit only if the bargaining unit is at peak during the eligibility period. The respondent named in a petition has the burden to allege and prove that the bargaining unit is not at peak during a pay period in an eligibility period.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1). Amended by final rulemaking at 28 A.A.R. 395 (February 18, 2022), effective April 5, 2022 (Supp. 22-1).

R4-2-214. Election Procedures

- A. Only an individual who is an agricultural employee in the appropriate bargaining unit on the date of an election is eligible to vote in the election.
- B. A party may be represented by two observers of the party's selection, subject to the following limitations:
1. A union shall not select as an observer an official of any labor organization, and
 2. An agricultural employer shall not select as an observer a supervisor or company official.
- C. A party or the Board's agent may challenge, for good cause, the eligibility of an individual to participate in an election. The Board shall impound the ballot of a challenged individual.
- D. The Board shall issue a tally of the ballots upon the conclusion of the election.
- E. If there are enough challenged ballots to affect the results of the election, the Board shall, as soon as practicable, investigate the challenges, issue a revised tally, and serve the revised tally upon all parties.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-215. Objections to Election; Investigation

- A. Within seven days after the tally of the ballots by the Board, a party may file with the Board an objection to the conduct of the election or conduct affecting the results of the election. The party filing the objection shall specifically set forth each fact and allegation in support of the objection. The party filing the objection shall simultaneously serve a copy of the objection on all other parties and file a certificate of service with the Board. The party filing the objection shall not raise in the objection an issue that was or could have been raised in either a challenge to the petition or the pre-election hearing.
- B. The Board shall not take further action on an objection if the objection is not timely filed, does not comply with subsection (A), or the number of challenged ballots is insufficient to

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affect the election results and a run-off election is not required under R4-2-217.

- C. If any objection meets the requirements of subsection (A), the Board shall investigate objections to the conduct of an election or conduct affecting the results of an election. If the Board determines that the objection is valid, the Board shall decertify the election results. The Board shall dismiss the objection if the Board determines that the objection is invalid. Any action by the Board under this Section shall comply with A.R.S. § 23-1387(C).
- D. If the Board decertifies the election results or dismisses the objection under subsections (B) or (C), the Board shall serve all the parties with its written decision. If the Board dismisses the objection, it shall immediately issue a certification of the results of the election, including certification or decertification of the representative, as appropriate. An aggrieved party may appeal the Board's decision as prescribed in Article 4, within 30 days after the party receives the notice of the decision. The Board may extend the time for filing an appeal for good cause.
- E. In investigating an objection, if the Board determines that substantial and material factual issues exist that can be resolved only after a hearing, the Board shall issue a Notice of Hearing. Any hearing under this subsection and any objection to the resulting decision shall be initiated and conducted as prescribed by Article 4.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1). Amended by final rulemaking at 28 A.A.R. 395 (February 18, 2022), effective April 5, 2022 (Supp. 22-1).

R4-2-216. Run-off Elections

- A. If an election ballot provides for a choice among at least two labor organizations and "no union," and none of the choices on the ballot receive a majority of valid votes cast, the Board shall, as soon as practicable, conduct a run-off election.
- B. In a run-off election, only an individual who is an agricultural employee in the appropriate bargaining unit on the date of the run-off election is eligible to vote.
- C. The ballot in a run-off election shall provide for a selection between the labor organization receiving the highest number of votes in the original election and "no union."
- D. The Board shall administer a run-off election as prescribed in R4-2-214.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1). Section repealed, new Section R4-2-216 renumbered from R4-2-217 and amended by final rulemaking at 28 A.A.R. 395 (February 18, 2022), effective April 5, 2022 (Supp. 22-1).

R4-2-217. Consent-election Agreements

An agricultural employer may enter into a consent-election agreement with one or more individuals or labor organizations that present to the employer a claim to be recognized as the representative of a designated bargaining unit. The parties shall submit to the Board an agreement containing a description of the appropriate bargaining unit, a proposed time and place for holding the election, and a statement specifying which agricultural employees within the appropriate bargaining unit are eligible to vote. The Board shall conduct a consent election if the Board finds that the consent-election agreement is fair and not collusive. The Board shall conduct a consent election consistent with the methods followed by the Board in conducting elections.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1). Section R4-2-217 renumbered to R4-2-216; new Section R4-2-217 renumbered from R4-2-218 and amended by final rulemaking at 28 A.A.R. 395 (February 18, 2022), effective April 5, 2022 (Supp. 22-1).

R4-2-218. Renumbered**Historical Note**

Adopted effective December 26, 1995 (Supp. 95-4). Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1). Section renumbered to R4-2-217 by final rulemaking at 28 A.A.R. 395 (February 18, 2022), effective April 5, 2022 (Supp. 22-1).

R4-2-219. Repealed**Historical Note**

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

ARTICLE 3. UNFAIR LABOR PRACTICES**R4-2-301. Unfair Labor Practice Charges**

Any person may make a charge that a person has engaged in or is engaging in an unfair labor practice. The charge may be withdrawn by the charging party before the hearing and thereafter with the consent of the ALJ. If a complaint has issued under R4-2-304 and the charge is withdrawn, the Board may dismiss the complaint on the advice of the General Counsel.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-302. Form and Contents of Charge

- A. A charging party shall include the following in the charge:
1. The full name and complete contact information of the individual, agricultural employer, or labor organization making the charge;
 2. If the charge is filed by a labor organization, the full name and complete contact information of any national or international labor organization of which it is an affiliate or constituent unit;
 3. The full name and complete contact information of the individual, agricultural employer, or labor organization against whom the charge is made; and
 4. A clear and concise statement of the facts constituting the alleged unfair labor practice.
- B. A charging party shall make the charge in writing, sign the charge, and declare under penalty of perjury that its contents are true and correct to the best of the charging party's knowledge, information, and belief.
- C. The Board shall not accept a charge that is submitted for filing if it does not contain all the information required in subsections (A) and (B).

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1). Amended by final rulemaking at 28 A.A.R. 395 (February 18, 2022), effective April 5, 2022 (Supp. 22-1).

R4-2-303. Investigation of Charge

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- A. The Board shall, as directed by R4-2-104(A), serve a copy of a filed charge upon the individual, agricultural employer, or labor organization against whom the charge is made.
- B. The General Counsel shall conduct a preliminary investigation of the charge under A.R.S. § 23-1390(K). After the preliminary investigation, and at the discretion of the General Counsel, the General Counsel may:
1. Refuse to issue a complaint; or
 2. File a complaint against any individual, agricultural employer, or labor organization named in the charge that the General Counsel believes may have committed an unfair labor practice; and
 3. If directed by the Board, seek appropriate injunctive relief or a restraining order, as provided for in A.R.S. § 23-1390.
- C. An investigative report, note, memorandum, oral or written statement, tape recording, and any other information or work product prepared or obtained by the General Counsel during an investigation is not subject to subpoena powers of the Act and a person shall not disclose this information to any person without the consent of the General Counsel, unless otherwise provided by law.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1). Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1). Amended by final rulemaking at 28 A.A.R. 395 (February 18, 2022), effective April 5, 2022 (Supp. 22-1).

R4-2-304. Complaint

- A. If the General Counsel decides after investigating a charge that a formal proceeding should be instituted, the General Counsel shall issue and serve, as directed by R4-2-104(A), on each party a complaint stating the alleged unfair labor practice. The General Counsel shall include in the complaint a clear and concise statement of the legal and factual basis of the Board's jurisdiction and a clear and concise description of the act that is claimed to constitute an unfair labor practice. The General Counsel shall include a notice of hearing issued under Article 4 with the complaint.
- B. After the hearing date is set, the General Counsel shall not amend the complaint unless the General Counsel makes a motion to amend and the ALJ grants the motion.
- C. The General Counsel may withdraw a complaint before the hearing. After the opening of the hearing, the complaint may be withdrawn upon motion by the General Counsel with consent of the ALJ.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1). Amended by final rulemaking at 28 A.A.R. 395 (February 18, 2022), effective April 5, 2022 (Supp. 22-1).

R4-2-305. Refusal to Issue Complaint

- A. If, after a charge is filed, the General Counsel declines to issue a complaint or, having withdrawn a complaint, refuses to reissue it, the General Counsel shall serve a written statement of the grounds for the action on each party. The charging party may file a request to reconsider the refusal to issue or reissue the complaint with the General Counsel within 10 days of receipt of notice of the refusal and shall simultaneously serve a copy on all other parties. The General Counsel shall file any response to the request within seven days of receiving it. The

General Counsel shall serve the decision on each party in writing and within seven days of the date the decision is made.

- B. The charging party may file a request to reconsider with the General Counsel if, after the General Counsel refuses to issue or reissue a complaint, newly discovered material evidence is found that could not with reasonable diligence have been discovered at the time the original charge was filed. The request shall be filed within 10 days after the discovery of the evidence.
- C. Nothing in this Section prohibits or limits the General Counsel from issuing or reissuing a complaint following a notice of refusal to issue a complaint or withdrawal of a complaint, however, if a complaint is withdrawn or dismissed on the General Counsel's own motion, the General Counsel shall not reissue the complaint more than six months after the date of the withdrawal or dismissal of the original complaint.
- D. Service under this Section shall be as directed by R4-2-104(A).

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1). Amended by final rulemaking at 28 A.A.R. 395 (February 18, 2022), effective April 5, 2022 (Supp. 22-1).

R4-2-306. Repealed**Historical Note**

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-307. Repealed**Historical Note**

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-308. Repealed**Historical Note**

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-309. Repealed**Historical Note**

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-310. Repealed**Historical Note**

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-311. Repealed**Historical Note**

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

ARTICLE 4. HEARINGS**R4-2-401. Hearings**

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The Board shall use the uniform administrative hearing procedures of A.R.S. Title 41, Chapter 6, Article 10 to govern the initiation and conduct of formal adjudicative proceedings before the Board.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-402. Repealed**Historical Note**

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-403. Repealed**Historical Note**

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-404. Repealed**Historical Note**

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-405. Repealed**Historical Note**

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-406. Repealed**Historical Note**

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-407. Rehearing or Review of Decision; Basis

- A.** A party may file a motion for rehearing or review under A.R.S. § 41-1092.09.
- B.** The Board shall grant a rehearing or review of a final administrative law decision for any of the following causes materially affecting the moving party's rights:
1. Irregularity in the administrative proceedings or abuse of discretion depriving the moving party of a fair hearing;
 2. Misconduct of the Board, ALJ, or the prevailing party;
 3. Accident or surprise that could not reasonably have been prevented;
 4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the original hearing;
 5. Excessive or insufficient penalties;
 6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the progress of the proceedings; or
 7. The decision is not justified by the evidence or is contrary to law.
- C.** The Board may grant a rehearing or review to any or all of the parties. The rehearing or review may cover all or part of the issues for any of the reasons stated in subsection (B). An order granting a rehearing or review shall particularly state the grounds for granting the rehearing or review, and the rehearing or review shall cover only the grounds stated.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1). Amended by final rulemaking at 28 A.A.R. 395 (February 18, 2022), effective April 5, 2022 (Supp. 22-1).

AGRICULTURAL EMPLOYMENT RELATIONS ACT

23-1381. Declaration of Policy

It is hereby declared to be the policy of this state that the uninterrupted production, packing, processing, transporting and marketing of agricultural products are vital to the public interest. It is also declared to be the policy of this state that agricultural employees are free to organize, to take concerted action and, through representatives of their own choosing, to enter into collective bargaining contracts establishing their wages and terms and conditions of employment or to refrain from engaging in any or all of these activities. It is further declared that there now exists an inequality of bargaining power between agricultural employers and labor unions, arising out of the seasonal character and perishable nature of such agricultural products, the mobility of agricultural labor and the fundamental differences between agriculture and industry. While the right to strike is a basic right of organized labor, such right must take into account the perishable character and the seasonal nature of agricultural products and must be limited and regulated accordingly. It is the intent of the legislature to provide a means to bargain collectively that is fair and equitable to agricultural employers, labor organizations and employees, to provide orderly election procedures to resolve questions concerning representation of agricultural employees and to declare that certain acts are unfair labor practices that are prohibited and that are subject to control by the police power of this state. The overriding special interest of this state with respect to certain secondary boycott activities originating in this state, but extending across state lines and directed at employers in other states, must be recognized, and such acts must be made unlawful and subject to control by the police power of this state.

23-1382. Definitions

In this article, unless the context otherwise requires:

1. "Agricultural employee, permanent" means any employee who is over sixteen years of age, who has been employed by a particular agricultural employer for at least six months during the preceding calendar year and who is engaged in the growing or harvesting of agricultural crops or the packing of agricultural crops if packing is accomplished in the field. "Agricultural employee, temporary" means any employee who is over sixteen years of age, who is employed by a particular agricultural employer, who has been so employed during the preceding calendar year and who is engaged in the growing or harvesting of agricultural crops or the packing of agricultural crops if packing is accomplished in the field. If otherwise qualified, a person shall be considered an agricultural employee if an agricultural employer pays the wages of the employee for work performed for the employer's benefit or on his behalf, even though the supervision of the employee, the bookkeeping and the issuance of payroll checks are by a person other than the employer. In calculating a workday of an agricultural employee, one hour or more of employment in any one day shall be considered a workday. "Agricultural employee" also includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice and who has not obtained any other regular and substantially equivalent employment. "Agricultural employee" does not include any individual who:

(a) Is employed by his parent or spouse or by an immediate relative.

- (b) Has the status of an independent contractor.
- (c) Is employed as a supervisor or in a confidential capacity or as a clerical employee or a guard.
- (d) Is employed as an executive, professional or technical employee.
- (e) Has quit or has been discharged for cause.
- (f) Is a tenant or sharecropper and reasonably directs or shares in the management of an enterprise engaged in agriculture.
- (g) Is engaged in hauling or stitching functions.

2. "Agricultural employer" means any employer who is engaged in agriculture and who employed six or more agricultural employees for a period of thirty days during the preceding six month period and includes any person who provides labor and services on one or more farms as an independent contractor if such person, for a period of thirty days during the preceding six month period, employed six or more employees in such work. In calculating the number of agricultural employees employed by an agricultural employer or provided by an independent contractor, one hour or more of employment in any one day shall be considered a day of work. Agricultural employer also includes any employer who is engaged in agriculture with less than six agricultural employees and who voluntarily elects to be subject to this article by filing a request in writing with the board.

3. "Agriculture" means all services performed on a farm as defined in section 23-603, including but not limited to the recruiting, housing and feeding of persons employed or to be employed as agricultural employees by agricultural employers.

4. "Board" means the agricultural employment relations board.

5. "Farm" means any enterprise that is engaged in agriculture, that is operated from one headquarters where the utilization of labor and equipment is directed and whose tracts of land, if consisting of separate tracts of land, are located within a fifty mile radius of such headquarters.

6. "Labor dispute" means any controversy between an agricultural employer and his agricultural employees or their representative concerning terms, tenure or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment.

7. "Labor organization" means any organization or any agency defined in sections 23-1301 and 23-1321.

8. "Person" means one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers.

9. "Professional employee" means:

- (a) Any employee engaged in agricultural work that either:

(i) Is predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work.

(ii) Involves the consistent exercise of discretion and judgment in its performance.

(iii) Is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

(iv) Requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning.

(b) Any employee who has completed the course or courses of specialized intellectual instruction and study described in subdivision (a), item (iv) and is performing such work, or is performing such work or related work under the supervision of a professional person while acquiring specialized instruction.

10. "Representative" means any individual or labor organization.

11. "Supervisor" means any individual who has authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if such authority requires the use of independent judgment.

12. "Ultimate consumer" means the person who purchases an agricultural product for consumption.

13. "Unfair labor practice" means any unfair labor practice listed in section 23-1385.

23-1383. Rights of Employees

A. Agricultural employees have the right to self-organization, to bargain directly for themselves, and to form and join or assist labor organizations to bargain collectively through representatives of their own free choosing, or to engage in lawful concerted activity for the purpose of collective bargaining or other mutual aid or protection, and each such employee has the right, without interference from any source, to refrain from any and all of these activities.

B. Agricultural employees also have those rights more particularly defined and described in articles 1 and 3 of this chapter and shall be protected from the practices described in article 4 of this chapter.

23-1384. Rights of Employer

An agricultural employer has the following management rights:

1. To manage, control and conduct his operations, including but not limited to the number of farms and their locations, methods of carrying on any operation or practices, kinds of crops, time of work, size and makeup of crews, assignment of work and places of work.

2. To hire, suspend, discharge or transfer employees in accordance with his judgment of their ability.
3. To determine the type of equipment or machinery to be used, the standards and quality of work, and the wages, hours and conditions of work. The terms of employment relating to wages, hours, conditions of work and matters of worker safety, sanitation, health and the establishment of grievance procedures directly relating to a job are subject to negotiation.
4. To work on his own farm in any capacity at any time.
5. To join or refuse to join any labor organization or employer organization.

23-1385. Unfair labor practices; definition

A. It is an unfair labor practice for an agricultural employer:

1. To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in section 23-1383 and articles 1 and 3 of this chapter or to violate the protection of employees from the practices described in article 4 of this chapter.
2. To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it. An agricultural employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.
3. To encourage or discourage membership in any labor organization by discrimination in regard to hiring or tenure of employment or any term or condition of employment.
4. To discharge or otherwise discriminate against an agricultural employee because he has filed charges or given testimony under this article.
5. To refuse to bargain collectively with the representatives of his employees, subject to section 23-1389. Nothing in this article shall be construed as requiring an agricultural employer to bargain collectively until a representative of his agricultural employees has been determined by means of a valid secret ballot election.
6. To discharge or otherwise discriminate against any person because he has filed charges or given testimony before the board or a court.
7. To threaten to have discharged any agricultural employee, or threaten to have wages of any agricultural employees reduced, solely because of any labor activity.

B. It is an unfair labor practice for a labor organization or its agents to:

1. Impose any economic sanction, to restrain or coerce agricultural employees in the exercise of their rights or to coerce or intimidate any employee in the enjoyment of his legal rights provided by this article, or to intimidate his family, picket his domicile or injure the person or property of any employee or his family. This paragraph does not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership.

2. Threaten or impose any economic sanction or reprisal against any person who is not a member of the labor organization in the exercise of rights under this article, including but not limited to the right to refrain from any or all concerted activity, or against any person, who is not a member of the labor organization, who refrains from compliance with a union rule, policy or practice that establishes or affects wages, hours or working conditions at such person's place of employment.

3. Restrain, coerce, or threaten or impose any fine or other economic sanction against any person who invokes the processes of the board, or the court, or against an agricultural employer or employee in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances.

4. Refuse to bargain collectively with an agricultural employer, provided it is the majority representative of his agricultural employees as determined pursuant to section 23-1389.

5. Cause or attempt to cause an agricultural employer to:

(a) Pay or deliver or agree to pay or deliver any money or other thing of value for services that are not performed or that are not to be performed.

(b) Establish or alter the number of employees to be employed or the assignment of the employees.

(c) Assign work to the employees of a particular employer.

(d) Discriminate in regard to hiring or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. Nothing in this subdivision prohibits agreements between labor organizations and agricultural employers that regulate hiring and tenure of employment on the basis of seniority, and the labor organization is not given power to determine seniority unilaterally.

6. Engage in a secondary boycott as defined in section 23-1321.

7. Induce or encourage or threaten, restrain or coerce any secondary employer or any executive or management employee of any secondary employer to make a management decision not to handle, transport, process, pack, sell or distribute any agricultural commodity of an agricultural employer with whom a labor dispute exists.

8. Induce or encourage the ultimate consumer of any agricultural product to refrain from purchasing, consuming or using such agricultural product by the use of dishonest, untruthful and deceptive publicity. Permissible inducement or encouragement within the meaning of this section means truthful, honest and nondeceptive publicity that identifies the agricultural product produced by an agricultural employer with whom the labor organization has a primary dispute. Permissible inducement or encouragement does not include publicity directed against any trademark, trade name or generic name that may include agricultural products of another producer or user of such trademark, trade name or generic name.

9. Restrain, coerce or threaten an ultimate consumer to prevent him from purchasing, consuming or using such agricultural product.

10. Threaten or engage in arson, libel, slander, injury to person or property or other violent conduct if the objective is to prevent the preparing for market, transporting, handling, displaying for sale, or selling of any agricultural product.

11. Intimidate, restrain or coerce agricultural employers in the exercise of the rights guaranteed by section 23-1384.

12. Picket or cause to be picketed, boycott or cause to be boycotted, or threaten to boycott or picket, or cause to be boycotted or picketed, any agricultural employer if the objective is to induce, encourage, force or require an agricultural employer to recognize or bargain with a labor organization as the representative of his agricultural employees, or the agricultural employees of an agricultural employer to accept or select such labor organization as their collective bargaining representative unless such labor organization is currently certified as the representative of such employees:

(a) If the agricultural employer has lawfully recognized in accordance with this article any other labor organization and a question concerning representation may not appropriately be raised under section 23-1389.

(b) If within the preceding twelve months a valid election under section 23-1389 has been conducted.

(c) If a petition has been filed under section 23-1389.

13. Call a strike unless a majority of the employees within the bargaining unit has first approved the calling of such a strike by secret ballot.

C. The expressing of any views, argument or opinion or the making of any statement, including expressions intended to influence the outcome of an organizing campaign, a bargaining controversy, a strike, lockout or other labor dispute, or the dissemination of such views whether in written, printed, graphic, visual or auditory form, if such expression contains no threat of reprisal or force or promise of benefit, does not constitute or is not evidence of an unfair labor practice or does not constitute grounds for, or evidence justifying, setting aside the results of any election conducted under any of the provisions of this article. A statement of fact by either a labor organization or an agricultural employer relating to existing or proposed operations of the employer or to existing or proposed terms, tenure or conditions of employment with the employer shall not be considered to constitute a threat of reprisal or force or promise of benefit. An employer shall not be required to furnish or make available to a labor organization, and no labor organization shall be required to furnish or make available to an employer, materials, information, time or facilities to enable such employer or labor organization, as the case may be, to communicate with employees of the employer, members of the labor organization, its supporters or its adherents.

D. For the purposes of this section, "bargain collectively" means the performance of the mutual obligation of the agricultural employer and the representative of the agricultural employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment that directly affect the work of employees, or the negotiation of an agreement, or to resolve any question arising thereunder. Bargain collectively includes the

furnishing of necessary and relevant information in connection with the negotiation of an agreement or any issue arising under such agreement, or requiring as a condition for entering into an agreement the execution of a written contract incorporating any agreement reached if requested by either party. The failure or refusal of either party to agree to a proposal, to the making, changing or withdrawing of a lawful proposal or to the making of a concession does not constitute, or is not evidence, direct or indirect, of, a breach of this obligation. The board in any remedial order shall not direct either party to make any concession, agree to any proposal or make any payment of money except to employees who are reinstated with back pay as provided in section 23-1390. This section does not require any agricultural employer to bargain collectively with respect to any management rights. "Management rights", as used in this subsection, includes but is not limited to the right to discontinue the entire farming operation or any part of the operation, to contract out any part of the work of the operation not covered by a labor contract, to sell or lease any of the real or personal property involved in the operation or to determine the methods, equipment and facilities to be used in producing agricultural products or the agricultural products to be produced.

E. If there is in effect a collective bargaining contract covering agricultural employees, the duty to bargain collectively also means that no party to the contract may terminate or modify the contract, unless the party desiring such termination or modification:

1. Serves a written notice on the other party to the contract of the proposed termination or modification not less than sixty days prior to the expiration date of the contract, or if such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification.
2. Offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications.
3. Continues the contract in full force and effect without resorting to a strike or lockout for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later.

F. The duties imposed on agricultural employers, agricultural employees and labor organizations become inapplicable on an intervening certification of the board, under which the labor organization or individual that is a party to the contract has been superseded as or ceased to be the representative of the employees subject to section 23-1389, and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any agricultural employee who engages in a strike within the sixty day period specified in this subsection loses his status as an agricultural employee of the agricultural employer engaged in the particular labor dispute for the purposes of this section and sections 23-1389 and 23-1390, but such loss of status for such employee terminates when he is reemployed by such employer.

23-1386. Agricultural employment relations board; members; terms; appointment

A. An agricultural employment relations board is established that consists of seven members.

B. The governor shall appoint the members of the board. Two of the members shall be appointed as representatives of agriculture employers, two of the members appointed shall be representatives of organized agricultural labor and the three additional members, one of whom shall be the chairman of the board, shall be appointed as representatives of the general public. The term of office of the members is five years. On the initial appointment, one of the labor representatives shall be appointed for a term of one year, one of the representatives of the general public shall be appointed for a term of one year, one of the agricultural representatives shall be appointed for a term of two years, one of the representatives of the general public shall be appointed for a term of two years, one of the agricultural representatives shall be appointed for a term of three years, one of the labor representatives shall be appointed for a term of four years, and one of the public members of the board shall be appointed for a term of five years. Any individual appointed to fill a vacancy of any member shall be appointed only for the unexpired portion of the term of the member he is succeeding. Members of the board may be removed from office by the governor on notice and a hearing for neglect of duty or malfeasance in office but for no other cause.

C. The governor shall appoint two alternate members. One of the alternates shall be appointed as a representative of organized agricultural labor and the other as a representative of agriculture. Alternates shall be appointed for terms of five years. Any individual appointed to fill a vacancy of any alternate shall be appointed only for the unexpired portion of the term of the alternate he is succeeding. Alternates may be removed from office by the governor on notice and a hearing for neglect of duty or malfeasance in office, but for no other cause. No alternate may participate in deliberations of the board except in the absence of a board member representing his area of interest.

D. The governor shall appoint a general counsel of the board. The general counsel is the exclusive legal representative of the board, has final authority, on behalf of the board, with respect to the investigation of charges and the issuance of complaints under section 23-1390 and with respect to the prosecution of such complaints by the board, and has such other duties as the board may prescribe or as may be provided by law. The general counsel shall appoint such assistants as needed to carry out the work of the office.

E. A vacancy on the board does not impair the right of the remaining members to exercise all of the powers of the board, and four members constitute a quorum of the board. The board shall have an official seal that is judicially recognized.

F. The principal office of the board shall be in the city of Phoenix, but it may meet and exercise any of its powers at any other place.

G. The board may meet in executive session on the decision of a majority of the members of the board.

H. Meetings of the board may be called by the chairman or by a majority of the members of the board by giving written notice to the chairman who shall notify all of the members of the board as to the time and place of the board meeting.

23-1387. Powers and duties

A. By one or more of its members or by such agents or agencies as it may designate, the board may prosecute any inquiry necessary to its functions in any part of this state. A member of the board who participates in any such inquiry shall not be disqualified from subsequently participating in a decision of the board in the same case.

B. The board shall adopt rules pursuant to title 41, chapter 6 as may be necessary to carry out this article.

C. The board may also establish offices in such other cities as it deems necessary and shall determine the region to be served by such offices. The board may delegate to the heads of these offices as it deems appropriate its powers under section 23-1389 to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, to determine whether a question of representation exists and to direct an election by a secret ballot and to certify, within a reasonable period of time, the results of such election. The board may review any action taken pursuant to the authority delegated under this subsection by any regional officer on a request for a review of such action filed with the board by any interested party. Any such review made by the board, unless specifically ordered by the board, does not operate as a stay of any action taken by the regional officer. The entire record considered by the board in considering or acting on any such request or review shall be made available to all parties before the consideration or action, and the board's findings and action thereon shall be published as a decision of the board.

23-1388. Officers and employees of the board

A. The board may appoint an executive secretary and such attorneys and other employees as it may from time to time find necessary for the proper performance of its duties. Compensation for all such personnel shall be as determined pursuant to section 38-611.

B. The board may not employ any attorney for the purpose of reviewing transcripts of hearings or preparing drafts of opinions, except that any attorney employed for assignment as a legal assistant to any board member may review such transcripts and prepare such drafts for the board member.

C. No administrative law judge's report may be reviewed, either before or after its publication, by any person other than a member of the board or his legal assistant, and no administrative law judge may advise or consult with the board with respect to exceptions taken to his findings, rulings or recommendations.

D. At the discretion of the board, attorneys appointed under this section may appear for and represent the board in any case in court.

23-1389. Representatives and elections

A. Representatives selected by a secret ballot for the purposes of collective bargaining by the majority of the agricultural employees in a unit appropriate for such purposes are the exclusive representatives of all of the agricultural employees in such unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment. If ratification of any such contract is required, the right to vote in such ratification is limited to the employees in the bargaining unit. Any individual agricultural employee or a group of agricultural employees at any time may present grievances to their agricultural employer and have such grievances adjusted, without the intervention of the bargaining representative, if the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect. The bargaining representative may be present at such adjustment.

B. The board shall decide in each case whether in order to ensure to employees the fullest freedom in exercising their rights the unit appropriate for the purposes of collective bargaining shall consist of either all temporary agricultural employees or all permanent agricultural employees of an agricultural employer working at the farm where such employer grows or produces agricultural products, or both. In making unit determinations the extent of a union's extent of organization shall not be controlling. Principal factors should be the community of interest between employees, the same hours, duties and compensation, the administrative structure of the employer and the control of labor relations policies.

C. The board shall investigate any petition and, if it has reasonable cause to believe that a question of representation exists, shall provide for an appropriate hearing on due notice, if such petition has been filed in good faith in accordance with the rules that may be prescribed by the board:

1. By an agricultural employee or group of agricultural employees or any individual or labor organization acting in its behalf alleging that thirty per cent or more of the number of agricultural employees in the unit in question either wish to be represented for collective bargaining and that their employer declines to recognize their representative or assert that the individual or labor organization that has been certified or that is being currently recognized by their employer as the bargaining representative is no longer a representative.

2. By an agricultural employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative or that an individual or labor organization that has previously been certified as the bargaining representative is no longer a representative.

D. If the board finds on the record of such hearing that a question of representation exists, it shall direct an election by secret ballot and shall certify the results. If a second labor organization files a petition for an election alleging that thirty per cent or more of the employees in the unit in question desire to be represented by that labor organization, the board shall require that the names of both labor organizations appear on the ballot. In any election the voters shall be afforded the choice of "no union". If in a representational election more than one union is on the ballot, and none of the choices receives a majority vote, a second election shall be held. The

second election shall be between the union receiving the highest number of votes and "no union". In any election a labor organization shall obtain a majority of all votes cast in that election in order to be certified as the bargaining representative of all of the employees in that unit.

E. In determining whether or not a question of representation exists, the same rules of decision apply irrespective of the identity of the persons filing the petition or the kind of relief sought. In no case may the board deny a labor organization a place on the ballot by reason of an order with respect to such labor organization or its predecessor not issued in conformity with section 23-1390.

F. Within five days of receipt of such a petition, the agricultural employer may file a challenge to such petition on the ground that the authorization for the filing of such petition is not current or that such authorization has been obtained by fraud, misrepresentation or coercion. The petition shall not act to stay the election proceeding, but if it is thereafter determined that the authorizations are not current or are obtained by fraud, misrepresentation or coercion the petition will be dismissed.

G. No election may be directed or conducted in any bargaining unit or any subdivision of a bargaining unit within which, in the preceding twelve month period, a valid election has been held. Employees who are engaged in an economic strike and who are not entitled to reinstatement are eligible to vote under such rules as the board finds are consistent with the purposes and provisions of this article in any election conducted within three months after the commencement of the strike. Any agricultural employee who is found to have sought or accepted employment only for the purpose of affecting the outcome of an election is not eligible to vote in an election conducted pursuant to this article for a period of twelve months from the date of that election.

H. Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with rules or decisions of the board.

I. Within ten days after an election is directed by the board or a consent election agreement is approved by the board and on request of the board, the agricultural employer shall furnish to the board a list of agricultural employees in the bargaining unit who are qualified to vote, and this list shall be made available to the organizations or other interested employees involved in the election.

J. On the filing with the board, by thirty per cent or more of the agricultural employees in a bargaining unit covered by a certification or by an agreement between their employer and a labor organization made pursuant to section 23-1385, of a petition alleging the desire that such representation authority be rescinded, the board shall conduct an election by secret ballot of the employees in such unit and shall certify the results to the labor organization and the employer.

23-1390. Prevention of unfair labor practices

A. The board, as provided in this section, may prevent any person from engaging in any unfair labor practice.

B. If it is charged that any person has engaged in or is engaging in any such unfair labor practice, the board, or any agent or agency designated by the board for such purposes, may issue and cause to be served on the person a complaint stating the charges in that respect and containing a notice of hearing before the board or a member of the board or an administrative law judge at least five days after the serving of the complaint. Hearings shall be conducted pursuant to title 41, chapter 6, article 10. No complaint may issue based on any unfair labor practice occurring more than six months before the filing of the charge with the board and the service of a copy of the complaint on the person against whom the charge is made, unless the person so aggrieved was prevented from filing the charge by reason of service in the armed forces, in which event the six month period shall be computed from the day of the person's discharge. Any such complaint may be amended by the member or administrative law judge conducting the hearing or the board in its discretion at any time before the issuance of an order based on the complaint. The person so complained of may file an answer to the original or amended complaint, may appear in person or otherwise and may give testimony at the place and time fixed in the complaint. In the discretion of the board or the member, agent or agency conducting the hearing, any other person may be allowed to intervene in the proceeding and to present testimony.

C. The testimony taken by the board or such member or administrative law judge shall be reduced to writing and filed with the board. Thereafter, in its discretion, the board on notice may take further testimony or hear argument. If on the preponderance of the testimony taken the board determines that any person named in the complaint has engaged in or is engaging in any unfair labor practice, the board shall state its findings of fact and shall issue and cause to be served on the person an order requiring the person to cease and desist from the unfair labor practice and shall take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this article. If an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by the employee. The order may further require the person to make reports from time to time showing the extent to which the person has complied with the order. If on the preponderance of the testimony taken the board determines that the person named in the complaint has not engaged in or is not engaging in any unfair labor practice, the board shall state its findings of fact and shall issue an order dismissing the complaint. No order of the board may require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to the individual of any back pay, if the individual was suspended or discharged for cause. If the evidence is presented before a member of the board, or before an examiner or examiners of the board, the member, or the examiner or examiners, as the case may be, shall issue and cause to be served on the parties to the proceedings a proposed report, together with a recommended order, that shall be filed with the board, and if no exceptions are filed within ten days after service of the order on such parties, or within such further period as the board may authorize, such recommended order becomes the order of the board and is as prescribed in the order.

D. Until the record in a case is filed in a court, as provided in this section, the board at any time on reasonable notice and in a manner as it deems proper may modify or set aside, in whole or in part, any finding or order made or issued by it.

E. The board may petition the superior court in any county where the unfair labor practice in question occurred or where the person resides or transacts business for the enforcement of the

order and for appropriate temporary relief or a restraining order. On the filing of the petition the court shall cause notice to be served on the person, and thereupon has jurisdiction of the proceeding and of the question determined therein, and may grant such temporary relief or restraining order as it deems just and proper and may make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the board.

F. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

G. If an order of the board made pursuant to this section is based in whole or in part on facts certified following an investigation pursuant to section 23-1389 and there is a petition for the enforcement of the order, the certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsection E of this section, and the decree of the court enforcing the order of the board shall be made and entered based on the pleadings, testimony and proceedings set forth in the transcript. The court shall not enforce any order of the board that rests, in whole or in part, on evidence adduced from witnesses who have not testified under oath and who have not been subject to cross-examination by opposing parties.

H. Unless specifically ordered by the court, the commencement of proceedings under subsection E or F of this section does not operate as a stay of the board's order.

I. Petitions filed under this article shall be heard expeditiously, and if possible within ten days after they have been docketed.

J. On issuance of a complaint as provided in subsection B of this section charging that any person has engaged in or is engaging in an unfair labor practice, the board may petition the superior court in any county where the unfair labor practice in question is alleged to have occurred or where the person resides or transacts business for appropriate temporary relief or a restraining order. On the filing of any such petition the court shall cause notice to be served on the person and thereupon has jurisdiction to grant to the board such temporary relief or restraining order as it deems just and proper.

K. If it is charged that any person has engaged in an unfair labor practice, the preliminary investigation of the charge shall be made immediately and shall be given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer to whom the matter may be referred has reasonable cause to believe that the charge is true and that a complaint should issue, the officer shall petition, on behalf of the board, the superior court in the county where the unfair labor practice in question has occurred or is alleged to have occurred, or where the person alleged to have committed the unfair labor practice resides or transacts business, for appropriate injunctive relief pending the final adjudication of the board with respect to the matter. On the filing of any such petition the superior court has jurisdiction to grant any injunctive relief or temporary restraining order it deems just and proper, notwithstanding any other law, except that no temporary restraining order may be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and the temporary restraining order is effective for no longer than five days and will become void at the expiration of such period. On the filing of any

such petition the court shall cause notice to be served on any person complained against in the charge and the person, including the charging party, shall be given an opportunity to appear in person or by counsel and present any relevant testimony. For the purposes of this subsection, the superior court is deemed to have jurisdiction of a labor organization either in the county in which the organization maintains its principal office or in any county in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process on an officer or agent constitutes service on the labor organization and makes the organization a party to the suit.

23-1391. Investigatory powers

A. The board, or its duly authorized agent or agencies, shall have access to, at all reasonable times, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. The board or any member of the board on application of any party to such proceedings forthwith shall issue to such party subpoenas requiring the attendance and testimony of witnesses or the production of any evidence in such proceeding or investigation requested in such application. Within five days after the service of a subpoena on any person requiring the production of any evidence in his possession or under his control, such person may petition the board to revoke, and the board shall revoke, the subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpoena does not describe with sufficient particularity the evidence whose production is required. Any member of the board, or any agent or agency designated by the board for such purposes, may administer oaths and affirmations, examine witnesses and receive evidence. The attendance of witnesses and the production of the evidence may be required from any place in this state at any designated place of hearing.

B. In case of contumacy or refusal to obey a subpoena issued to any person, the superior court in the county within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or transacts business, on application by the board, has jurisdiction to issue to such person an order requiring the person to appear before the board, or a member, agent or agency of the board, to produce evidence if so ordered or to give testimony touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as contempt.

C. Complaints, orders and other process and papers of the board, or a member, agent or agency of the board, may be served either personally, by registered or certified mail, by telegraph or by leaving a copy at the principal office, place of business or residence of the person required to be served. The verified return by the individual personally serving or leaving the copy, setting forth the manner of the service, and the return post office receipt, if registered or certified, or telegraph receipt and mailed or telegraphed as provided in this subsection, are proof of service. Witnesses summoned before the board or its members, agent or agency shall be paid the same fees and mileage that are paid witnesses in the superior court and witnesses whose depositions are taken, and the persons taking the depositions are entitled to the same fees as are paid for like services in the superior court.

D. The departments and agencies of this state, if directed by the governor, shall furnish the board, on its request, with all unprivileged records, papers and information in their possession relating to any matter before the board.

23-1392. Violation; classification

Any person who knowingly resists, prevents, impedes or interferes with any member of the board or any of its agents or agencies in the performance of duties pursuant to this article or who violates any provision of this article is guilty of a class 1 misdemeanor. This section does not apply to any activities carried on outside this state.

23-1393. Court jurisdiction

A. Any person who is aggrieved or is injured in his business or property by reason of any violation of this article, or a violation of an injunction issued as provided in this section, may sue in the superior court in the county having jurisdiction of the parties for recovery of any damages resulting from the unlawful action, regardless of where such unlawful action occurred and regardless of where such damage occurred, including costs of the suit and reasonable attorney fees. On the filing of the suit the court also has jurisdiction to grant injunctive relief or a temporary restraining order as it deems just and proper. Petitions for injunctive relief or temporary restraining orders shall be heard expeditiously. Petitions for temporary restraining orders alleging a violation of section 23-1385 shall be heard forthwith and if the petition alleges that substantial and irreparable injury to the petitioner is unavoidable such temporary restraining orders may be issued pursuant to rule 65 of the Arizona rules of civil procedure.

B. In the case of a strike or boycott, or threat of a strike or boycott, against an agricultural employer, the court may grant, and on proper application shall grant as provided in this section, a ten day restraining order enjoining such a strike or boycott, provided that if an agricultural employer invokes the court's jurisdiction to issue the ten day restraining order to enjoin a strike as provided by this subsection, the employer as a condition must agree to submit the dispute to binding arbitration as the means of settling the unresolved issues. If the parties cannot agree on an arbitrator within two days after the court awards a restraining order, the court shall appoint one to decide the unresolved issues. Any agricultural employer is entitled to injunctive relief accorded by rule 65 of the Arizona rules of civil procedure on the filing of a verified petition showing that his agricultural employees are unlawfully on strike or are unlawfully conducting a boycott, or are unlawfully threatening to strike or boycott, and that the resulting cessation of work or conduct of a boycott will result in the prevention of production or the loss, spoilage, deterioration or reduction in grade, quality or marketability of an agricultural commodity or commodities for human consumption in commercial quantities. For the purpose of this subsection, an agricultural commodity or commodities for human consumption with a market value of five thousand dollars or more constitutes commercial quantities.

C. For the purpose of this article, the superior court has jurisdiction of a labor organization in this state if such organization maintains its principal office in this state, or if its duly authorized officers or agents are engaged in promoting or protecting the interests of agricultural employee members or in the solicitation of such prospective members in this state.

D. The service of any summons, subpoena or other legal process of the superior court on an officer or agent of a labor organization, in his capacity as such, constitutes service on the labor organization.

E. Any labor organization that represents employees as defined in this article, and any agricultural employer, are bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of this state.

F. For the purposes of this article, in determining whether any person is acting as an agent of another person in order to make the other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified is not controlling. Nothing in this section shall be deemed to preclude an agent being sued both in his capacity as an agent and as an individual.

23-1394. Scope of article

This article applies only to such persons, labor organizations or activities as are not within the jurisdiction of the national labor relations act or the jurisdictional guidelines established by the national labor relations board.

23-1395. Limitations

A. Nothing in this article, except as otherwise specifically provided, shall be construed as to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

B. Nothing in this article prohibits any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this article may be compelled to deem such supervisors as agricultural employees for the purpose of any law, either national or local, relating to collective bargaining.

ARIZONA COMMISSION ON THE ARTS

Title 2, Chapter 2, Articles 1-2



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 2, 2022

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: June 30, 2022

SUBJECT: COMMISSION ON THE ARTS
Title 2, Chapter 2, Articles 1-2

Summary

This Five-Year-Review Report (5YRR) from the Commission on the Arts (Commission) relates to rules in Title 2, Chapter 2, Articles 1-2, regarding Matching Private Monies With Monies From the Arizona Arts Endowment Fund and Grantmaking Procedures for Grants From the Arizona Arts Trust Fund. The rules in Article 1 address the requirements, considerations and procedures the Commission takes when matching private money from the Arizona Arts Endowment Fund. The rules in Article 2 define who is eligible for funding from the Arizona Arts Trust Fund, the criteria that is used when granting funds, and outlines the process for obtaining a grant from the Arizona Arts Trust Fund.

In the previous 5YRR for these rules, which the Council approved in 2017, the Commission did not propose a course of action for the rules.

Proposed Action

The Commission is not proposing any changes to the rules.

1. **Has the agency analyzed whether the rules are authorized by statute?**

Yes, the Commission cites both general and specific statutory authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Arizona Commission on the Arts believes that the impact of the rules is thoroughly consistent with the economic impact statement submitted with the original rulemaking package.

Stakeholders include the Commission and applicants obtaining funds from the Arizona Arts Trust Fund.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Arizona Commission on the Arts has compared all six rules to those of other state arts agencies and determined that they all impose the least burden and cost to the applicants and are on par with practices in similar agencies.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Commission has not received any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Commission indicates that the rules are clear, concise and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes, the Commission indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Commission indicates the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Commission states the rules are enforced as written.

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

No, the Commission indicates that the rules are not more stringent than corresponding federal law.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable. The Commission indicates that the rules do not require a permit or license.

11. Conclusion

This 5YRR from the Commission on the Arts relates to rules in Title 2, Chapter 2, Articles 1-2, regarding Matching Private Monies With Monies From the Arizona Arts Endowment Fund and Grantmaking Procedures for Grants From the Arizona Arts Trust Fund. The Commission indicates the rules are clear, concise, understandable, consistent, effective and enforced as written. The Commission does not intend to take any action regarding these rules.

Council staff finds that the Board submitted an adequate report that meets the requirements of A.R.S. § 41-1056. Council staff recommends approval of this report.

May 27, 2022

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Arizona Commission on the Arts, Five-Year-Review Report for A.A.C. Title 2, Chapter 2, Articles 1 & 2

Dear Ms. Sornsin,

Please find enclosed the Five-Year-Review Report of the Arizona Commission on the Arts for A.A.C. Title 2, Chapter 2, Articles 1 & 2, which is due on or before May 31, 2022.

The Arizona Commission on the Arts hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact me at alecuyer@azarts.gov or 602-771-6520.

Sincerely,



Anne L'Ecuyer
Executive Director

Arizona Commission on the Arts
5 YEAR REVIEW REPORT
A.A.C. Title 2. Chapter 2. Articles 1 & 2
July 13, 2022

Unless otherwise noted, the information discussed below is identical for all six rules.

1. Authorization of the rule by existing statutes

Article 1 (MATCHING PRIVATE MONIES WITH MONIES FROM THE ARIZONA ARTS ENDOWMENT FUND):

- General Statutory Authority: A.R.S § 41-986(E)
- Specific Statutory Authority: A.R.S § 41-986

Article 2 (GRANTMAKING PROCEDURES FOR GRANTS FROM THE ARIZONA ARTS TRUST FUND):

- General Statutory Authority: A.R.S § 41-982(B)(5) and 41-983.02(B)
- Specific Statutory Authority: A.R.S § 41-983.01 and 41-983.02

2. The objective of each rule:

Article 1:

Rule	Objective
R2-2-101. Definitions	This rule defines the terms used by the Commission in carrying out the intent of the article.
R2-2-102. Matching Private Monies	This rule outlines the requirements, considerations and procedures that the Commission follows when matching private monies with monies from the Arizona Arts Endowment Fund.

Article 2:

In general terms, all four rules provide procedures to be followed by the Arizona Commission on the Arts [“Commission”], its staff and grant review panels in receiving, considering and reviewing applications for, and distribution of, general operating support grants from the Arizona Arts Trust Fund.

Rule	Objective
R2-2-201. Definitions	This rule defines the terms used by the Commission in carrying out the intent of the program.
R2-2-202. Eligibility	This rule defines who is eligible for support with funds from the Arizona Arts Trust Fund, based on the following five requirements: applicants are to be based in Arizona; must be a government entity, or a designated nonprofit (or using a nonprofit fiscal agent); adhere to a maximum number of applications per year as published in Commission guidelines; match grant funds; and meet arts service provision requirements.
R2-2-203. Criteria	This rule defines the criteria which are used when granting funds from the Arizona Arts Trust Fund. The criteria in this rule are published in relevant guidelines and used by grant review panels and commissioners when reviewing and approving grant applications.
R2-2-204. Process for Obtaining A Grant from the Arizona	This rule lays out the process for obtaining a grant from the Arizona Arts Trust Fund. It notes deadlines for submission of applications and the review process. The clear review process allows constituents from across the state to understand how the Commission reviews applications and makes grant decisions.

3. Are the rules effective in achieving their objectives?

Yes X

No

All six rules are effective in achieving the objectives of the agency.

4. Are the rules consistent with other rules and statutes? Yes X No
The only relevant statutes are the Arizona Revised Statutes listed under Item 1 in this report. All rules are consistent with state statutes.
5. Are the rules enforced as written? Yes X No
6. Are the rules clear, concise, and understandable? Yes X No
All six rules are clear, concise and understandable. They are readable and grammatically correct.
7. Has the agency received written criticisms of the rules within the last five years? Yes No X
The agency has not received any criticisms regarding the six rules in the last five years.
8. Economic, small business, and consumer impact comparison:
According to our information and observation, the impact of these rules is thoroughly consistent with the economic impact statement submitted with the original rulemaking package.
9. Has the agency received any business competitiveness analyses of the rules? Yes No X
There has been no outside analysis regarding this area. We as an agency regularly compare our programs and related rules to other states and find that ours are regularly and significantly less complicated and onerous.
10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?
The Arts Commission completed a successful five-year review in 2017. No necessary actions were identified in the agency's previous 5 Year Review Report.
11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:
The Arts Commission has compared all six rules to those of other state arts agencies and determined that they all impose the least burden and cost to our applicants and are on par with practices in similar agencies.
12. Are the rules more stringent than corresponding federal laws? Yes No X
The Arts Commission reviewed all six rules and determined that they are all less stringent than corresponding federal law.
13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. §41-1037 or explain why the agency believes an exception applies:
N/A; no rules require the issuance of a regulatory permit, license, or agency authorization.
14. Proposed course of action:
At this time the Arts Commission is not planning any proposed action in the next five years.

TITLE 2. ADMINISTRATION

CHAPTER 2. ARIZONA COMMISSION ON THE ARTS

(Authority: A.R.S. § 41-986)

**ARTICLE 1. MATCHING PRIVATE MONIES
WITH MONIES FROM THE ARIZONA ARTS
ENDOWMENT FUND**

Article 1, consisting of Sections R2-2-101 and R2-2-102,
adopted effective September 21, 1998 (Supp. 98-3).

Section

R2-2-101.	Definitions
R2-2-102.	Matching Private Monies

**ARTICLE 2. GRANTMAKING PROCEDURES FOR
GRANTS FROM THE ARIZONA ARTS TRUST FUND**

Article 2, consisting of Sections R2-2-201 through R2-2-204,
made by final rulemaking at 8 A.A.R. 406, effective January 9, 2002
(Supp. 02-1).

Section

R2-2-201.	Definitions
R2-2-202.	Eligibility
R2-2-203.	Criteria
R2-2-204.	Process for Obtaining A Grant from the Arizona Arts Trust Fund

**ARTICLE 1. MATCHING PRIVATE MONIES
WITH MONIES FROM THE ARIZONA ARTS
ENDOWMENT FUND****R2-2-101. Definitions**

In this Article, unless the context otherwise requires:

“Arizona Arts Endowment Fund” means the fund established
in A.R.S. § 41-986.

“Arts Organization” means an organization that has applied
for and received non-profit status under 501(c)(3) of the U.S.
internal revenue code and whose primary mission is to pro-
duce, present, or serve the arts.

“Commission” means the Arizona Commission on the Arts.

“Donor-advised Fund” means monies donated to a community
foundation, over which the donor or others designated by the
donor retain the right to advise on grants from the fund.

“Field-of-interest for the arts Fund” means monies donated to
a community foundation, that the donor restricts to grants in a
specific charitable field.

“Non-designated Funds” means monies donated or appropri-
ated to the Arizona Arts Endowment Fund, or to an endow-
ment fund for which income generated is to be administered
by the Commission for arts programs in Arizona.

“Other Government Endowment for the Arts” means an
endowment of a community college, university, city or county
local arts agency.

“Private Monies” means revenue from sources other than state
tax funds such as cash or securities, irrevocable deferred gifts,
lead trusts, real estate, or other items that are convertible to
cash. The cash value of an irrevocable deferred gift is its
present value.

“Programs” means arts activities or presentations that are pro-
moted to the public.

Historical note

Adopted effective September 21, 1998 (Supp. 98-3).
Amended by final rulemaking at 8 A.A.R. 3291, effective
July 15, 2002 (Supp. 02-3).

R2-2-102. Matching Private Monies

- A.** The Commission shall consider private monies to be a match
to the Arizona Arts Endowment Fund if the private monies are
contributed as follows:
1. The donor enters into a written agreement with an endow-
ment fund to dedicate the monies permanently; and
 2. The donor designates the monies to the Arizona Arts
Endowment Fund or to the endowment fund of a
501(c)(3) community organization contracting with the
Arizona Commission on the Arts to administer the mon-
ies.
- B.** The Commission shall not consider a donation to be a match to
the Arizona Arts Endowment Fund if:
1. The donor designates the monies to a specific arts organi-
zation’s endowment fund, or
 2. The donor designates the monies to another government
endowment fund for the arts.
- C.** The Commission shall consider monies in a donor-advised
fund or a field-of-interest for the arts fund the same as all other
monies donated in compliance with subsection (A).
- D.** Funds may be held, accounted for, and named individually.
- E.** The Commission may enter into written agreements with one
or more 501(c)(3) community organizations to collect, invest,
and manage private monies. The contracted organization shall
report, on a quarterly basis, the collection of, investment of,
and return on the monies, to the Commission.
- F.** The Commission shall request annual written financial reports
from non-profit arts organizations in Arizona. Each report
shall include a statement of the amount of monies received by
an endowment for the arts of the reporting non-profit arts orga-
nizations. The Commission shall annually document and
report these gifts to arts endowments to the Legislature in
addition to reporting non-designated funds.

Historical note

Adopted effective September 21, 1998 (Supp. 98-3).
Amended by final rulemaking at 8 A.A.R. 3291, effective
July 15, 2002 (Supp. 02-3).

**ARTICLE 2. GRANTMAKING PROCEDURES FOR
GRANTS FROM THE ARIZONA ARTS TRUST FUND****R2-2-201. Definitions**

In this Article, unless the context otherwise requires:

“Applicant” means an organization that applies for a grant.

“Application” means the documentation and material that an
applicant submits to request a grant.

“Arizona Arts Trust Fund” means the fund created by A.R.S. §
41-983.01 and funded with \$15 from each annual filing fee
submitted to the Arizona Corporation Commission by for-
profit corporations.

“Arizona Arts Trust Fund Grant” means a general operating
support grant that includes funds derived from the Arizona
Arts Trust Fund.

“Board member” means a trustee of a non-profit organization
elected or appointed according to that organization’s bylaws.

“Commission” means the Arizona Commission on the Arts, a state agency, consisting of fifteen members appointed by the Governor.

“Commissioner” means one of 15 Governor-appointed members of the Commission responsible for the administration of the Arizona Arts Program and the Arizona Arts Endowment Fund.

“Criteria” means the established and published standards used to evaluate an application to determine whether a grant award is recommended.

“Denial conference” means the method by which an applicant that was not recommended for a grant may request a review of their application.

“Fiscal agent” means any Arizona organization, designated 501(c)(3) tax exempt by the Internal Revenue Service, that accepts grant funds on behalf of an organization not meeting the nonprofit tax-exempt requirements.

“General operating support” means a grants program administered by the Commission that provides funds to organizations to be used for administrative or artistic expenses, or both.

“Grant” means an award of financial support to an organization, for the purposes requested in the application.

“Grant conditions” means specific requirements, agreed to by the grantee in writing, that must be met or undertaken to receive a grant.

“Grant deadline” means the published date by which an application must be postmarked or hand-delivered to the Commission to be considered for a grant.

“Grant review panel” means a group of citizens appointed by the Commission to review and make recommendations on public policy and applications for grants.

“Grant review panel chair” means a Commissioner who serves as a non-voting member of the panel to ensure that state law is followed and that there is an open, fair process for the review of applications by the grant review panel.

“Grant review panel comments” means documented comments made by the grant review panelists during the application review process that become the public record of the process after the final grants are awarded.

“Grant review panelist” means an individual serving on the grant review panel.

“Grantee” means an organization receiving grant funds.

“Guidelines” means information published annually describing the Commission’s grant program, including the application process, forms and formats, eligibility requirements, and criteria.

“Legal requirements” means the federal and state standards and regulations including those regarding fair labor, civil rights, accessibility, age discrimination, lobbying with appropriated monies, accounting records, and other published requirements to which organizations accepting a grant must adhere.

“Match” means an applicant’s financial contribution to a project, in addition to a grant, that demonstrates the community support of the project.

“Non-profit organization” means a school, governmental unit, or corporation that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

“Substantial interest” has the same meaning as in A.R.S. § 38-502.

“Underserved populations” means persons who are members of ethnic or racial minorities, have disabilities, or are from communities outside the metropolitan areas of Phoenix and Tucson.

Historical note

New Section made by final rulemaking at 8 A.A.R. 406, effective January 9, 2002 (Supp. 02-1).

R2-2-202. Eligibility

To be eligible to receive an Arizona Arts Trust Fund grant under this Article, an applicant shall meet the following requirements:

1. Be based in Arizona;
2. Be a city or county government, be designated as a non-profit 501(c)(3) organization by the Internal Revenue Service, or be an unincorporated organization using an Arizona-based nonprofit 501(c)(3) organization as a fiscal agent;
3. Submit no more than the maximum allowable number of grant applications per year as published in the Commission’s guidelines;
4. Match grant funds with applicant funds as required by the Commission; and
5. Have the production, presentation, or service of the arts as its primary mission.

Historical note

New Section made by final rulemaking at 8 A.A.R. 406, effective January 9, 2002 (Supp. 02-1).

R2-2-203. Criteria

A. The following criteria shall be used by the grant review panels and the Commission for reviewing general operating support grants and granting funds from the Arizona Arts Trust Fund:

1. Artistic quality and creativity;
2. Ability of the applicant organization’s programs to serve the needs of the community, including potential public exposure and public benefit, and efforts to reach artists and audiences from culturally diverse groups;
3. Managerial and administrative ability of the applicant organization to carry out arts programming and properly administer funds granted;
4. Appropriateness of the applicant organization’s budget to carry out its proposed programs; and
5. History of the applicant organization in producing, presenting or serving the arts.

B. Further, the Commission shall also take into consideration in approving grants:

1. Whether the applicant represents underserved populations;
2. The applicant’s employment of, or contracting with, artists who are members of racial or ethnic minorities; and
3. Inclusion of racial or ethnic minority members on applicant organizations’ governing boards.

Historical note

New Section made by final rulemaking at 8 A.A.R. 406, effective January 9, 2002 (Supp. 02-1).

R2-2-204. Process for Obtaining a Grant from the Arizona Arts Trust Fund

A. The Commission shall establish an annual grant deadline and publish grant guidelines by January 15th of each year. Applications shall be postmarked or delivered by 5:00 p.m. on the grant deadline date. Late applications shall not be filed by the Commission but shall be returned without review.

- B.** An applicant shall submit a narrative and budget that comply with the grant guidelines and address the criteria in R2-2-203. The Commission shall provide the forms and formats for the narrative and budget to the applicant. An applicant may submit supplemental information including slides, videotapes, audio recordings, press coverage, and print or other materials that document the artistic work of the applicant.
- C.** The Commission shall conduct a grant review process:
1. The Commission shall appoint grant review panels. Each panel shall be assigned a specific group of grant applications to review. The Commission shall appoint three to seven community members to serve on each of the grant review panels. Grant review panelists shall be appointed by the Commission for one year and may serve no more than three consecutive years on the same panel. No more than two members of any panel shall serve on the panel for the second and third years.
 2. Grant review panelists shall hold a grant review panel meeting. Grant review panelists shall read all the applications assigned to their panel prior to the grant review panel meeting. Upon request, grant review panelists shall attend events of the applicant or speak with a representative of the applicant to be informed about the applicant organization. At the grant review panel meeting, grant review panelists shall contribute to the discussion of the applications; rate applications based on the facts in the applications and their own professional judgments about the merit of the applications, in relation to the criteria in R2-2-203; and provide policy and procedural suggestions for the Commission.
 3. If a grant review panelist has a substantial interest in any application, the panelist shall declare the interest verbally and in writing and shall not participate in the discussion of or the vote on the application.
 4. The grant review panel chair shall chair the grant review panel meeting and shall ensure that the discussion relates to the required criteria, that Commission policies and open meeting laws under A.R.S. 38-431 et seq. are followed, and that all grant review panelists have an opportunity to speak.
- D.** Following the grant review panel process, Commissioners shall receive grant review panelists' recommendations and grant review panel comments for each application. At the Commission meeting following the Commissioners' receipt of grant review panelists' recommendations, the Commissioners shall discuss the recommendations of the grant review panels and shall vote to accept, reject, or modify the recommendations of the grant review panels.
- E.** All applicants shall be notified in writing of the Commission's decisions. Any applicant that is not recommended for funding may request and shall be provided a denial conference. The Commission shall establish and publish in its grant guidelines the process for requesting and receiving a denial conference. The Commission shall not provide a denial conference based on dissatisfaction with the amount of a grant.
- F.** All applicants shall accept in writing the grant's legal requirements and grant conditions before grant funds are released.

Historical note

New Section made by final rulemaking at 8 A.A.R. 406, effective January 9, 2002 (Supp. 02-1).

41-982. Powers and duties

A. The commission may:

1. With the consent of a majority of the commission, employ, subject to chapter 4, article 4 of this title, such personnel as may be required within the limits of funds available in the arts fund. The compensation for such personnel shall be as determined pursuant to section 38-611.
2. Hold hearings.
3. Enter into contracts, within the limits of funds available, with local and regional associations, individuals, organizations and institutions for any services which further the broad objectives of the commission's program.
4. Accept gifts, contributions and bequests of unrestricted funds for deposit in the arts fund or the arts trust fund from individuals, foundations, corporations, and other organizations or institutions for the purpose of furthering the broad objectives of the commission's program.
5. Make agreements to carry out the purposes of this article.
6. Request cooperation from any state agency for the purposes of this article.

B. The commission shall:

1. Stimulate and encourage throughout the state the study and presentation of the performing arts, fine arts, and public interest and participation therein.
2. Make such surveys of public and private institutions engaged within the state in artistic and cultural activities, as may be deemed advisable, and make recommendations concerning appropriate methods to encourage participation in and appreciation of the arts to meet the legitimate needs and aspirations of persons in all parts of the state.
3. Take such steps as may be necessary and appropriate to encourage public interest in the cultural heritage of our state and to expand the state's cultural resources.
4. Encourage and assist freedom of artistic and scholarly expression essential for the well-being of the arts.
5. Formulate policies and adopt rules and regulations which are consistent with the purposes of this article.

41-983.01. Arizona arts trust fund

A. There is established the Arizona arts trust fund. The trust fund shall be administered by the Arizona commission on the arts and shall consist of revenues derived from filing fees collected pursuant to section 10-122. The commission shall deposit, pursuant to sections 35-146 and 35-147, such revenues into the trust fund at least quarterly.

B. On notice from the commission, 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 trust fund. Monies in the fund shall not revert to the state general fund.

C. Expenditures from the trust fund for grants under the Arizona arts program shall be authorized by a majority vote of the commission. All other expenditures may be authorized by the chairman of the commission. Expenditures shall be made upon warrants drawn by the department of administration.

41-983.02. Arizona arts program

A. There is established an Arizona arts program to be administered by the Arizona commission on the arts. The purpose of the program shall be to advance and to foster the arts in Arizona through grants from the Arizona arts trust fund.

B. The commission shall establish rules for the administration of the program including grant applications and criteria to be utilized when evaluating applications. Such criteria shall include but shall not be limited to artistic quality, creativity, potential public exposure and public benefit, and the ability of the recipient to properly administer funds granted. The commission shall further establish criteria to assure all of the following:

1. A portion of the funds is granted to organizations representing persons with disabilities.
2. A portion of the funds is granted to artists who are members of racial or ethnic minorities.
3. A portion of the funds is granted to organizations representing rural areas.
4. Recipient arts organizations include on their governing boards members of racial or ethnic minorities.

C. All grants shall be authorized by a majority vote of the members of the commission.

D. Each grant recipient shall submit a detailed report at least annually to the commission outlining the uses and expenditure of any funds granted from the Arizona arts trust fund. Recipients shall agree to any auditing requirements relating to the use of grant funds as set forth by the commission.

41-986. Arizona arts endowment fund

- A. The Arizona arts endowment fund is established consisting of monies appropriated annually to the fund.
- B. The Arizona commission on the arts shall administer the fund. On notice from the commission, the state treasurer shall invest and divest monies in the fund as provided by section 35-313. Monies earned from investment:
1. Shall be credited to the fund.
 2. Are a continuing appropriation to the commission.
- C. The commission may not spend any monies in the fund except monies earned from investment of fund monies.
- D. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.
- E. The commission may enter into contracts with private charitable, nonprofit organizations that qualify for tax exemption under section 501(c)(3) of the United States internal revenue code to administer monies that are donated by the organization for use in conjunction with monies from the Arizona arts endowment fund. The commission shall adopt rules regarding matching private monies with monies from the Arizona arts endowment fund in a manner consistent with the intent of the fund.
- F. The commission shall include in its annual report an accounting of the private monies that are donated for use in conjunction with the monies from the Arizona arts endowment fund.
- G. Notwithstanding any law to the contrary, no monies from the Arizona arts endowment fund may be spent for payment to any person or entity for use in desecrating, casting contempt on, mutilating, defacing, defiling, burning, trampling or otherwise dishonoring or causing to bring dishonor on religious objects, the flag of the United States or the flag of this state.



Simon Larscheidt <simon.larscheidt@azdoa.gov>

GRRC Study Session Follow-Up

Anne L'Ecuyer <alecuyer@azarts.gov>

Mon, Aug 1, 2022 at 11:36 AM

To: Elizabeth Griffiths <elizabeth.griffiths@azdoa.gov>

Cc: Simon Larscheidt <simon.larscheidt@azdoa.gov>, Hanna Spence-Schehr <hspenceschehr@azarts.gov>

Good morning, Elizabeth, I hope the week is off to a good start.

Thank you for following up on Tuesday's inquiries from the commission. I was surprised to hear questions from rules commissioners when your office recommended approval.

Upon reflection, I gave an incomplete answer in the study session. I should have been better able to easily satisfy those concerns verbally. I apologize, and will clarify here.

In the study session, Commissioners referred to **R2-2-204. Process for Obtaining a Grant from the Arizona Arts Trust Fund**. The concern was about modernizing an outdated application process. Particular clauses in question are (emphasis added):

"The Commission shall establish an annual grant deadline and publish grant guidelines by January 15th of each year. Applications shall be **postmarked or delivered by 5:00 p.m. on the grant deadline date.** "

and

"The Commission **shall provide the forms and formats** for the narrative and budget to the applicant."

In practical terms, these rules do suffice and our operations do comply by providing **both** electronic and paper options for submitting grant applications.

As directed, our process and deadlines are posted here by January 15 each year:

[Grants - Arizona Commission on the Arts \(azarts.gov\)](#)

Further, we provide a steps guide for completing the application process digitally:

[Grantee Resources - Arizona Commission on the Arts \(azarts.gov\)](#)

We prefer to retain the word 'postmarked' in the rules because a backup paper process removes a burden for those constituents who may not have access to digital tools. In practical terms, we process a majority of applications quickly and efficiently online.

Again, we affirm that there is no need for rules revision at this time, as status quo is relief of burden itself. We are a small agency. We do not employ staff attorneys or policy analysts as is typical with larger state agencies. All administration requiring attention to minor adjustments in rules removes that staff time from constituent-focused operations.

We further affirm that the larger rules review requested in the nine-month period is also not necessary, as stated in two previous memos. The agency has a small section of A.R.S code - two articles and six elements of rules by which we carefully abide and which present no current dilemma from the public or the administration.

The agency completed the 5YRR five years ago as requested and did so again in this cycle. We continue to find no reason for any change to statute in the immediate term.

To provide further context, Governor Ducey has appointed five new arts commissioners since February, and five more appointments are under review. I began my new role six months ago. The proper course of action is to heed the direction of the current commission, none of whom have communicated any concern about our rules.

As I mentioned in the meeting, I will agendaize a rules review with the arts commission to contemplate a need for rules changes in the future, which we propose to complete under the regular five-year cycle.

Please do send a calendar invite if further discussion is required. Hanna Spence-Schehr is copied to assist with scheduling.

-Anne

--

Anne L'Ecuyer

Executive Director

tel (602) 771-6520 | email alecuyer@azarts.gov

Arizona Commission on the Arts

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[Quoted text hidden]

DEPARTMENT OF CHILD SAFETY
Title 21, Chapter 1, Article 1



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: August 2, 2022

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: July 5, 2022

SUBJECT: DEPARTMENT OF CHILD SAFETY
Title 21, Chapter 1, Article 1

Summary

This Five-Year Review Report (5YRR) from the Department of Child Safety (Department) relates to rules in Title 21, Chapter 1, Article 1 regarding Release of Department Information. These rules contain the practices and procedures for releasing Department information.

In the previous 5YRR, which the Council approved in 2017, the Department did not propose any changes to the rules.

Proposed Action

In this 5YRR, the Department proposes to amend several rules as indicated in the report. The Department plans to complete and submit a rulemaking to the Council by April 28, 2023.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes, the Department cites both general and specific statutory authority.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department of Child Safety (DCS) indicates that the rules in this article relate to the release of Department information. The Department states that R21-1-110 allows the Department to charge a fee for copying. The Department indicates that in the previous 5-Year Review Report they stated that they did not charge a copying fee for requested records. The Department indicates that it has not changed its practice and still does not charge a fee for requested records. The Department indicates that requests for information are received from parents, youth, case participants, courts, non-dependency attorneys, other agencies, the media and the public. The Department states that the majority of requests are responded to by the Centralized Records Coordination Unit (CRCU) unit within the Department. The Department indicates that they budgeted \$2.5M in FY22 for the services provided by CRCU, which is funded by federal and state funds.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department states that the benefits of the current rules is that they provide the public and clients (previous and current) information and expectations on how to request DCS information. They state the rule also outlines the process DCS follows in responding to these types of requests. The Department states that though the rules cover the ability to charge a fee for providing copies of DCS information, DCS has not charged the public and clients any fees for these types of requests. DCS has determined that creating an internal process to charge a fee for providing these services is not cost effective at this time. The Department believes that not only does the process outlined in these rules tell the public of expectations, the process is set to help reduce requests without sufficient information to process the request and aids the Department in following a process to ensure confidentiality is kept.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Department indicates they have not received any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, for reasons mentioned in the report, the Department indicates the following rules are not clear, concise, and understandable:

- **R21-1-101** - Definitions;
- **R21-1-103** - Procedures for Requesting DCS Information; and
- **R21-1-108** - Release of DCS Information to a Legislator or a Committee of the Legislature or Another Person that Provides Oversight.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes, for the reasons mentioned in the report, the Department indicates the following rules are not consistent with other rules and statutes:

- **R21-1-103** - Procedures for Requesting DCS Information; and
- **R21-1-108** - Release of DCS Information to a Legislator or a Committee of the Legislature or Another Person that Provides Oversight.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

Yes, the Department indicates R21-1-101 (Definitions) is the only rule not effective in achieving its objective because the definition of “workday” does not clearly indicate when the DCS office remains open.

8. Has the agency analyzed the current enforcement status of the rules?

Yes, for the reasons mentioned in the report, the Department indicates the following rules are not currently enforced as written:

- **R21-1-101** - Definitions; and
- **R21-1-108** - Release of DCS Information to a Legislator or a Committee of the Legislature or Another Person that Provides Oversight.

9. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

No, the Department indicates the rules are not more stringent than corresponding federal law.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable. The Department indicates the rules do not require a permit or license.

11. Conclusion

This Five-Year-Review Report (5YRR) from the Department relates to rules in Title 21, Chapter 1, Article 1, regarding Release of Department Information. The Department intends to amend the rules to make them clear, concise, understandable, consistent, and effective. The Department plans to submit a rulemaking to the Council by April 2023.

Council staff finds the Department submitted a report that meets the requirements of A.R.S. § 41-1056. Council staff recommends approval of this report.



ARIZONA
DEPARTMENT
of CHILD SAFETY

Mike Faust, Director
Douglas A. Ducey, Governor

June 14, 2022

VIA EMAIL: grrc@azdoa.gov

Ms. Nicole Sornsinsin Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Arizona Department of Child Safety, A.A.C. Title 21, Chapter 1, Article 1 Release of Department Information, Five Year Review Report

Dear Ms. Sornsinsin:

Please find enclosed the Five Year Review Report of the Arizona Department of Child Safety (DCS) for A.A.C. Title 21, Chapter 1, Article 1 which is due on June 30, 2022.

DCS hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Angie Trevino, Rules Development Specialist, at 602-619-3163 or angelica.trevino@azdcs.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Faust".

Mike Faust
Director

Enclosure

ARIZONA DEPARTMENT OF CHILD SAFETY

Five-Year-Review Report

Title 21. Child Safety

Chapter 1. Administration

Article 1. Release of Department Information

June 2022

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 8-453(A)(5)

Specific Statutory Authority: A.R.S. § § 8-807 and 8-807.01

2. The objective of each rule:

Rule	Objective
R21-1-101. Definitions	The objective of this rule is to promote and facilitate uniform understanding of terminology used by the Department in this Article.
R21-1-102. Scope and Application	The purpose of this rule is to clarify the scope of matters covered by Article 1.
R21-1-103. Procedures for Requesting DCS Information	The objective of this rule is to explain the procedures for requesting DCS information pursuant to A.R.S. § 8-807.
R21-1-104. Procedures for Processing a Request for DCS Information	The purpose of this rule is to explain the procedures the Department uses to process a request for DCS information.
R21-1-105. Procedures for Processing a Request for DCS Information from a Person or Entity Providing Services in Official Capacity	The purpose of this rule is to explain the procedures the Department uses to process a request for DCS information when the request is from a person or entity providing services in an official capacity.
R21-1-106. Release of Summary DCS Information to a Person Who Reported Suspected Child Abuse and Neglect	The objective of this rule is to explain the procedures that the Department uses to release DCS information to a person who reported child abuse or neglect.

R21-1-107. Release of DCS information for a Research or Evaluation Project	The objective of this rule is to explain the Department's policy on releasing DCS information for a research or evaluation project.
R21-1-108. Release of DCS Information to a Legislator or a Committee of the Legislature, or Another Person that Provides Oversight	The objective of this rule is to explain the Department's policy on releasing DCS information to a legislator or another person that provides oversight.
R21-1-109. Release of DCS Information in a Case of Child Abuse, Abandonment, or Neglect that has Resulted in a Fatality or Near Fatality	The objective of this rule is to explain the Department's policy on releasing DCS information in a case of child abuse, abandonment, or neglect that has resulted in a fatality or near fatality.
R21-1-110. Fees	The objective of this rule is to explain the Department's process and policy regarding charging of fees for copies of the requested DCS information.

3. **Are the rules effective in achieving their objectives?** Yes ___ No X

Rule	Explanation
R21-1-101 Definitions	R21-1-101(23) definition of "workday" indicates that mandatory state furlough days are excluded from the "workday" definition. This definition is not effective because whether or not the state mandates furlough days, the DCS office remains open.

4. **Are the rules consistent with other rules and statutes?** Yes ___ No X

Rule	Explanation
R21-1-108 Release of DCS Information to a Legislator or a Committee of the Legislature or Another Person that Provides Oversight	In 2021, with SB1225 the 55th Legislature, First Regular Session amended A.R.S. § 8-807. The statute amendment allows the Presiding Officer to also authorize a legislative staff member to attend with the legislator any meeting to review the file. Per the amendment, the staff member who attends must also sign the same Acknowledgement of Confidentiality form as the legislator. The rule needs to be updated to include these amendments.

R21-1-103. Procedures for Requesting DCS Information	The rules in this Section should also reference that request for DCS Information and DCS process must meet the requirements set in A.R.S. § § 8-807.01 and 8-502. This Section needs to be updated to provide clarification to the expectations in these statutes.
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5. **Are the rules enforced as written?** Yes ___ No X

Rule	Explanation
R21-1-101 Definitions	As explained in #3 of this report, the definition of "workday" is not effective as it excludes state mandated furlough days from being considered a workday. State furlough days have not been mandated since the enactment of these rules and has not been an issue. However, the Department proposes to conduct rulemaking to correct this definition.
R21-1-108 Release of DCS Information to a Legislator or a Committee of the Legislature or Another Person that Provides Oversight	As explained in #4 of this report, A.R.S. § 8-807 was amended in 2021. The Department currently follows statutory requirements and proposes to conduct rulemaking to update the rules.

6. **Are the rules clear, concise, and understandable?** Yes ___ No X

Rule	Explanation
R21-1-101 Definitions	R21-1-101(23): As explained in #3 and #5 of this report, the definition of "workday" needs to be updated to remove the word "furlough" from the definition.
R21-1-103 Procedures for Requesting DCS Information	As explained in #4 of this report, this Section needs to include reference to A.R.S. § § 8-807.01 and 8-502 as requests and release of DCS Information must also comply with these statutes. Additionally, R21-1-103 (D)(2)(e) indicates that this Section does not apply to "A person that provides oversight to the Department." R21-1-103(D)(2)(e) is not clear, concise, or understandable as it does not define "person or entity that provides oversight."
R21-1-108 Release of DCS Information to a Legislator or a Committee of the Legislature or Another Person that Provides Oversight	As explained in #4 of this report, A.R.S. § 8-807 was amended in 2021 to specify that the Presiding Officer may authorize a legislative staff member to attend any meeting with the legislator to review the case file. Additionally, the rule needs to be updated to reflect that an authorized legislative staff member must also sign the Department's Acknowledgement of Confidentiality form. The Department intends to update rules to align the rule with the statutory amendments.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes ___ No X

8. **Economic, small business, and consumer impact comparison:**

The previous 5 Year Review Report stated that the Department did not charge a copying fee for requested records. The Department has not changed its practice. It still does not charge a copying fee for requested records.

R21-1-110 states that the Department may charge a fee for copying. The rule states that if a copying fee is charged the rates will be posted on the DCS website. Currently, there are no copying rates posted on the DCS website. DCS has not charged a copying fee to requesters.

A significant number of requests for DCS information involve a request for a redacted copy of a DCS record from individuals about whom a report was made or about case participants. From July 2020 through June 2021, DCS received 1,649 requests from parents, youth, and case participants for redacted DCS records from individuals about whom the report was made or about case participants. During this same time-frame, DCS received 3,259 requests from courts, non-dependency attorneys, and other agencies for redacted DCS records from individuals about whom the report was made or about case participants. Additionally, during this same time-frame, DCS provided 3,221 redacted records to parent and legal guardian attorneys. The DCS did not charge a copy fee for the release of these redacted documents.

From July 2020 through June 2021, the DCS received 313 DCS public records and general information requests for DCS information from the media and the public. Also, during July 2020 through June 2021, DCS processed 71 public records and information requests pertaining to data, policy, training documents and other information in relation to DCS process and procedures. The DCS did not impose a copy fee for these records.

DCS has several units or staff responsible for responding to the various types of requests addressed in this Article. However, the majority of requests are responded to by the Centralized Records Coordination Unit (CRCU) unit within the Department. The Department budgeted \$2.5M in FY22 for the services provided by CRCU which is funded by federal and state funds.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No X

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

The Department of Child Safety did not propose any rulemaking activity in the Five-Year-Review Report completed in 2017.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The benefit of the current rules is that they provide the public and clients (previous and current) information and expectations on how to request DCS Information. The rule also outlines the process DCS follows in responding to these types of requests. Though the rules cover the ability to charge a fee for providing copies of DCS Information, DCS has not charged the public and clients any fees for these types of requests. DCS has determined that creating an internal process to charge a fee for providing these services is not cost effective at this time. Not only does the process outlined in these rules tell the public of expectations, the process is set to help reduce requests without sufficient information to process the request and aids the Department in following a process to ensure confidentiality is kept.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

Federal laws 42 U.S.C. Ch. 67, §§ 5101 et seq., 42 U.S.C. Ch. 7, Subchapters IV/Part B and IV/Part E, and 42 U.S.C. § 670 et seq. apply to this rulemaking. The rules are not more stringent than federal law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The Department has determined that A.R.S. § 41-1037 does not apply to these rules. The rules in this Article do not require the issuance of a regulatory permit, license, or agency authorization.

14. **Proposed course of action**

The Department has reviewed the current rules and plans to request a moratorium exemption from the Governor's Office in accordance with Executive Order 2022-01 and to amend rules to address the concerns identified in this five-year-review report. The Department plans to complete and submit rulemaking for Council's review by April 28, 2023.

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ARTICLE 1. RELEASE OF DEPARTMENT INFORMATION**R21-1-101. Definitions**

The definitions contained in A.R.S. §§ 8-101, 8-201, 8-531, 8-801, 8-807, 8-807.01, and the following definitions apply in this Article:

1. "Abandonment" has the same meaning as "abandoned" in A.R.S. § 8-201.
2. "Abuse" means the same as in A.R.S. § 8-201.
3. "CASA" or "Court Appointed Special Advocate" means a person appointed under A.R.S. § 8-522.
4. "Centralized Intake Hotline" or "the Hotline," means the entity described in A.R.S. § 8-455.
5. "Child" means a person less than 18 years of age.
6. "Completed request" means a fully completed DCS form or a written communication submitted to DCS requesting DCS Information and providing all the information necessary, as determined by the Department, to process the request. The requester shall have the request notarized or signed by a Department employee to confirm the identity of the requester.
7. "Copying fee" means the final amount a requester is required to pay to the Department before the Department releases the requested DCS Information.
8. "DCS Information" means the same as in A.R.S. § 8-807 and includes information contained in a hard copy or electronic case record, and both oral and written information.
9. "Department" or "DCS" means the Arizona Department of Child Safety.
10. "Estimated copying fee" means the projected total amount of a copying fee. A requester is required to pay the estimated copying fee to the Department before the Department redacts and copies the requested DCS Information.
11. "FCRB" means the Foster Care Review Board established under A.R.S. § 8-515.01.
12. "Incoming communication" means a telephonic, written, or in-person contact to the Department that is received by or ultimately directed to the Centralized Intake Hotline.
13. "Neglect" means the same as in A.R.S. § 8-201.
14. "Person that provides oversight" means those individuals, entities, or bodies authorized by A.R.S. § 8-807 to have access to DCS Information that is reasonably necessary for the person to provide oversight of the Department.
15. "Person who is the subject of DCS Information" means a parent, guardian, custodian, adult household member, child, or other person identified in a DCS report.
16. "Personally identifiable information" means information that specifically identifies a protected individual and includes:
 - a. Name;
 - b. Date of Birth;
 - c. Street address;
 - d. Telephone, fax number, or email address;
 - e. Photograph;
 - f. Fingerprints;
 - g. Physical description;
 - h. Place, address, and telephone number of employment;
 - i. Social security number;
 - j. Tribal affiliation and identification number;
 - k. Driver's license number;
 - l. Auto license number;
 - m. Any other identifier that is specific to an individual; and
- n. Any other information that would permit another person to readily identify the subject of the DCS Information.
17. "Protected individual" means a living person who is the subject of a DCS investigation and others whose personal information is confidential under A.R.S. § 8-807 and includes:
 - a. An alleged victim;
 - b. An alleged victim's sibling;
 - c. A parent, guardian, custodian, or adult household member;
 - d. A foster parent;
 - e. A child living with the alleged victim;
 - f. The person who made the report of child abuse or neglect; and
 - g. Any person whose life or safety would be endangered by disclosure of DCS Information.
18. "Redacting" means striking, blacking out, or otherwise editing out personally identifiable information or other information that is not subject to release under A.R.S. § 8-807 contained in DCS hard copy or electronic case records on protected individuals so that no one can access the information.
19. "Report" means an incoming communication to the Centralized Intake Hotline containing an allegation that meets the criteria in A.R.S. § 8-455.
20. "Request" means a written communication seeking DCS Information.
21. "Requester" means an individual, entity, or body that makes a request for DCS Information.
22. "Research requester" means an individual or organization that seeks DCS Information for a research or evaluation project.
23. "Workday" means Monday through Friday excluding Arizona state holidays and mandatory furlough days.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-102. Scope and Application

- A. This Article governs requests for and release of DCS Information made under A.R.S. § 8-807 and A.R.S. § 8-807.01.
- B. DCS maintains information in accordance with federal laws under A.R.S. § 8-807.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-103. Procedures for Requesting DCS Information

- A. A person who wishes to obtain DCS Information shall comply with A.R.S. § 8-807 and the requirements of this Article.
- B. The requester shall submit to the Department a completed request or use the form provided by the Department. The request shall include the following information:
 1. Requester's name, address, and telephone number;
 2. Name of the child victim who is the subject of the DCS report, with as much of the following information as the requester can provide on the child victim:
 - a. Other possible spellings, names, or aliases for the child;
 - b. Date of birth;
 - c. The name of the child's caregivers, parents, guardians, and custodians; and
 - d. The date of the DCS report or time-frame for the report.

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3. Any other data that the requester believes will assist the Department in identifying the DCS Information requested, such as:
 - a. The name of the child's siblings;
 - b. The child's Social Security number;
 - c. The name of the DCS Child Safety Worker handling the case; and
 - d. The location of the alleged abuse or neglect.
 4. Any additional information the Department requests to assist in processing the person's request for DCS Information.
- C.** Before releasing DCS Information, the Department shall determine whether the requester is entitled to receive the DCS Information under this Article, A.R.S. § 8-807 and A.R.S. § 8-807.01.
- D.** This Section does not apply to:
1. A person or entity authorized to receive DCS Information under A.R.S. § 8-807 to:
 - a. Meet its duties to provide for the safety, permanency, and well-being of a child;
 - b. Provide services to the child, parent, guardian, custodian, or family members to strengthen the family;
 - c. Enforce or prosecute violations of child abuse or neglect laws;
 - d. Help investigate and prosecute any violation involving domestic violence as defined in A.R.S. § 13-3601 or violent sexual assault as defined in A.R.S. § 13-1423; or
 - e. Provide DCS Information to a defendant after a criminal charge has been filed as required by an order of the criminal court.
 2. This Section also does not apply to:
 - a. Juvenile, domestic relations, family or conciliation court;
 - b. The parties or their attorneys in a dependency, guardianship, or termination of parental rights proceeding;
 - c. The FCRB;
 - d. A CASA; or
 - e. A person that provides oversight to the Department.
- Historical Note**
New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).
- R21-1-104. Procedures for Processing a Request for DCS Information**
- A.** Upon receipt of a request for DCS Information, the Department shall determine whether the request is complete. If the request is incomplete, the Department shall either:
1. Return the request to the requester with a statement explaining the additional information the Department needs to process the request; or
 2. Contact the requester to obtain the missing information.
- B.** Upon receipt of a completed request, the Department shall stamp the receipt date on the request. The receipt date is the day the Department receives the completed request.
- C.** Within 30 workdays of the receipt date, the Department shall provide the requester with one of the following written responses:
1. The requested DCS Information;
 2. A statement that the requested DCS Information does not exist;
 3. A statement that the Department cannot provide the requested DCS Information within 30 workdays, the reason for the delay, and the anticipated time-frame for response; or
 4. A statement that the Department cannot release the requested DCS Information, with the statutory citation and the reason for the denial.
- Historical Note**
New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).
- R21-1-105. Procedures for Processing a Request for DCS Information from a Person or Entity Providing Services in Official Capacity**
- A.** The Department shall release DCS Information without charging the fee required by R21-1-110 when a person or entity entitled to receive DCS Information requires information to:
1. Meet its duties to provide for the safety, permanency, and well-being of a child;
 2. Provide services to the child, parent, guardian, custodian, or family members to strengthen the family;
 3. Enforce or prosecute a violation of child abuse or neglect laws;
 4. To help investigate and prosecute any violation involving domestic violence as defined in A.R.S. § 13-3601, or violent sexual assaults as defined in A.R.S. § 13-1423;
 5. Provide DCS Information to a defendant as required by an order of the criminal court; or
 6. Provide DCS Information to:
 - a. A juvenile, domestic relations, family or conciliation court;
 - b. The parties or their attorneys in a dependency, guardianship, or termination of parental rights proceeding;
 - c. The FCRB;
 - d. A CASA; or
 - e. A person that provides oversight of DCS.
- B.** Before releasing DCS Information under this Section, the Department shall determine that the person requesting DCS Information is a person entitled to receive DCS Information under this Section and A.R.S. § 8-807.
- C.** Within 30 workdays of the receipt date, the Department shall provide the requester with one of the following written responses:
1. The requested DCS Information;
 2. A statement that the requested DCS Information does not exist;
 3. A statement that the Department cannot provide the requested DCS Information within 30 workdays, the reason for the delay, and the anticipated time-frame for response; or
 4. A statement that the Department cannot release the requested DCS Information, with the statutory citation and the reason for the denial.
- Historical Note**
New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).
- R21-1-106. Release of Summary DCS Information to a Person Who Reported Suspected Child Abuse and Neglect**
- A.** A person who reports suspected child abuse or neglect to DCS may contact DCS to obtain a summary of the outcome of the investigation, as authorized by A.R.S. § 8-807.
- B.** After receiving a completed request and before releasing DCS Information, the Department shall determine that the person requesting DCS Information was the person who made the report as follows:
1. Obtain the name and telephone number of the requester, and

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2. Compare the requester's name with the name of the person listed as the reporting source on the DCS report.
- C. After determining the identity of the requester, the Department shall call and advise the requester whether the Department has statutory authority to provide the requested DCS Information.
- D. If the requester is entitled to receive the requested DCS Information under A.R.S. § 8-807, DCS shall verbally provide the person a summary of the outcome with the following DCS Information:
 1. Disposition of the report;
 2. Investigation findings, if available; and
 3. A general description of the services offered or provided to the child and family.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-107. Release of DCS Information for a Research or Evaluation Project

- A. A person seeking DCS Information for a research or evaluation project shall send a written request to the Department. A request shall include the following information:
 1. If the person works for a research organization:
 - a. The name of the organization, and
 - b. The organization's mission;
 2. A description of the research or evaluation project and the data requested, which explains how the results of the project will improve the Department;
 3. A description of the plan for maintaining the confidentiality of personally identifiable information, if requested, and disseminating the results of the project; and
 4. The funding source for the research or evaluation project.
- B. Within 30 workdays of receipt of a completed request from a research requester, the Department shall:
 1. Advise the requester whether the Department will provide the requested DCS Information,
 2. Inform the requester of the estimated copying fee required under R21-1-110, and
 3. Inform the requester of the expected time-frame for providing the requested DCS Information.
- C. The Department shall provide the requester with the requested DCS Information, upon completion and after receipt of the copying fee.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-108. Release of DCS Information to a Legislator or a Committee of the Legislature, or Another Person that Provides Oversight

- A. A person that provides oversight of DCS and seeks DCS Information shall send a request to the Department and include the following information:
 1. The name of the person seeking the information;
 2. The purpose of the request and its relationship to the person's official duties; and
 3. The person's signature, or the signature of an authorized agent for an entity or other body, confirming that the person or authorized agent understands the DCS Information shall not be further disclosed unless authorized by A.R.S. § 8-807.
- B. A legislator or committee of the legislature seeking DCS Information to perform official duties shall send a request to the presiding officer of the body of which the state legislator is a member and include the name of the person whose case record is to be reviewed and any other information that will

assist the Department in locating the record. The legislator shall also sign the request, confirming that the legislator understands that the DCS Information shall not be further disclosed unless authorized by A.R.S. § 8-807. The presiding officer shall forward the request to the Department within five workdays of receiving the request.

- C. The copying fee required under R21-1-110 does not apply to this Section.
- D. Within 10 workdays of receiving the request, the Department shall provide the requester with one of the following written responses:
 1. The requested DCS Information;
 2. A statement that the requested DCS Information does not exist;
 3. A statement that the Department cannot provide the requested DCS Information within 10 workdays, the reason for the delay and the anticipated time-frame for response; or
 4. A statement that the Department cannot provide the requested DCS Information, with the statutory citation and the reason for denial.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-109. Release of DCS Information in a Case of Child Abuse, Abandonment, or Neglect that has Resulted in a Fatality or Near Fatality

- A. A person who requests DCS Information under A.R.S. § 8-807.01 concerning a case of child abuse, abandonment, or neglect that resulted in a fatality or near fatality, shall send a written request to the Department.
- B. Upon receipt of the request, the Department shall stamp the receipt date on the request and begin gathering the requested DCS Information.
- C. Prior to release of DCS Information in a case of child abuse or neglect resulting in a fatality or near fatality, the Department shall consult with the County Attorney who shall promptly inform the Department if it believes the release would cause a specific material harm under A.R.S. § 8-807.01. The Department shall not release any information that the County Attorney indicates would cause specific material harm.
- D. The Department shall notify the requester in writing of the estimated copying fee. If the requester does not want to proceed, the requester shall notify the Department within 72 hours to cancel the request. If this notification is oral, the requester shall confirm the cancellation in writing.
- E. The requester shall pay the estimated copying fee before the Department copies any DCS Information.
- F. After receipt of the final copying fee, the Department shall provide DCS Information consistent with A.R.S. § 8-807 and A.R.S. § 8-807.01.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

R21-1-110. Fees

- A. If the Department determines a request for DCS Information will result in a copying fee, the Department shall notify the requester of the estimated fee before copying any DCS Information.
- B. Unless otherwise exempted by this Chapter, the Department may charge a copying fee at the current rate set by the Department, as provided on the DCS website at <https://dcs.az.gov>.
- C. The copying fee applies to both paper and electronic copies. If the DCS Information is requested in an electronic format, but

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does not already exist in an electronic format, DCS shall apply additional fees that reflect the actual cost of conversion to copy the DCS Information to an electronic format.

- D. The Department shall notify the requester in writing of the final copying fee.
- E. The Department shall reimburse the requester if final copying costs are less than the estimated copying fee.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4).

ARTICLE 2. ADCS COMPREHENSIVE HEALTH PLAN**R21-1-201. Definitions**

The definitions in A.R.S. § 8-501 and the following definitions apply to this Article.

1. "AHCCCS" means the Arizona Health Care Cost Containment System, which is the State's program for medical assistance available under Title XIX of the Social Security Act and state public insurance statutes, A.R.S. Title 36, Chapter 29.
2. "Child Safety Worker" means the same as A.R.S. § 8-801.
3. "Covered services" means those benefits as described in A.R.S. Title 36, Chapter 29, Article 1 and contained in the approved Medicaid State Plan.
4. "DCS CHP Member" means the same as in A.R.S. § 8-512, child who is:
 - a. In a voluntary placement under A.R.S. § 8-806.
 - b. In the custody of the Department in out-of-home placement.
 - c. In the custody of a probation department and placed in foster care. The Department shall not provide this care if the cost exceeds funds currently appropriated and available for that purpose.
5. "DCS Comprehensive Health Plan" or "DCS CHP" means the program authorized by A.R.S. § 8-512 and this Article.
6. "Department" or "DCS" means the Department of Child Safety.
7. "Medically necessary" means a covered service provided by a physician, or other licensed practitioner in the healing arts within the scope of practice under state law to prevent disease, disability, or other adverse health conditions or their progression, or to prolong life.
8. "Out-of-home care provider" means the person or entity with whom a child resides in out-of-home placement.
9. "Title XIX Member" means a DCS CHP Member who is eligible for benefits under Title XIX or Title XXI of the Social Security Act and is receiving all covered services including behavioral health services through DCS CHP.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 2518 (October 29, 2021), with an immediate effective date of October 5, 2021 (Supp. 21-4).

R21-1-202. Eligible Member

- A. The Department shall provide DCS CHP to a DCS CHP Member under A.R.S. § 8-512.
- B. The Department shall not provide DCS CHP benefits to:
 1. An individual who no longer meets the eligibility in A.R.S. § 8-512;
 2. A child under the Bureau of Indian Affairs foster care program; or

3. A child placed in Arizona by another state whether voluntarily or under jurisdiction of the court of another state.

- C. DCS CHP shall notify AHCCCS if a Title XIX and Title XXI eligible DCS CHP Member no longer meets the criteria for coverage in A.R.S. § 8-512 and this Article.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 2518 (October 29, 2021), with an immediate effective date of October 5, 2021 (Supp. 21-4).

R21-1-203. Exceptions, Limitations, and Exclusions

- A. DCS CHP shall not pay for:
 1. Non-medically necessary health services.
 2. Any health service that is not eligible for reimbursement by AHCCCS in 9 A.A.C. 22, Article 2, including cosmetic procedures, experimental treatment, and personal care items.
 3. The cost of care and services payable through any federal, state, county, or municipal program to which a DCS CHP Member may be entitled, except for the cost of care and services in excess of any such program.
 4. The cost of care and services payable through an insurance carrier that provides coverage for the DCS CHP Member under A.R.S. § 8-512, except for the cost of care and services in excess of any such insurance benefits.
 5. Any admission, service, item, or otherwise uncovered service identified in A.R.S. Title 36, Chapter 29, Article 1, or the approved Medicaid State Plan.
- B. A health provider shall not submit a bill to or seek payment from the following for any covered services:
 1. DCS CHP Member; or
 2. DCS CHP Member's:
 - a. Guardian,
 - b. Custodian,
 - c. Estate,
 - d. Foster parent, or
 - e. Birth parent.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2554, effective November 30, 2015 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 2518 (October 29, 2021), with an immediate effective date of October 5, 2021 (Supp. 21-4).

R21-1-204. Prior Authorization

- A. Healthcare providers may be required to obtain authorization from DCS CHP or delegated entity before services are rendered in order for those services to be paid for under this Article and A.R.S. § 8-512.
- B. DCS CHP shall not pay for any health service that requires prior authorization and was:
 1. Not submitted for prior authorization; or
 2. Submitted but prior authorization is not granted.
- C. Healthcare providers shall obtain prior authorization from DCS CHP for certain services according to the provisions of A.R.S. Title 36, Chapter 29, Article 1, and 9 A.A.C. 22, Article 1.
- D. In instances where a prior authorization is required for a service but not obtained by the healthcare provider, the healthcare provider shall not submit a claim or invoice for a service to any party, including:
 1. The Department;
 2. The Department's representatives;

8-453. Powers and duties

A. The director shall:

1. Carry out the purposes of the department prescribed in section 8-451.
2. Provide transparency by being open and accountable to the public for the actions of the department.
3. Develop a data system that enables persons and entities that are charged with a responsibility relating to child safety to access all relevant information relating to an abused, neglected or abandoned child as provided by law.
4. Subject to title 41, chapter 4, article 4 and, as applicable, articles 5 and 6, employ deputy directors and other key personnel based on qualifications that are prescribed by the director.
5. Adopt rules to implement the purposes of the department and the duties and powers of the director.
6. Petition, as necessary to implement the case plan established under section 8-824 or 8-845, for the appointment of a guardian or a temporary guardian under title 14, chapter 5 for children who are in custody of the department pursuant to court order. Persons applying to be guardians or temporary guardians under this section shall be fingerprinted. A foster parent or certified adoptive parent already fingerprinted is not required to be fingerprinted again, if the foster parent or certified adoptive parent is the person applying to be the guardian or temporary guardian.
7. Cooperate with other agencies of this state, county and municipal agencies, faith-based organizations and community social services agencies, if available, to achieve the purposes of this chapter.
8. Exchange information, including case specific information, and cooperate with the department of economic security for the administration of the department of economic security's programs.
9. Administer child welfare activities, including:
 - (a) Cross-jurisdictional placements pursuant to section 8-548.
 - (b) Providing the cost of care of:
 - (i) Children who are in temporary custody, are the subject of a dependency petition or are adjudicated by the court as dependent and who are in out-of-home placement, except state institutions.
 - (ii) Children who are voluntarily placed in out-of-home placement pursuant to section 8-806.
 - (iii) Children who are the subject of a dependency petition or are adjudicated dependent and who are in the custody of the department and ordered by the court pursuant to section 8-845 to reside in an independent living program pursuant to section 8-521.
 - (c) Providing services for children placed in adoption.
10. Formulate policies, plans and programs to effectuate the missions and purposes of the department.
11. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of funds.
12. Coordinate with, contract with or assist other departments, agencies and institutions of this state and local and federal governments in the furtherance of the department's purposes, objectives and programs.
13. Accept and disburse grants, matching funds and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.

14. Collect monies owed to the department.
15. Act as an agent of the federal government in furtherance of any functions of the department.
16. Carry on research and compile statistics relating to the child welfare program throughout this state, including all phases of dependency.
17. Cooperate with the superior court in all matters related to this title and title 13.
18. Provide the cost of care and transitional independent living services for a person under twenty-one years of age pursuant to section 8-521.01.
19. Ensure that all criminal conduct allegations and reports of imminent risk of harm are investigated.
20. Ensure the department's compliance with the Indian child welfare act of 1978 (P.L. 95-608; 92 Stat. 3069; 25 United States Code sections 1901 through 1963).
21. Strengthen relationships with tribal child protection agencies or programs.

B. The director may:

1. Take administrative action to improve the efficiency of the department.
2. Contract with a private entity to provide any functions or services pursuant to this title.
3. Apply for, accept, receive and expend public and private gifts or grants of money or property on the terms and conditions as may be imposed by the donor and for any purpose provided for by this title.
4. Reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business. Volunteers reimbursed for expenses are not eligible for workers' compensation under title 23, chapter 6.

C. The department shall administer individual and family services, including sections on services to children and youth and other related functions in furtherance of social service programs under the social security act, as amended, title IV, parts B and E, grants to states for aid and services to needy families with children and for child-welfare services, title XX, grants to states for services and other related federal acts and titles.

D. If the department has responsibility for the care, custody or control of a child or is paying the cost of care for a child, the department may serve as representative payee to receive and administer social security and veterans administration benefits and other benefits payable to the child. Notwithstanding any law to the contrary, the department:

1. Shall deposit, pursuant to sections 35-146 and 35-147, any monies it receives to be retained separate and apart from the state general fund on the books of the department of administration.
2. May use these monies to defray the cost of care and services expended by the department for the benefit, welfare and best interests of the child and invest any of the monies that the director determines are not necessary for immediate use.
3. Shall maintain separate records to account for the receipt, investment and disposition of monies received for each child.
4. On termination of the department's responsibility for the child, shall release any monies remaining to the child's credit pursuant to the requirements of the funding source or, in the absence of any requirements, shall release the remaining monies to:

(a) The child, if the child is at least eighteen years of age or is emancipated.

(b) The person who is responsible for the child if the child is a minor and not emancipated.

E. Subsection D of this section does not apply to benefits that are payable to or for the benefit of a child receiving services under title 36.

F. Notwithstanding any other law, a state or local governmental agency or a private entity is not subject to civil liability for the disclosure of information that is made in good faith to the department pursuant to this section.

G. Notwithstanding section 41-192, the department may employ legal counsel to provide legal advice to the director. The attorney general shall represent the department in any administrative or judicial proceeding pursuant to title 41, chapter 1, article 5.

H. The total amount of state monies that may be spent in any fiscal year by the department for foster care as provided in subsection A, paragraph 9, subdivision (b) of this section may not exceed the amount appropriated or authorized by section 35-173 for that purpose. This section does not impose a duty on an officer, agent or employee of this state to discharge a responsibility or to create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.

8-807.01. Incidents involving fatality or near fatality; definition

A. The department shall promptly provide DCS information to the public regarding a case of child abuse, abandonment or neglect that has resulted in a fatality or near fatality as follows:

1. The department shall provide preliminary information including at a minimum:

(a) In the case of a fatality, the name of the child who has died.

(b) The age, gender, county and general location of the residence of the child who has suffered a fatality or a near fatality.

(c) The fact that a child suffered a fatality or near fatality as the result of abuse, abandonment or neglect.

(d) The name, age and city, town or general location of the residence of the alleged perpetrator, if available, unless the disclosure would violate the privacy of victims of crime pursuant to article II, section 2.1, Constitution of Arizona.

(e) Whether there have been reports, or any current or past cases, of abuse, abandonment or neglect involving the child or the alleged perpetrator.

(f) Actions taken by the department in response to the fatality or near fatality of the child.

(g) A detailed synopsis of prior reports or cases of abuse, abandonment or neglect involving the child or the alleged perpetrator and of the actions taken or determinations made by the department in response to these reports or cases.

2. On request by any person, the department shall promptly provide additional DCS information to the requestor in a case of child abuse, abandonment or neglect that has resulted in a fatality or a near fatality. Before releasing additional DCS information, the department shall promptly notify the county attorney of any decision to release that information, and the county attorney shall promptly inform the department if it believes the release would cause a specific, material harm to a criminal investigation or prosecution. After consulting with the county attorney, pursuant to paragraph 3 of this subsection, the department shall produce to the requestor as much additional DCS information as promptly as possible about a case of child abuse, abandonment or neglect that resulted in a fatality or near fatality.

3. On request, the department shall continue to provide DCS information promptly to the public about a fatality or near fatality unless:

(a) After consultation with the county attorney, the county attorney demonstrates that release of particular DCS information would cause a specific, material harm to a criminal investigation or prosecution.

(b) The release would violate section 8-807, subsection A or L or the privacy of victims of crime pursuant to article II, section 2.1, Constitution of Arizona.

4. If any person believes that the county attorney has failed to demonstrate that release would cause a specific, material harm to a criminal investigation or prosecution, that person may file an action in superior court pursuant to title 39, chapter 1, article 2 and section 8-807, subsection J and request the court to review the DCS information in camera to determine if disclosure should be ordered.

5. Within ninety days after the date of the DCS report for a case involving a fatality or a near fatality, the department shall provide to the public a summary report that:

(a) May include any actions taken by the department in response to the case, any changes in policies or practices that have been made to address any issues raised in the review of the case and any recommendations for further

changes in policies, practices, rules or statutes to address those issues.

(b) Shall include the information prescribed in subsection B of this section if the child was residing in the child's home and in subsection C of this section if the child was placed in an out-of-home placement.

B. If the summary report prescribed in subsection A, paragraph 5 of this section involves a child who was residing in the child's home, the summary report shall contain a summary of all of the following:

1. Whether services pursuant to this chapter were being provided to the child, a member of the child's family or the person suspected of the abuse or neglect at the time of the incident and the date of the last contact before the incident between the entity providing the services and the person receiving the services.

2. Whether the child, a member of the child's family or the person suspected of the abuse or neglect was the subject of a DCS report at the time of the incident.

3. All involvement of the child's parents and of the person suspected of the abuse or neglect in a situation for which a DCS report was made or in services provided pursuant to this chapter in the five years preceding the incident involving a fatality or a near fatality.

4. Any investigation pursuant to a DCS report concerning the child, a member of the child's family or the person suspected of the abuse or neglect or services provided to the child or the child's family since the date of the incident involving a fatality or a near fatality.

C. If the summary report prescribed in subsection A, paragraph 5 of this section involves a child who was in out-of-home placement, the summary report shall include the name of any agency the licensee was licensed by, the licensing history of the out-of-home placement, including the type of license held by the operator of the placement, the period for which the placement has been licensed and a summary of all violations by the licensee and any other actions by the licensee or an employee of the licensee that constitute a substantial failure to protect and promote the health, safety and welfare of a child.

D. For the purposes of this section, "near fatality" means an act that, as certified by a physician, including the child's treating physician, places a child in serious or critical condition.

8-807. DCS information; public record; use; confidentiality; violation; classification; definition

A. DCS information shall be maintained by the department as required by federal law as a condition of the allocation of federal monies to this state. All exceptions for the public release of DCS information shall be construed as openly as possible under federal law.

B. The department, or a person who receives DCS information pursuant to this subsection, shall provide DCS information to a federal agency, a state agency, a tribal agency, a county or municipal agency, a law enforcement agency, a prosecutor, an attorney or a guardian ad litem representing a child victim of crime pursuant to article II, section 2.1, Constitution of Arizona, a school, a community service provider, a contract service provider or any other person that is providing services pursuant to this article or article 9, 10, 11, 12, 13 or 14 of this chapter:

1. To meet its duties to provide for the safety and permanency of a child, provide services to a parent, guardian or custodian or provide services to family members to strengthen the family pursuant to this article or article 9, 10, 11, 12, 13 or 14 of this chapter.
2. To enforce or prosecute any violation involving child abuse or neglect or to assert the rights of the child as a victim of a crime.
3. To provide information to a defendant after a criminal charge has been filed as required by an order of the criminal court.
4. To help investigate and prosecute any violation involving domestic violence as defined in section 13-3601 or violent sexual assault as prescribed in section 13-1423.

C. The department shall disclose DCS information to a court, a party in a dependency or termination of parental rights proceeding or the party's attorney, the foster care review board or a court appointed special advocate for the purposes of and as prescribed in this title.

D. The department shall disclose DCS information to a domestic relations, family or conciliation court if the DCS information is necessary to promote the safety and well-being of children. The court shall notify the parties that it has received the DCS information.

E. A person or agent of a person who is the subject of DCS information shall have access to DCS information concerning that person.

F. The department may provide:

1. DCS information to confirm, clarify, correct or supplement information concerning an allegation or actual instance of child abuse or neglect that has been made public by a source or sources outside the department.
2. DCS information to a person who is conducting bona fide research, the results of which might provide DCS information that is beneficial in improving the department.
3. Access to DCS information to the parent, guardian or custodian of a child if the DCS information is reasonably necessary to promote the safety, permanency and well-being of the child.
4. DCS information if an employee of the department has a reasonable belief that exigent circumstances exist. For the purposes of this paragraph, "exigent circumstances" means a condition or situation in which the death of or serious injury to a child will likely result in the near future without immediate intervention.

G. The department shall disclose DCS information to a county medical examiner or an alternate medical examiner directing an investigation into the circumstances surrounding a death pursuant to section 11-593.

H. Access to DCS information in the central registry shall be provided as prescribed in section 8-804.

I. To provide oversight of the department, the department shall provide access to DCS information to the following persons, if the DCS information is reasonably necessary for the person to perform the person's official duties:

1. Federal or state auditors.
2. Persons conducting any accreditation deemed necessary by the department.
3. A standing committee of the legislature or a committee appointed by the president of the senate or the speaker of the house of representatives for purposes of conducting investigations related to the legislative oversight of the department. This information shall not be further disclosed unless a court has ordered the disclosure of this information, the information has been disclosed in a public or court record, or the information has been disclosed in the course of a public meeting or court proceeding.
4. A legislator who requests DCS information in the regular course of the legislator's duties. A legislator may discuss this information with another legislator if the other legislator has signed the form prescribed in subdivision (d) of this paragraph in regard to the specific file that will be discussed. This information shall not be further disclosed unless a court has ordered the disclosure of this information, the information has been disclosed in a public or court record, or the information has been disclosed in the course of a public meeting or court proceeding. To request a file pursuant to this paragraph:
 - (a) The legislator shall submit a written request for DCS information to the presiding officer of the body of which the state legislator is a member. The request shall state the name of the person whose case file is to be reviewed and any other information that will assist the department in locating the file. The presiding officer may authorize a legislative staff member to attend with the legislator any meeting to review the file.
 - (b) The presiding officer shall forward the request to the department within five working days of the receipt of the request.
 - (c) The department shall make the necessary arrangements for the legislator to review the file at an office of the department, chosen by the legislator, within ten working days.
 - (d) The legislator and staff member shall sign a form, consistent with the requirements of this paragraph and paragraph 3 of this subsection, before reviewing the file, that outlines the confidentiality laws governing department files and penalties for further release of the information.
5. A citizen review panel as prescribed by federal law, a child fatality review team as provided in title 36, chapter 35 and the office of ombudsman-citizens aide.
6. An independent oversight committee established pursuant to section 41-3801.
7. The governor who shall not disclose any information unless a court has ordered the disclosure of the information, the information has been disclosed in a public or court record or the information has been disclosed in the course of a public meeting or court proceeding.

J. A person who has been denied DCS information regarding a fatality or near fatality caused by abuse, abandonment or neglect pursuant to subsection L of this section or section 8-807.01 may bring a special action pursuant to section 39-121.02 in the superior court to order the department to release that DCS information. A legislator has standing to bring or to join a special action regarding the release of DCS information or to challenge the redaction of released DCS information. The plaintiff shall provide notice to the county attorney, who has standing and may participate in the action. The court shall review the requested records in camera and order disclosure consistent with subsections A and L of this section and section 8-807.01. The court shall take reasonable steps to prevent any clearly unwarranted invasions of privacy and protect the privacy and dignity of victims of crime pursuant to article II, section 2.1, subsection C, Constitution of Arizona.

K. The department or a person who is not specifically authorized by this section to obtain DCS information may petition a judge of the superior court to order the department to release DCS information. The plaintiff shall provide notice to the county attorney and to the attorney and guardian ad litem for the child, who have standing and may participate in the action. The court shall review the requested records in camera and shall balance the rights of the parties who are entitled to confidentiality pursuant to this section against the rights of the parties who are seeking the release of the DCS information. The court may release otherwise confidential DCS information only if the rights of the parties seeking the DCS information and any benefits from releasing the DCS information outweigh the rights of the parties who are entitled to confidentiality and any harm that may result from releasing the DCS information. The court shall take reasonable steps to prevent any clearly unwarranted invasions of privacy and protect the privacy and dignity of victims of crime pursuant to article II, section 2.1, subsection C, Constitution of Arizona.

L. Except as provided in subsection M of this section, before it releases records under this section or section 8-807.01, the department shall take whatever precautions it determines are reasonably necessary to protect the identity and safety of a person who reports child abuse or neglect and to protect any other person if the department believes that disclosure of the DCS information would be likely to endanger the life or safety of any person. The department is not required by this section to disclose DCS information if the department demonstrates that disclosure would cause a specific, material harm to a department investigation. The department is not required by this section to disclose DCS information if, in consultation with the county attorney, the county attorney demonstrates that disclosure would cause a specific, material harm to a criminal investigation or prosecution.

M. A person who is the subject of an unfounded report or complaint made pursuant to this article or article 9, 10, 11, 12, 13 or 14 of this chapter and who believes that the report or complaint was made in bad faith or with malicious intent may petition a judge of the superior court to order the department to release the DCS information. The petition shall specifically set forth reasons supporting the person's belief that the report or complaint was made in bad faith or with malicious intent. The court shall review the DCS information in camera and the person filing the petition shall be allowed to present evidence in support of the petition. If the court determines that there is a reasonable question of fact as to whether the report or complaint was made in bad faith or with malicious intent and that disclosure of the identity of the person making the report or complaint would not be likely to endanger the life or safety of the person making the report or complaint, it shall provide a copy of the DCS information to the person filing the petition and the original DCS information is subject to discovery in a subsequent civil action regarding the making of the report or complaint.

N. The department shall provide the person who conducts a forensic medical evaluation with any records the person requests, including social history and family history regarding the child, the child's siblings and the child's parents or guardians.

O. The department shall provide DCS information on request to a prospective adoptive parent, foster parent or guardian, if the information concerns a child the prospective adoptive parent, foster parent or guardian seeks to adopt or provide care for.

P. If the department receives information that is confidential by law, the department shall maintain the confidentiality of the information as prescribed in the applicable law.

Q. A person may authorize the release of DCS information about the person but may not waive the confidentiality of DCS information concerning any other person.

R. The department may provide a summary of the outcome of a department investigation to the person who reported the suspected child abuse or neglect.

S. The department shall adopt rules to facilitate the accessibility of DCS information.

T. The department or a person who receives DCS information pursuant to subsection B of this section shall provide DCS information to law enforcement and a court to protect the safety of any employee of the

department or the office of the attorney general or to protect a family member of such an employee.

U. A person who receives DCS information shall maintain the confidentiality of the information and shall not further disclose the information unless the disclosure is authorized by law or a court order.

V. The department may charge a fee for copying costs required to prepare DCS information for release pursuant to this section or section 8-807.01.

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

X. For the purposes of this section, "DCS information" includes all information the department gathers during the course of an investigation conducted under this chapter from the time a file is opened and until it is closed. DCS information does not include information that is contained in child welfare agency licensing records.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)

Title 9, Chapter 28, Articles 6, 7



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 1, 2022; July 6, 2022; August 2, 2022

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 11, 2022

SUBJECT: ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
Title 9, Chapter 28, Articles 6 & 7

Summary

This Five-Year Review Report (5YRR) from the Arizona Health Care Cost Containment System (AHCCCS) relates to six (6) rules in Title 9, Chapter 28, Article 6 (RFP and Contract Process) and five (5) rules in Article 7 (Standards for Payments).

The rules in Article 6 relate to Request for Proposal and contract process for the Arizona Long-Term Care System (ALTCS). The ALTCS is health insurance for individuals who are age 65 or older, or who have a disability, and who require nursing facility level of care. Services may be provided in an institution or in a home or community-based setting. Pursuant to A.R.S. 36-2944, the director at least every five years shall prepare and issue a request for proposal and a proposed contract format to qualified group disability insurers, hospital and medical service corporations, health care services organizations and any other qualified public or private persons to be a program contractor and provide long-term care services. The director may adopt rules regarding the request for proposal process, which was done in Title 9, Chapter 28, Article 6.

The rules in Article 7 relate to Standards for Payments regarding ALTCS. Specifically, these rules describe general reimbursement requirements, the requirements for assessments to nursing facilities, the requirements for supplemental payments for nursing facilities, and the criteria for determining the county that is financially responsible for the state's share of the ALTCS funding as referenced in A.R.S. §36-2913.

In the previous 5YRR for these rules, approved by the Council in October 2017, AHCCCS did not indicate any proposed changes to the rules.

Proposed Action

In the current report, AHCCCS does not propose to make any changes to the rules.

1. Has the agency analyzed whether the rules are authorized by statute?

AHCCCS cites both general and specific authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

AHCCCS indicates that for Articles 6 and 7 there has not been a rulemaking since the last 5YRR. Therefore, the economic impact is not significantly different from the original economic impact.

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

AHCCCS believes the rules as written impose the least burden and cost when meeting their objectives.

4. Has the agency received any written criticisms of the rules over the last five years?

AHCCCS indicates it has not received written criticisms of the rules in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

AHCCCS indicates the rules are clear, concise, and understandable.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

AHCCCS indicates the rules are consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

AHCCCS indicates the rules are effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

AHCCCS indicates the rules are enforced as written.

9. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

AHCCCS indicates the rules are not more stringent than corresponding federal law.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable. The rules do not require a permit, license, or agency authorization.

11. Conclusion

This 5YRR relates to six (6) rules in Title 9, Chapter 28, Article 6 (RFP and Contract Process) and five (5) rules in Article 7 (Standards for Payments). AHCCCS indicates the rules are generally clear, concise, understandable, consistent, effective, and enforced as written. AHCCCS does not intend to take any action regarding these rules.

Council staff recommends approval of this report.

January 28, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsins, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: AHCCCS Title 9, Chapter 28, Article 6, Five Year Review Report

Dear Ms. Sornsins:

Please find enclosed the Five-Year Review Report of AHCCCS for Title 9, Chapter 28, Article 6 which is due on January 31, 2022.

AHCCCS hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Nicole Fries at 602-417-4232 or nicole.fries@azahcccs.gov.

Sincerely,



Kasey Rogg
Assistant Director

Attachments

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

Not applicable.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Administration believes the rules as written impose the least burden and cost when meeting their objectives.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

13. **For rules adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

Not applicable.

14. **Proposed course of action:**

The agency did not provide any recommended changes to this article, therefore there is no proposed course of action.

January 28, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsins, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: AHCCCS Title 9, Chapter 28, Article 7, Five Year Review Report

Dear Ms. Sornsins:

Please find enclosed the Five-Year Review Report of AHCCCS for Title 9, Chapter 28, Article 7 which is due on January 31, 2022.

AHCCCS hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Nicole Fries at 602-417-4232 or nicole.fries@azahcccs.gov.

Sincerely,



Kasey Rogg
Assistant Director

Attachments

Not applicable.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Administration believes the rules as written impose the least burden and cost when meeting their objectives.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

13. **For rules adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

Not applicable.

14. **Proposed course of action:**

The agency has no recommended changes, so there is no corresponding course of action proposed.

- a. Re-evaluating and revising the case management plan when the member transfers to another facility, transfers to a hospital, has a change in level of care; and
 - b. Monitoring receipt of services by a member;
5. Assist the member to maintain or progress toward the highest level of functioning;
 6. Ensure that records are transferred when the member is transferred from a facility or provider to a new facility or provider;
 7. Perform additional monitoring of a member with rehabilitation potential and whose condition is fragile or unstable, whose case management plan is marginally cost effective, or whose use of medical and hospital services is unusual;
 8. Arrange behavioral health services, if necessary. The case manager shall have initial and quarterly consultation and collaboration with a behavioral health professional to review the treatment plan, unless the case manager meets the definition of a behavioral health professional under A.A.C. R9-20-101.
- C. A program contractor shall submit a service plan and other information related to the case management plan upon request to the Administration.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective July 13, 1992 (Supp. 92-3). Amended effective November 5, 1993 (Supp. 93-4). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 18 A.A.R. 3380, effective January 1, 2013 (Supp. 12-4).

R9-28-511. Quality Management/Utilization Management (QM/UM) Requirements

A program contractor shall:

1. Comply with all requirements specified in A.A.C. R9-22-522; and
2. Submit a quarterly utilization control report within time lines specified in contract, and meet the requirements in 42 CFR 456 Subparts C, D, and F, October 1, 2004, incorporated by reference in R9-28-505.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended under an exemption from the provisions of the Administrative Procedure Act effective March 1, 1993 (Supp. 93-1). Amended effective November 5, 1993 (Supp. 93-4). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 5 A.A.R. 874, effective March 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

R9-28-512. Expired**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective December 8, 1997 (Supp. 97-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4851, effective October 9, 2002 (Supp. 02-4).

R9-28-513. Program Compliance Audits

The Administration shall meet the requirements specified under A.A.C. R9-22-521 for a program contractor.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

R9-28-514. Release of Safeguarded Information by the Administration and Contractors

The Administration, program contractors, providers, and noncontracting providers shall meet the requirements specified under A.A.C. R9-22-512 for an ALTCS applicant, or member.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

R9-28-515. Repealed**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Section repealed by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

ARTICLE 6. RFP AND CONTRACT PROCESS

Article 6, consisting of Sections R9-28-601 through R9-28-610, repealed; new Article 6, consisting of Sections R9-28-601 through R9-28-608, adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).

R9-28-601. General Provisions

- A. The Director has full operational authority to adopt rules for the RFP process and the award of contract under A.R.S. § 36-2944.
- B. The Administration shall follow the provisions under 9 A.A.C. 22, Article 6 for members, subject to limitations and exclusions under that Article, unless otherwise specified in this Chapter.
- C. The Administration shall award contracts under A.R.S. § 36-2932 to provide services under A.R.S. § 36-2939.
- D. The Administration is exempt from the procurement code under A.R.S. § 41-2501.
- E. The Administration and contractors shall retain all records relating to contract compliance for five years under A.R.S. § 36-2932 and dispose of the records under A.R.S. § 41-2550.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Amended by final rulemaking at 5 A.A.R. 874, effective March 4, 1999 (Supp. 99-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-602. RFP

The ALTCS RFP for a program contractor serving members who are EPD shall meet the requirements of A.R.S. §§ 36-2944, A.R.S. § 36-2939, A.A.C. R9-22-602, and Articles 2 and 11 of this Chapter.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000

(Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-603. Contract Award

The Administration shall award a contract under A.R.S. § 36-2944 and A.A.C. R9-22-603.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-604. Contract or Proposal Protests; Appeals

Contract or proposal protests or appeals shall be under A.A.C. R9-22-604 and 9 A.A.C. 34.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2502, effective November 13, 2012 (Supp. 12-3).

R9-28-605. Waiver of Contractor's Subcontract with Hospitals

A contractor's subcontract with hospitals may be waived under A.A.C. R9-22-605.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-606. Contract Compliance Sanction

- A.** The Administration shall follow sanction provisions under A.A.C. R9-22-606.
- B.** The Administration shall apply remedies found in 42 CFR 488, Subpart F, effective January 1, 2012, incorporated by reference and on file with the Administration and the Office of the Secretary of State, for a nursing facility that does not meet requirements of participation under 42 U.S.C. 1396r. This incorporation by reference contains no future editions or amendments.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2502, effective November 13, 2012 (Supp. 12-3).

R9-28-607. Repealed

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-608. Repealed

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-609. Repealed

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Section repealed by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).

R9-28-610. Repealed

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended under an exemption from the provisions of the Administrative Procedure Act effective March 1, 1993 (Supp. 93-1). Section repealed by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-28-701. Standards for Payment Related Definitions

Definitions. In this Article, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, the following phrase has the following meaning unless the context of the Article explicitly requires another meaning:

"County of fiscal responsibility" means the county that is financially responsible for the state's share of ALTCS funding.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 3165, effective October 1, 2005 (Supp. 05-3).

R9-28-701.10. General Requirements

The following Sections of A.A.C. Chapter 22, Articles 2 and 7, are applicable to reimbursement for services provided under the ALTCS program, except that the term "program contractor" shall be substituted for "contractor."

1. Scope of the Administration's and Contractor's Liability, R9-22-701.10;
2. Charges to Members, R9-22-702;
3. Payments by the Administration or by a program contractor, R9-22-703 and R9-22-705;
4. Contractor's Liability to Hospitals for the Provision of Emergency and Post-stabilization Care, R9-22-709;
5. Payment for Non-hospital services, R9-22-710;
6. Specialty Contracts, R9-22-712(G)(3), R9-22-712.01(10) and Article 2;

(Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-603. Contract Award

The Administration shall award a contract under A.R.S. § 36-2944 and A.A.C. R9-22-603.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-604. Contract or Proposal Protests; Appeals

Contract or proposal protests or appeals shall be under A.A.C. R9-22-604 and 9 A.A.C. 34.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2502, effective November 13, 2012 (Supp. 12-3).

R9-28-605. Waiver of Contractor's Subcontract with Hospitals

A contractor's subcontract with hospitals may be waived under A.A.C. R9-22-605.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-606. Contract Compliance Sanction

- A.** The Administration shall follow sanction provisions under A.A.C. R9-22-606.
- B.** The Administration shall apply remedies found in 42 CFR 488, Subpart F, effective January 1, 2012, incorporated by reference and on file with the Administration and the Office of the Secretary of State, for a nursing facility that does not meet requirements of participation under 42 U.S.C. 1396r. This incorporation by reference contains no future editions or amendments.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2502, effective November 13, 2012 (Supp. 12-3).

R9-28-607. Repealed

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Amended effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-608. Repealed

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-609. Repealed

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Section repealed by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).

R9-28-610. Repealed

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended under an exemption from the provisions of the Administrative Procedure Act effective March 1, 1993 (Supp. 93-1). Section repealed by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-28-701. Standards for Payment Related Definitions

Definitions. In this Article, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, the following phrase has the following meaning unless the context of the Article explicitly requires another meaning:

"County of fiscal responsibility" means the county that is financially responsible for the state's share of ALTCS funding.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Section repealed; new Section made by final rulemaking at 11 A.A.R. 3165, effective October 1, 2005 (Supp. 05-3).

R9-28-701.10. General Requirements

The following Sections of A.A.C. Chapter 22, Articles 2 and 7, are applicable to reimbursement for services provided under the ALTCS program, except that the term "program contractor" shall be substituted for "contractor."

1. Scope of the Administration's and Contractor's Liability, R9-22-701.10;
2. Charges to Members, R9-22-702;
3. Payments by the Administration or by a program contractor, R9-22-703 and R9-22-705;
4. Contractor's Liability to Hospitals for the Provision of Emergency and Post-stabilization Care, R9-22-709;
5. Payment for Non-hospital services, R9-22-710;
6. Specialty Contracts, R9-22-712(G)(3), R9-22-712.01(10) and Article 2;

7. Payments by the Administration for Hospital Services Provided to an Eligible Person, R9-22-712; R9-22-712.01 and R9-22-712.10;
8. Overpayment and Recovery of Indebtedness, R9-22-713;
9. Payments to Providers, R9-22-714;
10. Hospital Rate Negotiations, R9-22-715; and
11. Reinsurance, R9-22-720.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

R9-28-702. Repealed Nursing Facility Assessment

- A. For purposes of this Section, in addition to the definitions under A.R.S. § 36-2999.51, the following terms have the following meaning unless the context specifically requires another meaning:

“820 transaction” means the standard health care premium payments transaction required by 45 CFR 162.1702.

“Assessment year” means the 12 month period beginning October 1st each year.

“Nursing Facility Assessment” means a tax paid by a qualifying nursing facility to the Department of Revenue on a quarterly basis established under A.R.S. § 36-2999.52.

“Medicaid days” means days of nursing facility services paid for by the Administration or its contractors as the primary payor and as reported in AHCCCS’ claim and encounter data.

“Medicare days” means resident days where the Medicare program, a Medicare advantage or special needs plan, or the Medicare hospice program is the primary payor.

“Payment year” means the 12 month period beginning October 1st each year. “Payment year” means the 12 month period beginning October 1st each year.

- B. Subject to Centers for Medicare and Medicaid Services (CMS) approval, effective October 1, 2012, nursing facilities shall be subject to a provider assessment payable on a quarterly basis.
- C. All nursing facilities licensed in the state of Arizona shall be subject to the provider assessment except for:
 1. A continuing care retirement community,
 2. A facility with 58 or fewer beds,
 3. A facility designated by the Arizona Department of Health Services as an Intermediate Care Facility for the Mentally Retarded,
 4. A tribally owned or operated facility located on a reservation, or
 5. Arizona Veteran’s Homes.
- D. The Administration shall calculate the prospective nursing facility provider assessment for qualifying nursing facilities as follows:
 1. The Administration shall utilize each nursing facility’s Uniform Accounting Report (UAR) submitted to the Arizona Department of Health Services as of August 1st immediately preceding the assessment year. In addition, by August 1st each year, each nursing facility shall provide the Administration with any additional information necessary to determine the assessment. For any nursing facility that does not provide by August 1st the additional information requested by the Administration, the Administration shall determine the assessment based on the information available.

2. For each nursing facility, other than a nursing facility noted in subsection (D)(3), the provider assessment is calculated by multiplying the nursing facility’s non-Medicare resident day data for each assessment year by \$7.50.
3. For a nursing facility with the number of annual Medicaid days greater than or equal to the number required to achieve a slope of at least 1 applying the uniformity tax waiver test described in 42 CFR 433.68(e)(2), the provider assessment is calculated by multiplying the nursing facility’s non-Medicare resident day data for each assessment year by \$1.00.
4. The number of annual Medicaid days used in subsection (D)(3) shall be recalculated each August 1, to achieve a slope of at least 1 applying the uniformity tax waiver test described in 42 CFR 433.68(e)(2).
5. The assessment calculated under subsections (D)(2), (D)(3) and (D)(4), shall not exceed 3.5 percent of aggregate net patient service revenue of all assessed providers.
6. The Administration will forward the provider assessment by facility to the Department of Revenue by no later than December preceding the assessment year.
7. In the event a nursing facility closes during the assessment year, the nursing facility shall cease to be responsible for the portion of the assessment applied to the dates the nursing facility is not operating.
8. In the event a nursing facility begins operation during the assessment year, that facility would have no responsibility for the assessment until such time as the facility has UAR data that falls within the collection period for the assessment calculation.
9. In the event a nursing facility has a change of ownership such that the facility remains open and the ownership of the facility changes, the assessment liability transfers with the change in ownership.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3340, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 3244, effective October 1, 2005 (Supp. 05-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 19 A.A.R. 137, effective January 8, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 4168, effective February 1, 2014 (Supp. 13-4).

R9-28-703. Nursing Facility Supplemental Payments

- A. Nursing Facility Supplemental Payments
1. Using Medicaid resident bed day information from the most recent and complete twelve months of adjudicated claims and encounter data, for every combination of contractor and every facility eligible for a supplemental payment, the Administration shall determine annually a ratio equal to the number of bed days for the facility paid by each contractor divided by the total number of bed days paid to all facilities by all contractors and the Administration.
 2. Using the same information as used in (A)(1), for every facility eligible for a supplemental payment, the Administration shall determine annually a ratio equal to the number of bed days for the facility paid by the Administration divided by the total number of bed days paid to all facilities by all contractors and the Administration.

3. Quarterly, each contractor shall make payments to each facility in an amount equal to 98% of the amounts identified as Nursing Facility Enhanced Payments in the 820 transaction sent from AHCCCS to the contractor for the quarter multiplied by the percentage determined in subsection (A)(2) applicable to the contractor and to each facility.
 4. Quarterly, the Administration shall make payments to each facility in an amount equal to 99% of the amounts collected during the preceding quarter under R9-28-702, less amounts collected and used to fund the Nursing Facility Enhanced Payments included in the capitation paid to contractors and the corresponding federal financial participation, multiplied by the percentage determined in subsection (A)(2) applicable to the Administration and to each facility. The Administration shall make the supplemental payments to the nursing facilities within 20 calendar days of the determination of the quarterly supplemental payment.
 5. Neither the Administration nor the Contractors shall be required to make quarterly payments to facilities otherwise required by subsections (A)(3) or (A)(4) until the assessment collected and actually available in the nursing facility assessment fund, plus the corresponding federal financial participation, are equal to or greater than 101% of the amount necessary for contractors to make the payments to facilities described in subsections (A)(4) and (A)(5).
 6. Contractors shall not be required to make quarterly payments to facility otherwise required by subsection (A)(4) until the Administration has made a retroactive adjustment to the capitation rates paid to contractors to correct the Nursing Facility Enhanced payments based on actual member months for the specified quarter.
- B.** Each contractor must pay each facility the amount computed within 20 calendar days of receiving the nursing facility enhanced payment from the Administration. The contractors must confirm each payment and payment date to the Administration within 20 calendar days from receipt of the funds.
- C.** After each assessment year, the Administration shall reconcile the payments made by contractors under subsection (A) and (B) to the portion of the annual collections under R9-28-702 attributable to Medicaid resident bed days paid for by contractors for the same year, less one percent, plus available federal financial participation. The proportion of each nursing facility's Medicaid resident bed days as described in subsection (A)(2)(ii) shall be used to calculate the reconciliation amounts. Contractors shall make additional payments to or recoup payments from nursing facilities based on the reconciliation in compliance with the requirements of subsection (B).
- D.** General requirements for all payments.
1. A facility must be open on the date the supplemental payment is made in order to receive a payment. In the event a nursing facility closes during the assessment year, the nursing facility shall cease to be eligible for supplemental payments.
 2. In the event a nursing facility begins operation during the assessment year, that facility shall not receive a supplemental payment until such time as the facility has claims and encounter data that falls within the collection period for the payment calculation.
 3. In the event a nursing facility has a change of ownership, payments shall be made to the owner of the facility as of the date of the supplemental payment.
 4. Subsection (E)(3) shall not be interpreted to prohibit the current and prior owner from agreeing to a transfer of the payment from the current owner to the prior owner.
- E.** The Arizona Veterans' Homes are not eligible for supplemental payments.
- Historical Note**
- Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3340, effective July 15, 2002 (Supp. 02-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1). New Section made by final rulemaking at 19 A.A.R. 137, effective January 8, 2013 (Supp. 13-1). Amended by final rulemaking at 19 A.A.R. 4168, effective February 1, 2014 (Supp. 13-4).
- R9-28-704. Repealed**
- Historical Note**
- Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3340, effective July 15, 2002 (Supp. 02-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).
- R9-28-705. Repealed**
- Historical Note**
- Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective April 25, 1990 (Supp. 90-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended effective November 5, 1993 (Supp. 93-4). Amended by final rulemaking at 5 A.A.R. 874, effective March 4, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 3165, effective October 1, 2005 (Supp. 05-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).
- R9-28-706. Repealed**
- Historical Note**
- Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended subsections (A) and (B) effective June 6, 1989 (Supp. 89-2). Amended effective April 25, 1990 (Supp. 90-2). Amended effective November 5, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 10 A.A.R. 4658, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 3852, effective November 12, 2005 (Supp. 05-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).
- R9-28-707. Repealed**
- Historical Note**
- Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

Editor's Note: The following Section was amended under an exemption from the provisions of the Administrative Procedure Act which means that the amendment was not reviewed by the Governor's Regulatory Review Council; the agency did not submit a notice of proposed rulemaking for publication in the Arizona Administrative Register; the agency was not required to hold public hearings on the rulemaking; and the Attorney General has not certified the rule. This Section was subsequently amended through the regular rulemaking process.

R9-28-708. Repealed

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective April 26, 1989 (Supp. 89-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended effective November 5, 1993 (Supp. 93-4). Amended by final rulemaking at 11 A.A.R. 3852, effective November 12, 2005 (Supp. 05-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

R9-28-709. Repealed

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended subsection (B) effective June 6, 1989 (Supp. 89-2). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3340, effective July 15, 2002 (Supp. 02-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

R9-28-710. Repealed

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended subsections (C) and (D) effective June 6, 1989 (Supp. 89-2). Amended effective September 22, 1997 (Supp. 97-3). Section repealed by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-711. Repealed

Historical Note

Adopted effective November 5, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3340, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 3165, effective October 1, 2005 (Supp. 05-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

R9-28-712. County of Fiscal Responsibility

A. General requirements.

1. The Administration shall determine the county of fiscal responsibility under A.R.S. § 36-2913 for an applicant or member who is elderly or physically disabled.
2. A program contractor shall cover services and provisions specified in 9 A.A.C. 22, Articles 2 and 7 and Article 11 of this Chapter.

B. Criteria for determining county of fiscal responsibility for an applicant.

1. If the applicant resides in the applicant's own home, the county of fiscal responsibility is the county where the applicant currently resides.
2. This applies only if subsection (B)(3) does not apply. If the applicant is residing in a NF or alternative HCBS set-

ting, the county of fiscal responsibility is the county in which the applicant last resided in the applicant's own home.

3. If the applicant moves from another state directly into a NF or alternative HCBS setting in this state, the county of fiscal responsibility is the county in which the person currently resides.
4. If the applicant moves from the Arizona State Hospital (ASH) into a NF or alternative HCBS setting, or is an inmate of a public institution moving from the public institution into a NF or alternative HCBS setting, the county of fiscal responsibility is the county in which the applicant resided in the applicant's own home prior to admission to ASH or the public institution.

C. Criteria for determining if there is a change in county of fiscal responsibility for a member moving from one county to another county.

1. No change in the county of fiscal responsibility. There is no change in the county of fiscal responsibility for a member if:
 - a. The member moves from a NF to another NF in a different county,
 - b. The member moves from a NF to an alternative HCBS setting in a different county,
 - c. The member moves from an alternative HCBS setting to another alternative HCBS setting in a different county,
 - d. The member moves from an alternative HCBS setting to a NF in a different county,
 - e. The member moves from the member's own home to an alternative HCBS setting in a different county,
 - f. The member moves from the member's own home to a NF in a different county,
 - g. The member moves from a NF or alternative HCBS setting into ASH, or
 - h. The member moves from ASH to a NF or alternative HCBS setting.
2. Change in the county of fiscal responsibility. If a member moves from one county to another, the county of fiscal responsibility changes to the new county if the member moves from:
 - a. An alternative HCBS setting to the member's own home in a different county,
 - b. A NF to the member's own home in a different county,
 - c. The member's own home to the member's own home in a different county, or
 - d. ASH to the member's own home.
3. Transfers between program contractors. The county of fiscal responsibility changes if the Administration transfers a member from one program contractor to a different program contractor and if:
 - a. Both program contractors agree, or
 - b. The Administration determines that it is in the best interest of the member.

Historical Note

Adopted effective November 4, 1998 (Supp. 98-4). Amended by final rulemaking at 8 A.A.R. 3340, effective July 15, 2002 (Supp. 02-3).

R9-28-713. Repealed

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 3165, effective October 1, 2005 (Supp. 05-3). Section repealed by final rulemak-

ing at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

R9-28-714. Repealed

Historical Note

New Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

R9-28-715. Repealed

Historical Note

New Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

ARTICLE 8. TEFRA LIENS AND RECOVERIES

R9-28-801. Definitions Related to TEFRA Liens

In addition to the definitions in A.R.S. §§ 36-2901 and 36-2931, 9 A.A.C. 22, Article 1, and 9 A.A.C. 28, Article 1, the following definitions apply to this Article:

“Consecutive days” means days following one after the other without an interruption resulting from a discharge.

“File” means the date that AHCCCS receives a request for a State Fair Hearing under R9-28-805, as established by a date stamp on the request or other record of receipt.

“Home” means property in which a member has an ownership interest and that serves as the member’s principal place of residence. This property includes the shelter in which a member resides, the land on which the shelter is located, and related outbuildings.

“Recover” means that AHCCCS takes action to collect from a claim.

“TEFRA lien” means a lien under 42 U.S.C. 1396p of the Tax Equity and Fiscal Responsibility Act of 1982.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Section repealed; new Section adopted effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-801.01. TEFRA Liens – General

Purpose. The purpose of TEFRA is to allow AHCCCS to file a lien on an AHCCCS member’s interest in any real property before the member is deceased, including but not limited to life estates and beneficiary deeds.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-802. TEFRA Liens – Affected Members

- A. Except for members under R9-28-803, AHCCCS shall file a TEFRA lien against the real property of all members who are:
1. Receiving ALTCS services,
 2. 55 years of age or older, and
 3. Permanently institutionalized.

- B. A rebuttable presumption exists that a member is permanently institutionalized if the member has continually resided in a nursing facility, ICF/MR, or other medical institution defined in 42 CFR 435.1010 for 90 or more consecutive days. A member may rebut the presumption by providing a written opinion from a treating physician, rendered to a reasonable degree of medical certainty, that the member’s condition is likely to improve to the point that the member will be discharged from the medical institution and will be capable of returning home by a date certain.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Section repealed; new Section adopted effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-803. TEFRA Liens – Prohibitions

AHCCCS shall not file a TEFRA lien against a member’s home if one of the following individuals is lawfully residing in the member’s home:

1. Member’s spouse;
2. Member’s child who is under the age of 21;
3. Member’s child who is blind or disabled under 42 U.S.C. 1382c; or
4. Member’s sibling who has an equity interest in the home and who was residing in the member’s home for at least one year immediately before the date the member was admitted to a nursing facility, ICF/MR, or other medical institution as defined under 42 CFR 435.1010.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Section repealed; new Section adopted effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-804. TEFRA Liens – AHCCCS Notice of Intent

- A. Time-frame. At least 30 days before filing a TEFRA lien, AHCCCS shall send the member or member’s representative a Notice of Intent.
- B. Content of the Notice of Intent. The Notice of Intent shall include the following information:
1. A description of a TEFRA lien and the action that AHCCCS intends to take,
 2. How a TEFRA lien affects a member’s property,
 3. The legal authority for filing a TEFRA lien,
 4. The time-frames and procedures involved in filing a TEFRA lien, and
 5. The member’s right to request an exemption.
- C. Request for exemption. A member or a member’s representative may request an exemption. To request an exemption the member or the member’s representative shall submit a written statement to AHCCCS within 30 days from the receipt of the Notice of Intent describing the factual basis for a claim that the property should be exempt from placement of a TEFRA lien or from recovery of lien based on R9-28-802, R9-28-803, or R9-

36-2932. Arizona long-term care system; powers and duties of the director; expenditure limitation

A. The Arizona long-term care system is established. The system includes the management and delivery of hospitalization, medical care, institutional services and home and community based services to members through the administration, the program contractors and providers pursuant to this article together with federal participation under title XIX of the social security act. The director in the performance of all duties shall consider the use of existing programs, rules and procedures in the counties and department where appropriate in meeting federal requirements.

B. The administration has full operational responsibility for the system, which shall include the following:

1. Contracting with and certification of program contractors in compliance with all applicable federal laws.
2. Approving the program contractors' comprehensive service delivery plans pursuant to section 36-2940.
3. Providing by rule for the ability of the director to review and approve or disapprove program contractors' requests for proposals for providers and provider subcontracts.
4. Providing technical assistance to the program contractors.
5. Developing a uniform accounting system to be implemented by program contractors and providers of institutional services and home and community based services.
6. Conducting quality control on eligibility determinations and preadmission screenings.
7. Establishing and managing a comprehensive system for assuring the quality of care delivered by the system as required by federal law.
8. Establishing an enrollment system.
9. Establishing a member case management tracking system.
10. Establishing and managing a method to prevent fraud by applicants, members, eligible persons, program contractors, providers and noncontracting providers as required by federal law.
11. Coordinating benefits as provided in section 36-2946.
12. Establishing standards for the coordination of services.
13. Establishing financial and performance audit requirements for program contractors, providers and noncontracting providers.
14. Prescribing remedies as required pursuant to 42 United States Code section 1396r. These remedies may include the appointment of temporary management by the director, acting in collaboration with the director of the department of health services, in order to continue operation of a nursing care institution providing services pursuant to this article.
15. Establishing a system to implement medical child support requirements, as required by federal law. The administration may enter into an intergovernmental agreement with the department of economic security to implement this paragraph.
16. Establishing requirements and guidelines for the review of trusts for the purposes of establishing eligibility for the system pursuant to section 36-2934.01 and posteligibility treatment of income pursuant to subsection L of this section.

17. Accepting the delegation of authority from the department of health services to enforce rules that prescribe minimum certification standards for adult foster care providers pursuant to section 36-410, subsection B. The administration may contract with another entity to perform the certification functions.

18. Assessing civil penalties for improper billing as prescribed in section 36-2903.01, subsection K.

C. For nursing care institutions and hospices that provide services pursuant to this article, the director shall contract periodically as deemed necessary and as required by federal law for a financial audit of the institutions and hospices that is certified by a certified public accountant in accordance with generally accepted auditing standards or conduct or contract for a financial audit or review of the institutions and hospices. The director shall notify the nursing care institution and hospice at least sixty days before beginning a periodic audit. The administration shall reimburse a nursing care institution or hospice for any additional expenses incurred for professional accounting services obtained in response to a specific request by the administration. On request, the director of the administration shall provide a copy of an audit performed pursuant to this subsection to the director of the department of health services or that person's designee.

D. Notwithstanding any other provision of this article, the administration may contract by an intergovernmental agreement with an Indian tribe, a tribal council or a tribal organization for the provision of long-term care services pursuant to section 36-2939, subsection A, paragraphs 1, 2, 3 and 4 and the home and community based services pursuant to section 36-2939, subsection B, paragraph 2 and subsection C, subject to the restrictions in section 36-2939, subsections D and E for eligible members.

E. The director shall require as a condition of a contract that all records relating to contract compliance are available for inspection by the administration subject to subsection F of this section and that these records are maintained for five years. The director shall also require that these records are available on request of the secretary of the United States department of health and human services or its successor agency.

F. Subject to applicable law relating to privilege and protection, the director shall adopt rules prescribing the types of information that are confidential and circumstances under which that information may be used or released, including requirements for physician-patient confidentiality. Notwithstanding any other law, these rules shall provide for the exchange of necessary information among the program contractors, the administration and the department for the purposes of eligibility determination under this article.

G. The director shall adopt rules to specify methods for the transition of members into, within and out of the system. The rules shall include provisions for the transfer of members, the transfer of medical records and the initiation and termination of services.

H. The director shall adopt rules that provide for withholding or forfeiting payments made to a program contractor if it fails to comply with a provision of its contract or with the director's rules.

I. The director shall:

1. Establish by rule the time frames and procedures for all grievances and requests for hearings consistent with section 36-2903.01, subsection B, paragraph 4.

2. Apply for and accept federal monies available under title XIX of the social security act in support of the system. In addition, the director may apply for and accept grants, contracts and private donations in support of the system.

3. Not less than thirty days before the administration implements a policy or a change to an existing policy relating to reimbursement, provide notice to interested parties. Parties interested in receiving notification of policy changes shall submit a written request for notification to the administration.

J. The director may apply for federal monies available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state monies appropriated for

the administration of the system may be used as matching monies to secure federal monies pursuant to this subsection.

K. The director shall adopt rules that establish requirements of state residency and qualified alien status as prescribed in section 36-2903.03. The administration shall enforce these requirements as part of the eligibility determination process. The rules shall also provide for the determination of the applicant's county of residence for the purpose of assignment of the appropriate program contractor.

L. The director shall adopt rules in accordance with the state plan regarding posteligibility treatment of income and resources that determine the portion of a member's income that shall be available for payment for services under this article. The rules shall provide that a portion of income may be retained for:

1. A personal needs allowance for members receiving institutional services of at least fifteen per cent of the maximum monthly supplemental security income payment for an individual or a personal needs allowance for members receiving home and community based services based on a reasonable assessment of need.
2. The maintenance needs of a spouse or family at home in accordance with federal law. The minimum resource allowance for the spouse or family at home is twelve thousand dollars adjusted annually by the same percentage as the percentage change in the consumer price index for all urban consumers (all items; United States city average) between September 1988 and the September before the calendar year involved.
3. Expenses incurred for noncovered medical or remedial care that are not subject to payment by a third party payor.

M. In addition to the rules otherwise specified in this article, the director may adopt necessary rules pursuant to title 41, chapter 6 to carry out this article. Rules adopted by the director pursuant to this subsection may consider the differences between rural and urban conditions on the delivery of services.

N. The director shall not adopt any rule or enter into or approve any contract or subcontract that does not conform to federal requirements or that may cause the system to lose any federal monies to which it is otherwise entitled.

O. The administration, program contractors and providers may establish and maintain review committees dealing with the delivery of care. Review committees and their staff are subject to the same requirements, protections, privileges and immunities prescribed pursuant to section 36-2917.

P. If the director determines that the financial viability of a nursing care institution or hospice is in question, the director may require a nursing care institution and a hospice providing services pursuant to this article to submit quarterly financial statements within thirty days after the end of its financial quarter unless the director grants an extension in writing before that date. Quarterly financial statements submitted to the department shall include the following:

1. A balance sheet detailing the institution's assets, liabilities and net worth.
2. A statement of income and expenses, including current personnel costs and full-time equivalent statistics.

Q. The director may require monthly financial statements if the director determines that the financial viability of a nursing care institution or hospice is in question. The director shall prescribe the requirements of these statements.

R. The total amount of state monies that may be spent in any fiscal year by the administration for long-term care shall not exceed the amount appropriated or authorized by section 35-173 for that purpose. This article shall not be construed to impose a duty on an officer, agent or employee of this state to discharge a responsibility or to create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.

36-2943. Provider subcontracts; hospital reimbursement

A. Subcontracts for services rendered by providers pursuant to section 36-2940 shall be awarded through competitive statewide proposals in as nearly the same manner as that provided in section 41-2534. If there is not a sufficient number of qualified proposals, a subcontract may be negotiated with a provider and shall be awarded pursuant to section 41-2536. In order to deliver covered services to members enrolled or expected to be enrolled in the system within a county, the program contractor may negotiate and award without bid a provider subcontract if during the contract year there is an insufficient number of subcontracts awarded to providers. The term of the subcontract shall not extend beyond the next bid and subcontract award process as provided in this section, and the subcontract shall be at rates no greater than the weighted average rates for the appropriate level of care paid to similar providers in the same county. This section does not allow a program contractor to forego the competitive bid process pursuant to section 41-2534 unless there is an unanticipated increase in members enrolled in the system or a decrease in available beds brought about by the closure of a facility operated by a provider that is unable to be absorbed by current contracting providers located in the same general area. Before soliciting subcontracts without the competitive bid process, the program contractor shall receive approval from the director.

B. Hospitals that render care to members shall be paid by the program contractor as prescribed in section 36-2903.01, or such lower rate as may be negotiated by the program contractor.

C. The director may ensure through the subcontracts pursuant to subsection A of this section that at least ten per cent of the members are provided services pursuant to this article on a capitation basis.

D. A claim for an authorized service submitted by a licensed skilled nursing facility, an assisted living Arizona long-term care system provider or a home and community based Arizona long-term care system provider that renders care to members pursuant to this article shall be adjudicated within thirty calendar days after receipt by the program contractor. Any clean claim for an authorized service provided to a member that is not paid within thirty calendar days after the claim is received accrues interest at the rate of one per cent per month from the date the claim is submitted. The interest is prorated on a daily basis and must be paid by the program contractor at the time the clean claim is paid.

36-2944. Qualified plan health service contracts; proposals; administration; contract terms

A. For each county that has a population of four hundred thousand persons or less according to the most recent United States decennial census and that was not approved as a program contractor before January 1, 1994 or that officially states that it wishes to end its status as a program contractor, the director at least every five years shall prepare and issue a request for proposal and a proposed contract format to qualified group disability insurers, hospital and medical service corporations, health care services organizations and any other qualified public or private persons to be a program contractor and provide services pursuant to this article on a capitation rate basis to members who are enrolled with the program contractors by the system, who are not persons with developmental disabilities as defined in section 36-551 and who are residents of the county at the time of application for the system.

B. The director may adopt rules regarding the request for proposal process which provide:

1. For the award of contracts by categories of members or services in order to secure the most financially advantageous proposals for the system.

2. That each qualified proposal shall be entered with separate categories for the distinct groups of members or services to be covered by the proposed contracts, as set forth in the request for proposal.

3. For the procurement of reinsurance for expenses incurred by any program contractor, any member or the system in providing services in excess of amounts specified by the director in any contract year.

4. For second round competitive proposals to request voluntary price reduction of proposals from only those proposals that have been tentatively selected for award, before the final award or rejection of proposals.

C. Contracts shall be awarded as otherwise provided by law, except that in no event may a contract be awarded to any program contractor which will cause the system to lose any federal monies to which it is otherwise entitled.

D. After contracts are awarded pursuant to this section, the director may negotiate with any successful proposal respondent for the expansion or contraction of services or service areas if there are unnecessary gaps or duplications in services or service areas.

E. Payments to program contractors pursuant to this section shall be made monthly or quarterly and may be subject to contract provisions requiring the retention of a specified percentage of the payment by the director, a reserve fund or other contract provisions by which adjustments to the payments are made based on utilization efficiency, including incentives for maintaining quality care and minimizing unnecessary inpatient services. Reserve funds withheld from contracts shall be distributed to program contractors who meet performance standards established by the director. Any reserve fund established pursuant to this subsection shall be established as a separate account within the Arizona long-term care system fund.

F. Payments made pursuant to this section shall begin after a member is enrolled in the system.

G. Each program contractor pursuant to this section shall submit an annual audited financial and programmatic report for the preceding fiscal year as required by the administration. The report shall include beginning and ending fund balances, revenues and expenditures including specific identification of administrative costs. The report shall include the number of members served by the program contractor and the cost incurred for various types of services provided to members in a format prescribed by the director.

H. The director shall require contract terms necessary to ensure adequate performance by the program contractor of the provisions of each contract executed pursuant to this section. Contract provisions required by the director shall include the maintenance of deposits, performance bonds, financial reserves or other financial security.

36-2959. Reimbursement rates; capitation rates; annual review

A. The department shall contract with an independent consulting firm for an annual study of the adequacy and appropriateness of title XIX reimbursement rates to service providers for the persons with developmental disabilities program of both the Arizona long-term care system and the state only program. The consultant shall also include a recommendation for annual inflationary costs. Unless modified in response to federal or state law, the independent consulting firm shall include, in its recommendation, costs arising from amendments to existing contracts. The department may require, and the department's contracted providers shall provide, financial data to the department in the format prescribed by the department to assist in the study. A complete study of reimbursement rates shall be completed no less than once every five years.

B. Capitation rate adjustments shall be limited to utilization of existing services and inflation unless policy changes, including creation or expansion of programs, have been approved by the legislature or are specifically required by federal law or court mandate.

C. The administration shall contract with an independent consulting firm for an annual study of the adequacy and appropriateness of title XIX reimbursement rates to service providers for the elderly and physical disability program of the Arizona long-term care system. The administration may require, and the administration's contracted providers shall provide, financial data to the administration in the format prescribed by the administration to assist in the study. A complete study of reimbursement rates shall be completed no less than once every five years. In determining the adequacy of the rates in the five year study, the consulting firm shall examine in detail the costs associated with the delivery of services, including programmatic, administrative and indirect costs in providing services in rural and urban Arizona.

D. The department and the administration shall provide each of their reports to the joint legislative budget committee and the administration by October 1 of each year.

E. The department shall include the results of the study in its yearly capitation rate request to the administration.

F. If results of the study are not completely incorporated into the capitation rate, the administration shall provide a report to the joint legislative budget committee within thirty days of setting the final capitation rate, including reasons for differences between the rate and the study.

36-2999.51. Definitions

(Rpld. 10/1/23)

In this article, unless the context otherwise requires:

1. "Continuing care retirement community" means an entity that provides nursing facility services and assisted living or independent living services on a contiguous campus that is either registered as a life care facility with the department of insurance and financial institutions or has assisted living and independent living beds in the aggregate that equal at least twice the number of nursing facility beds. For the purposes of this paragraph, "contiguous" means land that adjoins or touches the other property held by the same or a related organization and land divided by a public road.
2. "Fiscal year" means the period beginning on October 1 and ending on September 30.
3. "Medicare resident days" means resident days that are funded by the medicare program, a medicare advantage or special needs plan or the medicare hospice program.
4. "Net patient service revenue" means gross inpatient revenues from services that are provided to nursing facility patients minus reductions from gross inpatient revenue. For the purposes of this paragraph, inpatient revenues from services do not include nonpatient care revenues such as beauty and barber income, vending income, interest and contributions, revenues from the sale of meals and all outpatient revenues.
5. "Nursing facility" means a health care institution that provides inpatient beds or resident beds and nursing services to persons who need nursing services on a continuing basis but who do not require hospital care or direct daily care from a physician. Nursing facility does not include the Arizona veterans' homes.
6. "Reductions from gross inpatient revenue" includes bad debts, contractual adjustments, uncompensated care, administrative, courtesy and policy discounts, adjustments and other similar revenue deductions.
7. "Resident day" means a calendar day of care provided to a nursing facility resident, including the day of admission and excluding the day of discharge. Resident day includes a day on which a bed is held for a patient and for which the facility receives compensation for holding the bed.
8. "Upper payment limit" means the limitation established pursuant to 42 Code of Federal Regulations section 447.272 that disallows federal matching funds if a state medicaid agency pays certain classes of nursing facilities an aggregate amount for services that would exceed the amount that would be paid for the same services furnished by that class of nursing facilities under medicare payment principles.

AHCCCS Non-Emergency Medical Transportation

[Contract language](#): Scope of Services

Transportation: These services include emergency and non-emergency medically necessary transportation. Emergency transportation, including transportation initiated by an emergency response system such as 911, may be provided by ground, air, or water ambulance to manage an AHCCCS member's emergency medical condition at an emergency scene and transport the member to the nearest appropriate medical facility. Non-emergency transportation shall be provided for members who are unable to provide or secure their own transportation for medically necessary services using the appropriate mode based on the needs of the member. Refer to AHCCCS Medical Policy Manual ([AMPM Policy 310-BB](#)). The Contractor shall ensure that members have coordinated, reliable, medically necessary transportation to ensure members arrive on-time for regularly scheduled appointments and are picked up upon completion of the entire scheduled treatment.

[Contract language](#): Appointment Availability, Transportation Timeliness, Monitoring, and Reporting

The Contractor shall actively monitor and track provider compliance with appointment availability, transportation timeliness, monitoring, and reporting standards as specified in AHCCCS Contractor Operations Manual (ACOM) Policy 417 [42 CFR 438.206(c)(1)].

The Contractor shall ensure that populations with ongoing medical needs, including but not limited to dialysis, radiation, and chemotherapy, have coordinated, reliable, medically necessary transportation to ensure members arrive on-time for regularly scheduled appointments and are picked up upon completion of the entire scheduled treatment.

The Contractor shall ensure members have timely access to medically necessary non-emergent transportation for routine appointments. Additionally, the Contractor shall have a process in place for members to request and receive medically necessary transportation for urgent appointments. The Contractor shall schedule transportation so that the member arrives on time for the appointment, but no sooner than one hour before the appointment; nor have to wait more than one hour after the conclusion of the treatment for transportation home; nor be picked up prior to the completion of treatment. The Contractor shall develop and implement performance auditing protocol to evaluate compliance with the standards above for all subcontracted transportation vendors/brokers and require corrective action if standards are not met.

<p>Contract language: Subcontracts (<i>NEMT Brokers are Administrative Services Subcontractors</i>)</p>	<p>The Contractor shall be held fully liable for the performance of all Contract requirements. Subject to limitations as specified in this Contract, any function required to be provided by the Contractor pursuant to this Contract may be subcontracted to a qualified individual or organization [42 CFR 438.6]. Notwithstanding any relationship(s) the Contractor may have with any subcontractor, the Contractor maintains ultimate responsibility for adhering to and otherwise fully complying with all terms and conditions of this Contract [42 CFR 438.230(b)(1); 42 CFR 438.3(k)].</p> <p>In order to determine adequate performance, the Contractor shall monitor the Administrative Services Subcontractor's performance on an ongoing basis and subject it to formal review at least annually or more frequently if requested by AHCCCS. As a result of the performance review, any deficiencies shall be communicated to the Administrative Services Subcontractor in order to establish a corrective action plan [42 CFR 438.230(b)]. The results of the performance review and the corrective action plan shall be communicated to AHCCCS upon completion as specified in ACOM Policy 438 and Section F, Attachment F3, Contractor Chart of Deliverables.</p>
<p>ACOM Policy 417, Appointment Availability, Transportation Timeliness, Monitoring, and Reporting</p>	<p>TRANSPORTATION TIMELINESS REVIEW</p> <p>For medically necessary non-emergent transportation, the Contractor shall ensure that a member arrives on time for an appointment, but no sooner than one hour before the appointment; nor have to wait more than one hour after the conclusion of the treatment for transportation home.</p> <p>The Contractor shall evaluate compliance with the above standards on a quarterly basis for all subcontracted transportation vendors/brokers and require corrective action if standards are not met.</p>
<p>ACOM Policy 417, Transportation Timeliness Deliverable format</p>	<p>Total Drop Offs, Timely Drop Offs, % of Timely Drop Offs Total Pickups, Timely Pickups, % of Timely Pickups</p>
<p>Deliverable Data</p>	<p>For Contract Year ending 2022, Quarter 1 (Oct-Dec 2021) and Quarter 2 (Jan-Mar 2022) data received on Timeliness of Transportation shows the following:</p> <ul style="list-style-type: none"> ● 92.50% of 638,948 total drop off trips were timely ● 98.05% of 570,725 total pickup trips were timely

	(This data is from more recent time periods than the data quoted in the meeting)
<p>Strategy to Resolve NEMT Concerns: AHCCCS NEMT Workgroup</p>	<p>AHCCCS created an Internal NEMT workgroup which meets every six weeks.</p> <p>This cross-divisional team includes staff from the Office of Inspector General, Office of General Counsel, Division of Community Advocacy and Intergovernmental Relations, Division of Member and Provider Services, Division of Health Care Management, Division of Fee For Service Management, and Office of the Director (Legislative Liaison).</p> <p>The Workgroup discusses concerns around NEMT services in general, as well as policy and other regulatory changes aimed at improving access to NEMT services. Recent examples include: helping to resolve transportation issues for members residing at the bottom of the Grand Canyon by implementing Equine and Helicopter NEMT options, and new policy language around coverage of public transportation for members.</p>
<p>Strategy to Resolve NEMT Concerns: MCO Oversight of NEMT Brokers</p>	<p>MCOs meet with NEMT Brokers on a regular basis to review performance, address any gaps in services, and resolve any escalated issues. Additional information reviewed in these meetings include call center statistics, member grievances, complaint resolution reports and timeliness reports.</p> <p>One recent example regarding MCO work to address gaps in services relates to increasing capacity for specialty transportation (including wheelchair vans). One such idea looked to increase payment rates for providers that service specialty transports. Another looked to give provider incentives to providers who accepted a minimum percentage of rides..</p>

Member Grievances and Quality of Care Concerns

Contract language: Member Complaint/Grievance requirements

At a minimum, the Contractor shall comply with the following Grievance and Appeal System Standards and incorporate these requirements into its policies and/or procedures:

The Contractor shall track and trend Grievance and Appeal System information as a source of information for quality improvement and in accordance with the AHCCCS Grievance and Appeal System Reporting Guide.

The Contractor shall address identified issues as expeditiously as the member's condition requires and shall resolve each grievance within 10 business days of receipt, absent extraordinary circumstances. However, no grievances shall exceed 90 days for resolution. Contractor decisions on member grievances cannot be appealed [42 CFR 438.408(a), 42 CFR 438.408(b)(1) and (3)].

Contract Language: Quality Management and Quality of Care requirements

The Contractor shall undergo annual, external independent reviews of the quality of, timeliness of, and access to services covered under the Contract [42 CFR 438.320, 42 CFR 438.350]. AHCCCS will utilize an External Quality Review Organization (EQRO) for purposes of independent review of its Contractors and related AHCCCS oversight. External quality reviews will be conducted by an EQRO [42 CFR 438.358]. Direct engagement at the Contractor level may occur, at the discretion or invitation of AHCCCS.

The Contractor shall establish and implement mechanisms to assess the quality and appropriateness of care provided to members, including members with special health care needs, [42 CFR 438.208(c)(4), 42 CFR 438.330(a)(1), 42 CFR 438.330(b)(4)].

The Contractor shall develop and implement policies and procedures that analyze quality of care issues through identifying the issue, initial assessment of the severity of the issue, and prioritization of action(s) needed to resolve immediate care needs when appropriate. The Contractor shall establish a process to ensure that all staff and providers are trained on how to refer suspected quality of care issues to quality management. This training shall be provided during new employee orientation (within 30 days of hire) and annually, thereafter.

	<p>The Contractor shall monitor contracted providers for compliance with Quality Management metrics, as well as member health and safety; Quality Management staff shall lead all monitoring and investigative efforts. The Contractor shall establish mechanisms to track and trend member and provider issues. The Contractor shall comply with requirements, as specified in Contract and AMPM Policy 960.</p>
<p>AMPM Policy 960, Quality of Care Concerns</p>	<p>The Contractor shall develop and implement policies and procedures to review, report, evaluate, and resolve Quality of Care (QOC) concerns and service concerns raised by members/Health Care Decision Makers (HCDM)s, contracted providers, and stakeholders. Concerns may be received from anywhere within the organization or externally from anywhere in the community including provider incident, accident, and death reports entered directly into the AHCCCS Quality Management (QM) Portal as specified in AMPM Policy 961. All concerns shall be addressed regardless of source (external or internal). QOC concerns involving both physical and behavioral health providers or services shall be addressed in the same manner.</p> <p>...</p> <p>The Contractor shall develop and implement a system to document, track, trend, and evaluate complaints and allegations received from members and providers or as directed by AHCCCS, inclusive of QOC concerns, quality of service, and immediate care needs.</p> <ol style="list-style-type: none"> a. The data from the tracking and trending system shall be analyzed and evaluated to identify and address any trends related to members, providers, the QOC process or services in the Contractor's service delivery system or provider network. The Contractor is responsible for incorporating trending of QOC concerns in determining systemic interventions for quality improvement, b. The Contractor shall ensure that tracking and trending information is submitted, reviewed, and considered for action by the Contractor's local QM Committee and local Medical Director, as Chairman of the QM Committee, c. If significant negative trends are noted, the Contractor should consider developing performance improvement activities focused on the topic area to improve the concern resolution process itself, and to make improvements that address other system issues raised during the resolution process, d. The Contractor shall ensure that tracking and trending information related to provider education, training, and staff credentialing is shared with the workforce development operation as specified in ACOM Policy 407, ...

<p>AHCCCS Review of Quality of Care (QOC) cases</p>	<p>The majority of the QOC investigative work is completed by the MCOs with oversight, monitoring, and auditing of cases completed by AHCCCS. QOCs can be submitted to either an MCO directly or to AHCCCS. If submitted directly to AHCCCS, staff review the concern, research the MCO that the member is enrolled with (for member-specific concerns) and/or the network status of the provider (for systemic provider-related concerns), and then forward all relevant information to the appropriate MCO(s) for review/investigation. A general outline of how concerns are reviewed can be found at the following location: https://www.azahcccs.gov/AHCCCS/Downloads/AHCCCS_IncidentFlowChart_200911.pdf</p> <p>MCOs document QOC information, including findings and corrective actions, in the AHCCCS Quality Management Portal. AHCCCS selects random samples of completed cases from each MCO and audits the case files (from initial triage through resolution). Additionally, AHCCCS runs data queries on selected procedure codes and assesses for correlating quality of care concern cases; if no case is found, a notification is sent to the MCO for follow up. AHCCCS also monitors timeliness of case review against timelines outlined in AMPM Policy 960; MCOs receive reports on any QOCs that are overdue or at risk of becoming overdue and provide feedback on case status, rationale for extended time frames, and/or corrective action plans for addressing noted issues. If any of the above-mentioned oversight activities show concerning trends or under-performance, findings may result in corrective action, ranging from directed technical assistance, increased monitoring, more detailed audits, Notice to Cure, and/or financial sanctions.</p>
<p>AHCCCS Access to Care Committee</p>	<p>AHCCCS has an Access to Care Committee which meets quarterly.</p> <p>This cross-divisional committee reviews individual and systemic Access to Care issues for AHCCCS members to inform Medicaid health care delivery decisions, as well as development of rates and reimbursement to ensure availability of AHCCCS-covered services.</p> <p>This Committee reviews member and/or provider complaints, grievances and/or Quality of Care concerns that impact the accessibility and availability of an adequate AHCCCS registered provider network across Arizona.</p>

Additional Relevant Requirements

Contract Language: Periodic Reporting Requirements

Under the terms and conditions of its CMS grant award, AHCCCS requires periodic reports, encounter data and other information from the Contractor. The submission of late, inaccurate, or otherwise incomplete reports shall constitute failure to report subject to the penalty provisions specified in Section D, Paragraph 74, Administrative Actions.

Standards applied for determining adequacy of required reports are as follows:

1. Timeliness: Reports or other required data shall be received on or before scheduled due dates.
2. Accuracy: Reports or other required data shall be prepared in strict conformity with appropriate authoritative sources and/or AHCCCS defined standards.
3. Completeness: All required information shall be fully disclosed in a manner that is both responsive and pertinent to report intent with no material omissions

Contract Language: Administrative Actions

Sanctions: In accordance with applicable Federal and State regulations, A.A.C. R9-28-606, [ACOM Policy 408](#), [ACOM Policy 440](#), Section 1932 of the Social Security Act or any implementing regulation, and the terms of this Contract, AHCCCS may impose sanctions for failure to comply with any provision of this Contract, including but not limited to: temporary management of the Contractor; monetary penalties; suspension of enrollment; withholding of payments; granting members the right to terminate enrollment without cause; suspension of new enrollments, suspension of payment for new enrollments, refusal to renew, or termination of the Contract, or any related subcontracts [45 CFR 74.48, 42 CFR Part 455, 42 CFR Part 438, Sections 1903 and 1932 of the Social Security Act]. See also Section E, Paragraph 45, Temporary Management/Operation of a Contractor and Paragraphs 47 through 50 regarding Termination of the Contract.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)

Title 9, Chapter 22, Articles 6, 7



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: June 1, 2022; July 6, 2022; August 2, 2022

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: May 11, 2022

SUBJECT: ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
Title 9, Chapter 22, Articles 6, 7

Summary

This Five-Year Review Report (5YRR) from the Arizona Health Care Cost Containment System (AHCCCS) relate to six (6) rules in Title 9, Chapter 22, Article 6 (RFP and Contract Process) and fifty-three (53) rules in Article 7 (Standards for Payments).

The rules in Article 6 relate to Request for Proposal (RFP) and contract process generally. Pursuant to A.R.S. § 36-2906, the director shall prepare and issue a request for proposal, including a proposed contract format, in each of the counties of this state, at least once every five years, to qualified group disability insurers, hospital and medical service corporations, health care services organizations and any other qualified public or private persons, including county-owned and operated health care facilities. The director shall adopt rules regarding the request for proposal process, which was done in Title 9, Chapter 22, Article 6. The rules in Article 7 relate to general standards for payments.

In the previous 5YRR for these rules, approved by the Council in November 2017, with regards to the rules in Article 7, AHCCCS indicated that it was "currently in the process of amending the [Diagnosis Related Group] rules to rebase the components of the DRG system using updated claims and encounter data" and would also "update the version of the All Patient Refined Diagnosis Related Group (APR-DRG) classification system established by 3M Health

Information Systems for dates of discharge beginning January 1, 2018." AHCCCS indicates it completed this proposed course of action by rulemaking subsequent to the prior 5YRR..

Proposed Action

As indicated in more detail below, AHCCCS intends to complete a rulemaking to address rules in Article 6 related to the RFP process that it believes are not currently effective in achieving their regulatory objectives and not enforced as written. AHCCCS indicates the proposed amendments are intended to: 1) Clarify the current RFP process wherein there are ambiguities, and 2) align AHCCCS's process to best practice and other state procurement laws. AHCCCS indicates it will request a rulemaking exemption to make these changes within a month of this 5YRR being approved by the Council.

1. Has the agency analyzed whether the rules are authorized by statute?

AHCCCS cites both general and specific authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

In the prior economic impact statement, AHCCCS stated that the amendments are primarily made to make the rules more clear, concise, and understandable. Minimal impact was anticipated. The small business community as a whole was not impacted by the clarifications. All affected entities benefit from the additional clarity and conciseness of the rule language. AHCCCS and contractors are also directly affected by and benefit from the clarifications.

AHCCCS indicates there has been no noticeable change in the economic impact on small businesses or consumers of these regulations, in this case the offerors to the agency's RFPs. This is because the prior rulemaking in 2012 enacted changes to streamline the RFP process for offerors. Since then, the rules have continued to operate as they were intended, are clear, concise, and understandable.

The rule changes represent the most cost-effective and efficient method of fulfilling the agency's responsibilities and impose only those requirements that are necessary to comply with federal law and state statute.

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

For Article 6, AHCCCS believes the rules as written impose the least burden and cost when meeting their objectives. For Article 7, AHCCCS did not consider other alternatives because the changes are the most cost effective and efficient method of complying with federal law and state statute.

4. Has the agency received any written criticisms of the rules over the last five years?

AHCCCS indicates it has not received written criticisms of the rules in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

AHCCCS indicates the rules are clear, concise, and understandable.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

AHCCCS indicates the rules are consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

AHCCCS indicates the rules are generally effective in achieving their objectives. However, AHCCCS indicates rule R9-22-601 could be made more effective by amending the rule to remove the term "bids/offers" with "submitted proposals."

8. Has the agency analyzed the current enforcement status of the rules?

AHCCCS indicates the rules are generally enforced as written except for the following rules:

- R9-22-602
- R9-22-603
- R9-22-604

The amendments AHCCCS proposes to make regarding these rules are outlined in Section 5 of the 5YRR.

9. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

AHCCCS indicates the rules are not more stringent than corresponding federal law.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable. The rules do not require a permit, license, or agency authorization.

11. Conclusion

This 5YRR relates to six (6) rules in Title 9, Chapter 22, Article 6 (RFP and Contract Process) and fifty-three (53) rules in Article 7 (Standards for Payments). AHCCCS indicates the rules are generally clear, concise, understandable, consistent, effective, and enforced as written, except for rules R9-22-601 through 604. For those rules AHCCCS intends to amend to clarify the current RFP process wherein there are ambiguities and align AHCCCS's process to best

practice and other state procurement laws. AHCCCS indicates it intends to request a rulemaking exemption to make these changes within a month of this 5YRR being approved by the Council.

Council staff recommends approval of this report.

January 28, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsins, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: AHCCCS Title 9, Chapter 22, Article 6, Five Year Review Report

Dear Ms. Sornsins:

Please find enclosed the Five-Year Review Report of AHCCCS for Title 9, Chapter 22, Article 6 which is due on January 31, 2022.

AHCCCS hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Nicole Fries at 602-417-4232 or nicole.fries@azahcccs.gov.

Sincerely,



Kasey Rogg
Assistant Director

Attachments

Arizona Health Care Cost Containment System (AHCCCS)

5 YEAR REVIEW REPORT

A.A.C. Title 9, Chapter 22, Articles 6

January 2022

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 36-2903.01(F)

Implementing statute: A.R.S. § 36-2906

2. The objective of each rule:

Rule	Objective
R9-22-601	The objective of this rule is to list the authority for the Request for Proposal (RFP) and describe the applicability of Article 6.
R9-22-602	The objective of this rule is to prescribe the contents of the RFP and the proposal process.
R9-22-603	The objective of this rule is to prescribe the process the Administration follows when awarding contracts.
R9-22-604	The objective of these rules is to prescribe the means of protesting an RFP or award including the administrative appeal process.
R9-22-605	The objective of this rule is to prescribe means by which an offeror or contractor may request from the Director a waiver of the requirement for hospital subcontracts.
R9-22-606	The objective of this rule is to prescribe sanctions the Director may impose on contractors for noncompliance and the factors considered when doing so.

3. Are the rules effective in achieving their objectives?

Yes **X**

No

Except;

Rule	Objective
R9-22-601	Replace bids/offers with submitted proposals

4. Are the rules consistent with other rules and statutes?

Yes **X**

No

5. Are the rules enforced as written?

Yes **X**

No

Except;

Rule	Objective
R9-22-602	Remove “The Administration shall not request best and final offers more than once unless the Administration determines that it is advantageous to the state to request additional best and final offers.” from subsection B(8) because ADOA (Arizona Department of Administration) has removed this language from their rules and AHCCCS would like to align with state best practices for procurement. Add “or other scope of work as applicable,” to subsection A(2). Add “or post such information publicly with the solicitation” to subsection B(1). Change and in subsection B(3) to and/or. Change proposal to RFP in subsection D
R9-22-603	Update references to contract file to procurement file.

R9-22-604	<p>Add “to an RFP” to subsection C. Remove “or contract” from subsection C(2). Add “3. The protest must be submitted to the procurement office by email unless otherwise allowed for in the RFP Instructions to Offerors.” to subsection C. Change D to “Time for filing a RFP protest”. Add “4. A protest is due by 5:00pm Arizona time on the due date. If the due date does not fall on a business day, the protest is due on the next business day.” to subsection D. Add “Unless extended by a time period not to exceed 30 days under G(3)” to subsection G(1). Add “electronic mail” to subsection G(2). Change G(3) to read “The Administration may extend, for good cause, the time-limit for a decision in subsection (G)(1) by an additional time frame not to exceed 30 days. The procurement officer shall notify the protester in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.”</p>
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6. **Are the rules clear, concise, and understandable?** Yes X No

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No X

8. **Economic, small business, and consumer impact comparison:**

There has been no noticeable change in economic impact on small businesses or consumers of these regulations, in this case the offerors to the agency’s RFPs (Request for Proposal). This is because the prior rulemaking in 2012 enacted changes to streamline the RFP process for offerors. Since then, the rules have continued to operate as they were intended, are clear, concise, and understandable. The changes recommended in this Five-Year Review Report have the same intention of streamlining the RFP process by updating the time for submissions and allowing correspondence, explicitly by e-mail, a practice already enacted by the agency. Therefore, the changes recommended in this report will have no economic impact on the agency or participants in the agency’s RFP process.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No X

10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Administration believes the rules as written impose the least burden and cost when meeting their objectives.

12. **Are the rules more stringent than corresponding federal laws?** Yes No X

13. **For rules adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

Not applicable.

14. Proposed course of action:

Following GRRC approval of this Five-Year Review Report, AHCCCS plans to undertake a workgroup with internal stakeholders in the RFP process to determine whether larger changes are made to the RFP process. Since any substantive changes to the RFP process could implicate the eligibility of contractors' proposals, AHCCCS plans to undertake a regular rulemaking that allows for full participation by the public.

January 28, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsins, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: AHCCCS Title 9, Chapter 22, Article 7, Five Year Review Report

Dear Ms. Sornsins:

Please find enclosed the Five-Year Review Report of AHCCCS for Title 9, Chapter 22, Article 7 which is due on January 31, 2022.

AHCCCS hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Nicole Fries at 602-417-4232 or nicole.fries@azahcccs.gov.

Sincerely,



Kasey Rogg
Assistant Director

Attachments

Arizona Health Care Cost Containment System (AHCCCS)

5 YEAR REVIEW REPORT

A.A.C. Title 9, Chapter 22, Article 7

January 2022

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 36-2903.01(F)

Implementing statute: A.R.S. § 36-2906

2. The objective of each rule:

Rule	Comment
R9-22-701	The objective of this rule is to primarily provide definitions that specifically support the payment regulations outlined in Article 7.
R9-22-701.10	The objective of this rule is to describe the limitations on the scope of the liability for the Administration and contractors.
R9-22-702	The objective of this rule is to require health care providers to accept, as payment in full, the amount paid by the AHCCCS program plus any additional copayment or third-party payments made by or on behalf of the member. It also sets forth the circumstances when a member may be billed for services.
R9-22-703	The objective of this rule is to set forth claims submission timelines and related claims processing provisions required for reimbursement to providers for health care services.
R9-22-705	The objective of this rule is to describe payment guidelines for contracting prepaid health plans to reimburse subcontractors and non-contracting providers for the provision of health care services rendered to an AHCCCS member.
R9-22-708	The objective of this rule is to set forth provisions governing payment for services rendered to eligible American Indians.
R9-22-709	The objective of this rule is to describe provisions governing payment liability for emergency health care and subsequent care as well as facility transfer conditions.
R9-22-710	The objective of this rule is to describe provisions relating to fee schedules maintained by the Administration to reimburse non-hospital health care services.
R9-22-711	The objective of this rule is to describe the co-payment requirements that a member must pay when receiving medical services.
R9-22-712	The objective of this rule is to describe the cost-based reimbursement system that uses a prospective tiered per diem reimbursement methodology for inpatient services and a cost-to-charge ratio for outpatient services. The tiered per diem methodology includes: a statewide operating component, a blended statewide/hospital specific capital component and provisions for outlier payments; and provisions for transplant services and annual update factors.
R9-22-712.01	The objective of this rule is to describe the methodology for inpatient hospital reimbursement, explaining the tier rate data, components, assignment, and exclusions. In addition, it describes

	when the tiers are updated and how new hospitals, outliers, transplants, ownership changes, psychiatric hospital specialty facilities and outliers for new hospitals are reimbursed.
R9-22-712.05	The objective of this rule is to describe how the Graduate Medical Education Fund will be allocated among hospitals
R9-22-712.07	The objective of this rule is to describe how the Rural Hospital Inpatient Fund will be allocated among rural hospitals.
R9-22-712.09	The objective of this rule is to list the tier hierarchy of the inpatient reimbursement system.
R9-22-712.10	The objective of this rule is to describe general information applicable to the reimbursement of outpatient hospital services.
R9-22-712.15	The objective of this rule is to notify that reimbursement using the capped fee for service schedule is applicable to non-IHS acute hospitals.
R9-22-712.20	The objective of this rule is to describe the methodology for reimbursement using the capped fee for service schedule for outpatient hospital services.
R9-22-712.25	The objective of this rule is to describe how associated service costs are accounted for within the outpatient reimbursement methodology.
R9-22-712.30	The objective of this rule is to describe how reimbursement is made for a service not listed in the outpatient capped fee-for-service schedule.
R9-22-712.35	The objective of this rule is to describe how the outpatient capped fee for service schedule is adjusted by type of hospital submitting claims.
R9-22-712.40	The objective of this rule is to describe when updates are made to the outpatient fee schedule and rates used for reimbursement.
R9-22-712.45	The objective of this rule is to describe the reimbursement restrictions for outpatient hospital services.
R9-22-712.50	The objective of this rule is to describe the forms a hospital must use when billing for outpatient hospital services.
R9-22-712.60	The objective of this rule is to describe how the payments are made using the Diagnosis Related Group methodology.
R9-22-712.61	The objective of this rule explains the exceptions to the Diagnosis Related Group (DRG) methodology.
R9-22-712.62	The objective of this rule explains the calculation of the DRG base payment.
R9-22-712.63	The objective of this rule is to describe the calculation when the DRG base payment is not based on the statewide standardized amount.
R9-22-712.64	The objective of this rule sets forth the methodology for DRG base payments and the Outlier CCR (Cost-To-Charge Ratio) for out-of-state hospitals.
R9-22-712.65	The objective of this rule is to describe the DRG provider policy adjuster.
R9-22-712.66	The objective of this rule is to describe the DRG service policy adjuster.
R9-22-712.67	The objective of this rule explains the DRG reimbursement when there is a “transfer” of a member from a hospital to a short-term general hospital for inpatient care, a designated cancer center, children’s hospital, or a critical access hospital.

R9-22-712.68	The objective of this rule is to describe the DRG reimbursement when there is an unadjusted outlier add-on payment.
R9-22-712.69	The objective of this rule explains the DRG reimbursement when there is a covered day adjusted DRG base payment and covered day adjusted outlier add-on payment.
R9-22-712.70	The objective of this rule explains the DRG reimbursement when there is a covered day adjusted DRG payment and covered day adjusted outlier add-on payment for FES members.
R9-22-712.71	The objective of this rule describes the final DRG payment.
R9-22-712.72	The objective of this rule explains DRG reimbursement when there is an enrollment change during an inpatient stay.
R9-22-712.73	The objective of this rule explains DRG reimbursement for Inpatient stays for members eligible for Medicare.
R9-22-712.74	The objective of this rule describes DRG reimbursement when there is third party liability.
R9-22-712.75	The objective of this rule describes the payment for administrative days in relation to DRG reimbursement.
R9-22-712.76	The objective of this rule explains the reimbursement of interim claims in relation to DRG reimbursement.
R9-22-712.77	The objective of this rule describes DRG reimbursement when there are admissions and discharges on the same day.
R9-22-712.78	The objective of this rule explains DRG reimbursement when a member is readmitted to the hospital.
R9-22-712.79	The objective of this rule describes DRG reimbursement when there is a change in hospital's ownership.
R9-22-712.80	The objective of this rule explains DRG reimbursement pertaining to new hospitals.
R9-22-712.81	The objective of this rule describes how the Administration handles updates to the DRG.
R9-22-712.90	The objective of this rule is to set forth reimbursement requirements for hospital- based freestanding emergency departments.
R9-22-713	The objective of this rule is to require a provider to repay overpayments to the Administration.
R9-22-714	The objective of this rule is to describe the requirement of a provider agreement and to set forth specific requirements for the Administration and a contractor to reimburse a provider.
R9-22-715	The objective of this rule is to describe basic contractor responsibilities relating to hospital negotiations. This subsection also enables the Administration to negotiate with hospitals on behalf of prepaid health plans for AHCCCS services.
R9-22-718	The objective of this rule is to require contractors to enter a contract for reimbursement of inpatient hospital services with one or more hospitals in a county of more than 500,000 individuals. This rule also delineates mandatory terms to be included in the contract.
R9-22-719	The objective of this rule is to allow the Administration to retain a specified percentage of capitation reimbursement to distribute monies to contractors based on their performance outcomes.
R9-22-720	The objective of this rule is to describe the reimbursement of reinsurance for high-cost hospital services.

R9-22-730	The objective of this rule is to set forth the requirements for the hospital assessment levied against hospitals pursuant to ARS 36-2901.08.
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- 3. **Are the rules effective in achieving their objectives?** Yes No
- 4. **Are the rules consistent with other rules and statutes?** Yes No
- 5. **Are the rules enforced as written?** Yes No
- 6. **Are the rules clear, concise, and understandable?** Yes No
- 7. **Has the agency received written criticisms of the rules within the last five years?** Yes No

8. **Economic, small business, and consumer impact comparison:**

The rules in this article change often, some change annually. However much of the economic change, does not have a corresponding economic impact on the public because the costs are offset by legislative appropriations or federal-match funds made by the Center for Medicare and Medicaid Services. Economic differences between the programs outlined in these rulemakings can fluctuate annually based on several factors, which are outlined in each unique rulemaking. An example of these factors can be found in the Economic Impact Statement of the most recent rulemaking in this article, which has been attached to this 5YRR. However, for this article, there has not been a substantive economic impact since the last 5YRR.

- 9. **Has the agency received any business competitiveness analyses of the rules?** Yes No
- 10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**

Yes, the prior course of action has been implemented in successive rulemakings following the last 5YRR.

- 11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Administration believes the rules as written impose the least burden and cost when meeting their objectives.

- 12. **Are the rules more stringent than corresponding federal laws?** Yes No

- 13. **For rules adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

Not applicable.

14. Proposed course of action:

The agency did not recommend any changes to the article, therefore there is no proposed course of action.

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

4). Former Section R9-22-524 repealed, new Section R9-22-524 adopted effective October 1, 1985 (Supp. 85-4). Amended effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 11 A.A.R. 4277, effective December 5, 2005 (Supp. 05-4).

R9-22-525. Repealed**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-525 adopted as an emergency adopted, amended and renumbered as Section R9-22-523, former Section R9-22-527 adopted as an emergency now adopted, amended and renumbered as Section R9-22-525 as a permanent rule effective August 30, 1982 (Supp. 82-4). Repealed effective October 1, 1985 (Supp. 85-5).

R9-22-526. Renumbered**Historical Note**

Adopted as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Adopted as a permanent rule effective May 16, 1983; text of the permanent rule identical to the emergency (Supp. 83-3). Former Section R9-22-526 repealed, new Section R9-22-526 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-526 renumbered and amended as Section R9-22-501 effective October 1, 1985 (Supp. 85-1).

R9-22-527. Renumbered**Historical Note**

Adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-527 renumbered and amended as Section R9-22-505 effective October 1, 1985 (Supp. 85-5).

R9-22-528. Renumbered**Historical Note**

Adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-528 renumbered and amended as Section R9-22-504 effective October 1, 1985 (Supp. 85-5).

R9-22-529. Renumbered**Historical Note**

Adopted as Section R9-22-529 effective October 1, 1985, then renumbered as Section R9-22-1002 effective October 1, 1985 (Supp. 85-5).

ARTICLE 6. RFP AND CONTRACT PROCESS**R9-22-601. General Provisions**

- A. The Director has full operational authority to adopt rules for the RFP process and the award of contracts under A.R.S. § 36-2906.
- B. This Article applies to the award of contracts under A.R.S. §§ 36-2904 and 36-2906 to provide services under A.R.S. § 36-2907 and the expenditure of public monies by the Administration pertaining to covered services when the procurement so states. The Administration shall establish conflict-of-interest safeguards for officers and employees of this state with responsibilities relating to contracts that comply with 42 U.S.C. 1396u-2(d)(3).
- C. The Administration is exempt from the procurement code under A.R.S. § 41-2501.
- D. The Administration and contractors shall retain all contract records for five years under A.R.S. § 36-2903 and dispose of the records under A.R.S. § 41-2550.
- E. The following terms are defined as related to this Article:

“Procurement file” means the official records file of the Director whether located in the Office of the Director or at the public procurement unit. The procurement file shall include in electronic or paper form a list of notified vendors, final solicitation, solicitation amendments, bids/offers, final proposal revisions, clarifications, and final evaluation report.

Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-601 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Repealed effective October 1, 1983 (Supp. 83-5). Adopted effective July 16, 1985 (Supp. 85-4). Amended effective December 13, 1993 (Supp. 93-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 607, effective February 5, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2340, effective November 11, 2012 (Supp. 12-3).

R9-22-602. RFP

- A. RFP content. The Administration shall include the following items in any RFP under this Article:
 1. Instructions and information to an offeror concerning the proposal submission including:
 - a. The deadline for submitting a proposal,
 - b. The address of the office at which a proposal is to be received,
 - c. The period during which the RFP remains open, and
 - d. Any special instructions and information;
 2. The scope of covered services under Article 2 of this Chapter and A.R.S. §§ 36-2906 and 36-2907, covered populations, geographic coverage, service and performance requirements, and a delivery or performance schedule;
 3. The contract terms and conditions, including bonding or other security requirements, if applicable;
 4. The factors used to evaluate a proposal;
 5. The location and method of obtaining documents that are incorporated by reference in the RFP;
 6. A requirement that the offeror acknowledge receipt of all RFP amendments issued by the Administration;
 7. The type of contract to be used and a copy of a proposed contract form or provisions;
 8. The length of the contract service;
 9. A requirement for cost or pricing data;
 10. The minimum RFP requirements; and
 11. A provision requiring an offeror to certify that a submitted proposal does not involve collusion or other anti-competitive practices.
- B. Proposal process.
 1. After the deadline for submitting proposals, the Administration may open a proposal publicly and announce and record the name of the offeror. The Administration shall keep all other information contained in a proposal confidential. The Administration shall open a proposal for public inspection after contract award unless the Administration determines that disclosure is not in the best interest of the state.
 2. The Administration shall evaluate a proposal based on the GSA and the evaluation factors listed in the RFP.
 3. The Administration may initiate discussions with a responsive and responsible offeror to clarify and assure full understanding of an offeror's proposal. The Administration shall provide an offeror fair treatment with respect

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to discussion and revision of a proposal. The Administration shall not disclose information derived from a proposal submitted by a competing offeror.

4. The Administration shall allow for the adjustment of covered services by expansion, deletion, segregation, or combination in order to secure the most financially advantageous proposals for the state.
 5. The Administration may conduct an investigation of a person or organization who has ownership or management interests in corporate offerors or affiliated corporate organizations of an offeror.
 6. The Administration may issue a written request for best and final offers. The Administration shall state in the request the date, time, and place for the submission of best and final offers.
 7. The Administration shall not request best and final offers more than once unless the Administration determines that it is advantageous to the state to request additional best and final offers. The Administration shall state in the written request for best and final offers that if the offeror does not submit a notice of withdrawal or a best and final offer, the Administration shall take the most recent offer as the offeror's best and final offer.
- C. Proposal rejection.
1. The Administration may reject an offeror's proposal if the offeror fails to supply the information requested by the Administration.
 2. The offeror shall not disclose information pertaining to its proposal to any other offeror prior to contract award. The offeror may disclose proposal information to a person other than another offeror if the recipient agrees to keep the information confidential until contract award. Disclosure in violation of this subsection may be grounds for rejecting a proposal.
 3. The Administration shall provide written notification to an offeror whose proposal is rejected. The rejection notice shall be part of the contract file and a public record.
 4. If the Administration determines that it is in the best interest of the state, the Administration may reject any and all proposals, in whole or in part, under the RFP. The reasons for rejection shall be part of the contract file. An offeror shall have no right to damages for any claims against the state, the state's employees, or agents if a proposal is rejected in whole or in part.
- D. Proposal cancellation. If the Administration determines that it is in the best interest of the state, the Administration may cancel a RFP. The reasons for cancellation shall be part of the contract file. An offeror shall have no right to damages for any claims against the state, the state's employees, or agents if a RFP is cancelled.

Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-602 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Repealed effective October 1, 1983 (Supp. 83-5). Adopted effective July 16, 1985 (Supp. 85-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 607, effective February 5, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1).

R9-22-603. Contract Award

The Administration shall award a contract to the responsible and responsive offeror whose proposal is determined most advantageous to the state under A.R.S. § 36-2906. If the Administration determines that multiple contracts are in the best interest of the state, the Administration may award multiple contracts. The contract file shall contain the basis on which the award is made.

Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-603 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Repealed effective October 1, 1983 (Supp. 83-5). Adopted effective July 16, 1985 (Supp. 85-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 607, effective February 5, 1999 (Supp. 99-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1).

R9-22-604. Contract or Proposal Protests; Appeals

- A. Disputes related to contract performance. This Section does not apply to a dispute related to contract performance. A contract performance dispute is governed by 9 A.A.C. 34.
- B. Resolution of a proposal protest. The procurement officer issuing a RFP shall have the authority to resolve proposal protests. An appeal from the decision of the procurement officer shall be made to the Director.
- C. Filing of a protest.
1. A person may file a protest with the procurement officer regarding:
 - a. A RFP issued by the Administration,
 - b. A proposed award, or
 - c. An award of a contract.
 2. A protester shall submit a written protest and include the following information:
 - a. The name, address, and telephone number of the protester;
 - b. The signature of the protester or protester's representative;
 - c. Identification of a RFP or contract number;
 - d. A detailed statement of the legal and factual grounds of the protest including copies of any relevant documents; and
 - e. The relief requested.
- D. Time for filing a protest.
1. A protester filing a protest alleging improprieties in an RFP or an amendment to an RFP shall file the protest at least 14 days before the due date of receipt of proposals.
 2. Any protest alleging improprieties in an amendment issued 14 or fewer days before the due date of the proposal shall be filed before the due date for receipt of proposals.
 3. In cases other than those covered in subsections (D)(1) and (2), a protester shall file a protest no later than 10 days after the procurement officer makes the procurement file available for public inspection.
- E. Stay of procurement during the protest. If a protester files a protest before the contract award, the procurement officer may issue a written stay of the contract award. In considering whether to issue a written stay of contract, the procurement officer shall consider but is not limited to considering whether:
1. A reasonable probability exists that the protest will be sustained, and
 2. The stay of the contract award is in the best interest of the state.

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- F. Stay of contract award during an appeal to the Director. The Director shall automatically continue the stay of a contract award if:
1. An appeal is filed before a contract award, and
 2. The procurement officer issues a stay of the contract award under subsection (E), unless
 3. The Director issues a written determination that the contract award is necessary to protect the best interest of the state.
- G. Decision by the procurement officer.
1. The procurement officer shall issue a written decision no later than 14 days after a protest has been filed. The decision shall contain an explanation of the basis of the decision.
 2. The procurement officer shall furnish a copy of the decision to the protester by:
 - a. Certified mail, return receipt requested; or
 - b. Any other method that provides evidence of receipt.
 3. The Administration may extend, for good cause, the time-limit for decisions in subsection (G)(1) for a time not to exceed 30 days. The procurement officer shall notify the protester in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.
 4. If the procurement officer fails to issue a decision within the time-limits in subsection (G)(1) or (G)(3), the protester may proceed as if the procurement officer issued an adverse decision.
- H. Remedies.
1. If the procurement officer sustains the protest in whole or in part and determines that the RFP, proposed contract award, or contract award does not comply with applicable statutes and rules, the procurement officer shall order an appropriate remedy.
 2. In determining an appropriate remedy, the procurement officer shall consider all the circumstances of the procurement or proposed procurement, including:
 - a. Seriousness of the procurement deficiency,
 - b. Degree of prejudice to other interested parties or to the integrity of the RFP process,
 - c. Good faith of the parties,
 - d. Extent of performance,
 - e. Costs to the state, and
 - f. Urgency of the procurement.
 - g. Best interest of the state.
 3. An appropriate remedy may include one or more of the following:
 - a. Terminating the contract;
 - b. Reissuing the RFP;
 - c. Issuing a new RFP;
 - d. Awarding a contract consistent with statutes, rules, and the terms of the RFP; or
 - e. Any relief determined necessary to ensure compliance with applicable statutes and rules.
- I. Appeals to the Director.
1. A person may file an appeal of a procurement officer's decision with both the Director and the procurement officer no later than five days from the date the decision is received. The date the decision is received shall be determined under subsection (G)(2).
 2. The appeal shall contain:
 - a. The information required in subsection (C)(2),
 - b. A copy of the procurement officer's decision,
 - c. The alleged factual or legal error in the decision of the procurement officer on which the appeal to the Director is based, and
 - d. A request for hearing unless the person requests that the Director's decision be based solely upon the procurement file.
- J. Dismissal. The Director shall not schedule a hearing and shall dismiss an appeal with a written determination if:
1. The appeal does not state a basis for protest,
 2. The appeal is untimely under subsection (I)(1), or
 3. The appeal is moot.
- K. Hearing. Hearings under this Section shall be conducted using the Arizona Administrative Procedure Act under A.R.S. Title 41, Ch. 6.
- Historical Note**
- Adopted effective July 16, 1985 (Supp. 85-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 607, effective February 5, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2340, effective November 11, 2012 (Supp. 12-3).
- R9-22-605. Waiver of Contractor's Subcontract with Hospitals**
- If a contractor is unable to obtain a subcontract with a hospital as contractually required, the contractor may request in writing a waiver from the Administration as allowed by A.R.S. § 36-2906. The contractor shall state in the request the reasons a waiver is believed to be necessary and all efforts the contractor has made to secure a subcontract.
- Historical Note**
- Adopted effective January 31, 1986 (Supp. 86-1). Amended effective December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 607, effective February 5, 1999 (Supp. 99-1). New Section made by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2340, effective November 11, 2012 (Supp. 12-3).
- R9-22-606. Contract Compliance Sanction**
- A. The Director may impose sanctions upon a contractor for violation of any provision of this Chapter or of a contract. Sanctions include but are not limited to:
1. Suspension of any or all further member enrollment, by choice and/or assignment for a period of time.
 2. Imposition of a monetary sanction.
- B. The Director shall consider the nature, severity, and length of the violation when determining a sanction.
- C. The Director shall provide a contractor with written notice specifying grounds and terms for the sanction.
- D. Nothing contained in this Section shall be construed to prevent the Administration from imposing sanctions as provided in contract under A.R.S. § 36-2903.
- Historical Note**
- New Section made by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2340, effective November 11, 2012 (Supp. 12-3).
- ARTICLE 7. STANDARDS FOR PAYMENTS**
- R9-22-701. Standard for Payments Related Definitions**
- In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Article have the following meanings unless the context explicitly requires another meaning:
- "Accommodation" means room and board services provided to a patient during an inpatient hospital stay and includes all staffing, supplies, and equipment. The accommodation is

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- F. Stay of contract award during an appeal to the Director. The Director shall automatically continue the stay of a contract award if:
1. An appeal is filed before a contract award, and
 2. The procurement officer issues a stay of the contract award under subsection (E), unless
 3. The Director issues a written determination that the contract award is necessary to protect the best interest of the state.
- G. Decision by the procurement officer.
1. The procurement officer shall issue a written decision no later than 14 days after a protest has been filed. The decision shall contain an explanation of the basis of the decision.
 2. The procurement officer shall furnish a copy of the decision to the protester by:
 - a. Certified mail, return receipt requested; or
 - b. Any other method that provides evidence of receipt.
 3. The Administration may extend, for good cause, the time-limit for decisions in subsection (G)(1) for a time not to exceed 30 days. The procurement officer shall notify the protester in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.
 4. If the procurement officer fails to issue a decision within the time-limits in subsection (G)(1) or (G)(3), the protester may proceed as if the procurement officer issued an adverse decision.
- H. Remedies.
1. If the procurement officer sustains the protest in whole or in part and determines that the RFP, proposed contract award, or contract award does not comply with applicable statutes and rules, the procurement officer shall order an appropriate remedy.
 2. In determining an appropriate remedy, the procurement officer shall consider all the circumstances of the procurement or proposed procurement, including:
 - a. Seriousness of the procurement deficiency,
 - b. Degree of prejudice to other interested parties or to the integrity of the RFP process,
 - c. Good faith of the parties,
 - d. Extent of performance,
 - e. Costs to the state, and
 - f. Urgency of the procurement.
 3. An appropriate remedy may include one or more of the following:
 - a. Terminating the contract;
 - b. Reissuing the RFP;
 - c. Issuing a new RFP;
 - d. Awarding a contract consistent with statutes, rules, and the terms of the RFP; or
 - e. Any relief determined necessary to ensure compliance with applicable statutes and rules.
- I. Appeals to the Director.
1. A person may file an appeal of a procurement officer's decision with both the Director and the procurement officer no later than five days from the date the decision is received. The date the decision is received shall be determined under subsection (G)(2).
 2. The appeal shall contain:
 - a. The information required in subsection (C)(2),
 - b. A copy of the procurement officer's decision,
 - c. The alleged factual or legal error in the decision of the procurement officer on which the appeal to the Director is based, and
 - d. A request for hearing unless the person requests that the Director's decision be based solely upon the procurement file.
- J. Dismissal. The Director shall not schedule a hearing and shall dismiss an appeal with a written determination if:
1. The appeal does not state a basis for protest,
 2. The appeal is untimely under subsection (I)(1), or
 3. The appeal is moot.
- K. Hearing. Hearings under this Section shall be conducted using the Arizona Administrative Procedure Act under A.R.S. Title 41, Ch. 6.

Historical Note

Adopted effective July 16, 1985 (Supp. 85-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 607, effective February 5, 1999 (Supp. 99-1). Amended by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2340, effective November 11, 2012 (Supp. 12-3).

R9-22-605. Waiver of Contractor's Subcontract with Hospitals

If a contractor is unable to obtain a subcontract with a hospital as contractually required, the contractor may request in writing a waiver from the Administration as allowed by A.R.S. § 36-2906. The contractor shall state in the request the reasons a waiver is believed to be necessary and all efforts the contractor has made to secure a subcontract.

Historical Note

Adopted effective January 31, 1986 (Supp. 86-1). Amended effective December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 607, effective February 5, 1999 (Supp. 99-1). New Section made by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2340, effective November 11, 2012 (Supp. 12-3).

R9-22-606. Contract Compliance Sanction

- A. The Director may impose sanctions upon a contractor for violation of any provision of this Chapter or of a contract. Sanctions include but are not limited to:
1. Suspension of any or all further member enrollment, by choice and/or assignment for a period of time.
 2. Imposition of a monetary sanction.
- B. The Director shall consider the nature, severity, and length of the violation when determining a sanction.
- C. The Director shall provide a contractor with written notice specifying grounds and terms for the sanction.
- D. Nothing contained in this Section shall be construed to prevent the Administration from imposing sanctions as provided in contract under A.R.S. § 36-2903.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 2340, effective November 11, 2012 (Supp. 12-3).

ARTICLE 7. STANDARDS FOR PAYMENTS**R9-22-701. Standard for Payments Related Definitions**

In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Article have the following meanings unless the context explicitly requires another meaning:

"Accommodation" means room and board services provided to a patient during an inpatient hospital stay and includes all staffing, supplies, and equipment. The accommodation is

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semi-private except when the member must be isolated for medical reasons. Types of accommodation include hospital routine medical/surgical units, intensive care units, and any other specialty care unit in which room and board are provided.

“Aggregate” means the combined amount of hospital payments for covered services provided within and outside the GSA.

“AHCCCS inpatient hospital day or days of care” means each day of an inpatient stay for a member beginning with the day of admission and including the day of death, if applicable, but excluding the day of discharge, provided that all eligibility, medical necessity, and medical review requirements are met.

“Ancillary service” means all hospital services for patient care other than room and board and nursing services, including but not limited to, laboratory, radiology, drugs, delivery room (including maternity labor room), operating room (including postanesthesia and postoperative recovery rooms), and therapy services (physical, speech, and occupational).

“APC” means the Ambulatory Payment Classification system under 42 CFR 419.31 used by Medicare for grouping clinically and resource-similar procedures and services.

“Billed charges” means charges for services provided to a member that a hospital includes on a claim consistent with the rates and charges filed by the hospital with Arizona Department of Health Services (ADHS).

“Business agent” means a company such as a billing service or accounting firm that renders billing statements and receives payment in the name of a provider.

“Capital costs” means costs as reported by the hospital to CMS as required by 42 CFR 413.20.

“Copayment” means a monetary amount, specified by the Director, that a member pays directly to a contractor or provider at the time covered services are rendered.

“Cost-to-charge ratio” (CCR) means a hospital’s costs for providing covered services divided by the hospital’s charges for the same services. The CCR is the percentage derived from the cost and charge data for each revenue code provided to AHCCCS by each hospital.

“Covered charges” means billed charges that represent medically necessary, reasonable, and customary items of expense for covered services that meet medical review criteria of AHCCCS or a contractor.

“CPT” means Current Procedural Terminology, published and updated by the American Medical Association. CPT is a nationally-accepted listing of descriptive terms and identifying codes for reporting medical services and procedures performed by physicians that provide a uniform language to accurately designate medical, surgical, and diagnostic services.

“Critical Access Hospital” is a hospital certified by Medicare under 42 CFR 485 Subpart F and 42 CFR 440.170(g). “Direct graduate medical education costs” or “direct program costs” means the costs that are incurred by a hospital for the education activities of an approved graduate medical education program that are the proximate result of training medical residents in the hospital, including resident salaries and fringe benefits, the portion of teaching physician salaries and fringe benefits that are related to the time spent in teaching and supervision of residents, and other related GME overhead costs.

“DRI inflation factor” means Global Insights Prospective Hospital Market Basket.

“Eligibility posting” means the date a member’s eligibility information is entered into the AHCCCS Pre-paid Medical Management Information System (PMMIS).

“Encounter” means a record of a medically-related service rendered by an AHCCCS-registered provider to a member enrolled with a contractor on the date of service.

“Existing outpatient service” means a service provided by a hospital before the hospital files an increase in its charge master as defined in R9-22-712(G), regardless of whether the service was explicitly described in the hospital charge master before filing the increase or how the service was described in the charge master before filing the increase.

“Expansion funds” means funds appropriated to support GME program expansions as described under A.R.S. § 36-2903.01(G)(9)(b) and (c)(i).

“Factor” means a person or an organization, such as a collection agency or service bureau, that advances money to a provider for accounts receivable that the provider has assigned, sold, or transferred to the organization for an added fee or a deduction of a portion of the accounts receivable. Factor does not include a business agent.

“Fiscal intermediary” means an organization authorized by CMS to make determinations and payments for Part A and Part B provider services for a given region.

“Freestanding Children’s Hospital” means a separately standing hospital with at least 120 pediatric beds that is dedicated to provide the majority of the hospital’s services to children.

“GME program approved by the Administration” or “approved GME program” means a graduate medical education program that has been approved by a national organization as described in 42 CFR 415.152.

“Graduate medical education (GME) program” means an approved residency program that prepares a physician for independent practice of medicine by providing didactic and clinical education in a medical environment to a medical student who has completed a recognized undergraduate medical education program.

“HCAC” means a health care acquired condition described under 42 CFR 447.26 but does not include Deep Vein Thrombosis (DVT)/Pulmonary Embolism (PE) as related to total knee replacement or hip replacement surgery in pediatric and obstetric patients.

“HCPCS” means the Health Care Procedure Coding System, published and updated by Center for Medicare and Medicaid Services (CMS). HCPCS is a listing of codes and descriptive terminology used for reporting the provision of physician services, other health care services, and substances, equipment, supplies or other items used in health care services.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, as specified under 45 CFR 162, that establishes standards and requirements for the electronic transmission of certain health information by defining code sets used for encoding data elements, such as tables of terms, medical concepts, medical diagnostic codes, or medical procedure codes.

“ICU” means the intensive care unit of a hospital.

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“Indirect program costs” means the marginal increase in operating costs that a hospital experiences as a result of having an approved graduate medical education program and that is not accounted for by the hospital’s direct program costs.

“Intern and Resident Information System” means a software program used by teaching hospitals and the provider community for collecting and reporting information on resident training in hospital and non-hospital settings.

“Medical education costs” means direct hospital costs for intern and resident salaries, fringe benefits, program costs, nursing school education, and paramedical education, as described in the Medicare Provider Reimbursement Manual.

“Medical review” means a clinical evaluation of documentation conducted by AHCCCS or a contractor for purposes of prior authorization, concurrent review, post-payment review, or determining medical necessity. The criteria for medical review are established by AHCCCS or a contractor based on medical practice standards that are updated periodically to reflect changes in medical care.

“Medicare Urban or Rural Cost-to-Charge Ratio (CCR)” means statewide average capital cost-to-charge ratio published annually by CMS added to the urban or rural statewide average operating cost-to-charge ratio published annually by CMS.

“National Standard code sets” means codes that are accepted nationally in accordance with federal requirements under 45 CFR 160 and 45 CFR 164.

“New hospital” means a hospital for which Medicare Cost Report claim and encounter data are not available for the fiscal year used for initial rate setting or rebasing.

“NICU” means the neonatal intensive care unit of a hospital that is classified as a Level II or Level III perinatal center by the Arizona Perinatal Trust.

“Non-IHS Acute Hospital” means a hospital that is not run by Indian Health Services, is not a free-standing psychiatric hospital, such as an IMD, and is paid under ADHS rates.

“Observation day” means a physician-ordered evaluation period of less than 24 hours to determine whether a person needs treatment or needs to be admitted as an inpatient. Each observation day consists of a period of 24 hours or less.

“Operating costs” means AHCCCS-allowable accommodation costs and ancillary department hospital costs excluding capital and medical education costs.

“OPPC” means an Other Provider Preventable Condition that is: (1) a wrong surgical or other invasive procedure performed on a patient, (2) a surgical or other invasive procedure performed on the wrong body part, or (3) a surgical or other invasive procedure performed on the wrong patient.

“Organized health care delivery system” means a public or private organization that delivers health services. It includes, but is not limited to, a clinic, a group practice prepaid capitation plan, and a health maintenance organization.

“Outlier” means a hospital claim or encounter in which the operating costs per day for an AHCCCS inpatient hospital stay meet the criteria described under this Article and A.R.S. § 36-2903.01(G).

“Outpatient hospital service” means a service provided in an outpatient hospital setting that does not result in an admission.

“Ownership change” means a change in a hospital’s owner, lessor, or operator under 42 CFR 489.18(a).

“Participating institution” means an institution at which portions of a graduate medical education program are regularly conducted and to which residents rotate for an educational experience for at least one month.

“Peer group” means hospitals that share a common, stable, and independently definable characteristic or feature that significantly influences the cost of providing hospital services, including specialty hospitals that limit the provision of services to specific patient populations, such as rehabilitative patients or children.

“PPC” means prior period coverage. PPC is the period of time, prior to the member’s enrollment, during which a member is eligible for covered services. The time-frame is the first day of the month of application or the first eligible month, whichever is later, until the day a member is enrolled with a contractor.

“PPS bed” means Medicare-approved Prospective Payment beds for inpatient services as reported in the Medicare cost reports for the most recent fiscal year for which the Administration has a complete set of Medicare cost reports for every rural hospital as determined as of the first of February of each year.

“Procedure code” means the numeric or alphanumeric code listed in the CPT or HCPCS manual by which a procedure or service is identified.

“Prospective rates” means inpatient or outpatient hospital rates set by AHCCCS in advance of a payment period and representing full payment for covered services excluding any quick-pay discounts, slow-pay penalties, and first-and third-party payments regardless of billed charges or individual hospital costs.

“Public hospital” means a hospital that is owned and operated by county, state, or hospital health care district.

“Qualifying health information exchange organization” means a non-profit health information organization as defined in A.R.S. § 36-3801 that provides the statewide exchange of patient health information among disparate health care organizations and providers not owned, operated, or controlled by the health information exchange. A qualifying health information exchange organization must include representation by the administration on its board of directors, and have a significant number of health care participants, including hospitals, laboratories, payers, community physicians and Federally Qualified Health Centers.

“Rebase” means the process by which the most currently available and complete Medicare Cost Report data for a year and AHCCCS claim and encounter data for the same year are collected and analyzed to reset the Inpatient Hospital Tiered per diem rates, or the Outpatient Hospital Capped Fee-For-Service Schedule.

“Reinsurance” means a risk-sharing program provided by AHCCCS to contractors for the reimbursement of specified contract service costs incurred by a member beyond a certain monetary threshold.

“Remittance advice” means an electronic or paper document submitted to an AHCCCS-registered provider by AHCCCS to explain the disposition of a claim.

“Resident” means a physician engaged in postdoctoral training in an accredited graduate medical education program, including an intern and a physician who has completed the requirements for the physician’s eligibility for board certification.

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“Revenue code” means a numeric code, that identifies a specific accommodation, ancillary service, or billing calculation, as defined by the National Uniform Billing committee for UB-04 forms.

“Sub-acute services” means inpatient care for a patient with an acute illness, injury or exacerbation of a disease process when the patient does not require acute inpatient hospitalization. Sub-acute care is rendered immediately after, or instead of, acute inpatient hospitalization.

“Specialty facility” means a facility where the service provided is limited to a specific population, such as rehabilitative services for children.

“Sponsoring institution” means the institution or entity that is recognized by the GME accrediting organization and designated as having ultimate responsibility for the assurance of academic quality and compliance with the terms of accreditation.

“Tier” means a grouping of inpatient hospital services into levels of care based on diagnosis, procedure, or revenue codes, peer group, NICU classification level, or any combination of these items.

“Tiered per diem” means an AHCCCS capped fee schedule in which payment is made on a per-day basis depending upon the tier (or tiers) into which an AHCCCS inpatient hospital day of care is assigned.

“Trip” means a one-way transport each time a taxi is called. If the taxi waits for the member then the transport continues to be part of the one-way trip. If the taxi leaves and is called to pick up the member, that is considered a new one-way trip.

Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-701 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-701 repealed, new Section R9-22-701 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Section repealed; new Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 12 A.A.R. 2188, effective June 6, 2006 (Supp. 06-2). Amended by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 1782, effective June 30, 2007 (Supp. 07-2). Amended by exempt rulemaking at 13 A.A.R. 3190, effective October 1, 2007 (Supp. 07-3). Amended by exempt rulemaking at 13 A.A.R. 4032, effective November 1, 2007 (Supp. 07-4). Amended by final rulemaking at 20 A.A.R. 1956, effective September 6, 2014; amended by exempt rulemaking at 20 A.A.R. 2755, effective January 1, 2015 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4).

R9-22-701.01. Reserved

R9-22-701.02. Reserved

R9-22-701.03. Reserved

R9-22-701.04. Reserved

R9-22-701.05. Reserved

R9-22-701.06. Reserved

R9-22-701.07. Reserved

R9-22-701.08. Reserved

R9-22-701.09. Reserved

R9-22-701.10 Scope of the Administration’s and Contractor’s Liability

The Administration shall bear no liability for providing covered services for any member beyond the date of termination of the member’s eligibility or during the member’s enrollment with a contractor. A contractor has no financial responsibility for services provided to a member beyond the last date of enrollment except as provided in Articles 2 and 5 of this Chapter and as specified in contract.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1).

R9-22-702. Charges to Members

- A.** For purposes of this subsection, the term “member” includes the member’s financially responsible representative as described under A.R.S. § 36-2903.01.
- B.** Registered providers must accept payment from the Administration or a contractor as payment in full.
- C.** Except as provided in subsection (D) a registered provider shall not request or collect payment from, refer to a collection agency, or report to a credit reporting agency an eligible person or a person claiming to be an eligible person.
- D.** An AHCCCS registered provider may charge, submit a claim to, or demand or collect payment from a member:
 1. To collect the copayment described in R9-22-711;
 2. To recover from a member that portion of a payment made by a third party to the member for an AHCCCS covered service if the member has not transferred the payment to the Administration or the contractor as required by the statutory assignment of rights to AHCCCS;
 3. To obtain payment from a member for medical expenses incurred during a period when the member intentionally withheld information or intentionally provided inaccurate information pertaining to the member’s AHCCCS eligibility or enrollment that caused payment to the provider to be reduced or denied;
 4. For a service that is excluded by statute or rule, or provided in an amount that exceeds a limitation in statute or rule, if the member signs a document in advance of receiving the service stating that the member understands the service is excluded or is subject to a limit and that the member will be financially responsible for payment for the excluded service or for the services in excess of the limit;
 5. When the contractor or the Administration has denied authorization for a service if the member signs a document in advance of receiving the service stating that the member understands that authorization has been denied and that the member will be financially responsible for payment for the service;

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6. For services requested for a member enrolled with a contractor, and rendered by a noncontracting provider under circumstances where the member's contractor is not responsible for payment of "out of network" services under R9-22-705(A), if the member signs a document in advance of receiving the service stating that the member understands the provider is out of network, that the member's contractor is not responsible for payment, and that the member will be financially responsible for payment for the excluded service;
 7. For services rendered to a person eligible for the FESP if the provider submits a claim to the Administration in the reasonable belief that the service is for treatment of an emergency medical condition and the Administration denies the claim because the service does not meet the criteria of R9-22-217; or
 8. If the provider has received verification from the Administration that the person was not an eligible person on the date of service.
- E.** The signature requirement of subsections (D)(4), (D)(5), and (D)(6) do not apply if:
1. The member is unable or incompetent to sign such a document, or
 2. When services are rendered for the purpose of treating an emergency medical condition as defined in R9-22-217 and a delay in providing treatment to obtain a signature would have a significant adverse affect on the member's health.
- F.** Except as provided for in this Section, registered providers shall not bill a member when the provider could have received reimbursement from the Administration or a contractor but for the provider's failure to file a claim in accordance with the requirements of AHCCCS statutes, rules, the provider agreement, or contract, such as, but not limited to, requirements to request and obtain prior authorization, timely filing, and clean claim requirements.
- Historical Note**
- Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-702 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Amended as a permanent rule effective May 16, 1983; text identical to the emergency (Supp. 83-3). Former Section R9-22-702 repealed, new Section R9-22-702 adopted effective October 1, 1983 (Supp. 83-5). Amended by adding subsection (B) effective October 1, 1985 (Supp. 85-5). Amended by adding subsection (C) effective October 1, 1987 (Supp. 87-4). Amended effective April 13, 1990 (Supp. 90-2). Amended effective December 13, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 3217, effective October 1, 2005 (Supp. 05-3). Amended by exempt rulemaking at 17 A.A.R. 1707, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3).
- R9-22-703. Payments by the Administration**
- A.** General requirements. A provider shall enter into a provider agreement with the Administration that meets the requirements of A.R.S. § 36-2904 and 42 CFR 431.107(b) as of October 1, 2012, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.
- B.** Timely submission of claims.
1. Under A.R.S. § 36-2904, the Administration shall deem a paper claim to be submitted on the date that it is received by the Administration. An electronic claim is deemed received by the Administration when the claim enters the information processing system designated by the Administration for electronic claims in a form that is capable of being processed by the designated information processing system. The Administration shall do one or more of the following for each claim it receives:
 - a. Place a date stamp on the face of the claim,
 - b. Assign a system-generated claim reference number, or
 - c. Assign a system-generated date-specific number.
 2. Unless a shorter time period is specified in contract, the Administration shall not pay a claim for a covered service unless the claim is initially submitted within one of the following time limits, whichever is later:
 - a. Six months from the date of service or for an inpatient hospital claim, six months from the date of discharge; or
 - b. Six months from the date of eligibility posting.
 3. Unless a shorter time period is specified in contract, the Administration shall not pay a clean claim for a covered service unless the claim is submitted within one of the following time limits, whichever is later:
 - a. Twelve months from the date of service or for an inpatient hospital claim, 12 months from the date of discharge; or
 - b. Twelve months from the date of eligibility posting.
 4. Unless a shorter time period is specified in contract, the Administration shall not pay a claim submitted by an HIS or tribal facility for a covered service unless the claim is initially submitted within 12 months from the date of service, date of discharge, or eligibility posting, whichever is later.
- C.** Claims processing.
1. The Administration shall notify the AHCCCS-registered provider with a remittance advice when a claim is processed for payment.
 2. The Administration shall reimburse a hospital for inpatient hospital admissions and outpatient hospital services rendered on or after March 1, 1993, as follows and in the manner and at the rate described in A.R.S. § 36-2903.01:
 - a. If the hospital bill is paid within 30 days from the date of receipt, the claim is paid at 99 percent of the rate.
 - b. If the hospital bill is paid between 30 and 60 days from the date of receipt, the claim is paid at 100 percent of the rate.
 - c. If the hospital bill is paid after 60 days from the date of receipt, the claim is paid at 100 percent of the rate plus a fee of one percent per month for each month or portion of a month following the 60th day of receipt of the bill until date of payment.
 3. A claim is paid on the date indicated on the disbursement check.
 4. A claim is denied as of the date of the remittance advice.
 5. The Administration shall process a hospital claim under this Article.
- D.** Prior authorization.
1. An AHCCCS-registered provider shall:

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- a. Obtain prior authorization from the Administration for non-emergency hospital admissions, covered services as specified in Articles 2 and 12 of this Chapter, and for administrative days as described in R9-22-712.75,
 - b. Notify the Administration of hospital admissions under Article 2 of this Chapter, and
 - c. Make records available for review by the Administration upon request.
2. The Administration may deny a claim if the provider fails to comply with subsection (D)(1).
 3. If the Administration issues prior authorization for an inpatient hospital admission, a specific service, or level of care but subsequent medical review indicates that the admission, the service, or level of care was not medically appropriate, the Administration shall adjust the claim payment.
- E. Review of claims and coverage for hospital supplies.**
1. The Administration may conduct prepayment and post-payment review of any claims, including but not limited to hospital claims.
 2. Personal care items supplied by a hospital, including but not limited to the following, are not covered services:
 - a. Patient care kit,
 - b. Toothbrush,
 - c. Toothpaste,
 - d. Petroleum jelly,
 - e. Deodorant,
 - f. Septi soap,
 - g. Razor or disposable razor,
 - h. Shaving cream,
 - i. Slippers,
 - j. Mouthwash,
 - k. Shampoo,
 - l. Powder,
 - m. Lotion,
 - n. Comb, and
 - o. Patient gown.
 3. The following hospital supplies and equipment, if medically necessary and used by the member, are covered services:
 - a. Arm board,
 - b. Diaper,
 - c. Underpad,
 - d. Special mattress and special bed,
 - e. Gloves,
 - f. Wrist restraint,
 - g. Limb holder,
 - h. Disposable item used instead of a durable item,
 - i. Universal precaution,
 - j. Stat charge, and
 - k. Portable charge.
 4. The Administration shall determine in a hospital claims review whether services rendered were:
 - a. Covered services as defined in Article 2;
 - b. Medically necessary;
 - c. Provided in the most appropriate, cost-effective, and least restrictive setting; and
 - d. For claims with dates of admission on and after March 1, 1993, substantiated by the minimum documentation specified in A.R.S. § 36-2903.01.
 5. If the Administration adjudicates a claim, a person may file a claim dispute challenging the adjudication under 9 A.A.C. 34.
- F. Overpayment for AHCCCS services.**
1. An AHCCCS-registered provider shall notify the Administration when the provider discovers the Administration made an overpayment.
 2. The Administration shall recoup an overpayment from a future claim cycle if an AHCCCS-registered provider fails to return the overpaid amount to the Administration.
 3. The Administration shall document any recoupment of an overpayment on a remittance advice.
 4. An AHCCCS-registered provider may file a claim dispute under 9 A.A.C. 34 if the AHCCCS-registered provider disagrees with a recoupment action.
- G.** For services subject to limitations or exclusions such as the number of hours, days, or visits covered as described in Article 2 of this Chapter, once the limit is reached the Administration will not reimburse the services.
- H.** Prior quarter reimbursement. A provider shall:
1. Bill the Administration for services provided during a prior quarter eligibility period upon verification of eligibility or upon notification from a member of AHCCCS eligibility.
 2. Reimburse a member when payment has been received from the Administration for covered services during a prior quarter eligibility period. All funds paid by the member shall be reimbursed.
 3. Accept payment received by the Administration as payment in full.
- I.** Payment for in-state inpatient hospital services for claims with discharge dates on or before September 30, 2014. The Administration shall reimburse an in-state provider of inpatient hospital services rendered with a discharge date on or before September 30, 2014, the prospective tiered-per-diem amount in A.R.S. § 36-2903.01 and this Article.
- J.** Payment for out-of-state inpatient hospital services for claims with discharge dates on or before September 30, 2014. The Administration shall reimburse an out-of-state provider of inpatient hospital services rendered with a discharge date on or before September 30, 2014, for covered inpatient services by multiplying covered charges by the most recent statewide urban cost-to-charge ratio as determined in R9-22-712.01(6)(b).
- K.** Payment for inpatient hospital services for claims with discharge dates on and after October 1, 2014 regardless of admission date. The Administration shall reimburse an in-state or out-of-state provider of inpatient hospital services rendered with a discharge date on or after October 1, 2014, the DRG rate established by the Administration.
- L.** The Administration may enter into contracts for the provisions of transplant services.

Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R-22-703 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-703 repealed, new Section R9-22-703 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1986 (Supp. 86-5). Amended subsection (B), paragraph (1) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (A) effective September 16, 1987 (Supp. 87-3). Amended effective May 30, 1989 (Supp. 89-2). Amended effective September 29, 1992 (Supp. 92-3). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 3222, effective October 1, 2005 (Supp.

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05-3). Amended by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by exempt rulemaking at 17 A.A.R. 1707, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3). Amended by final rulemaking at 19 A.A.R. 3309, November 30, 2013 (Supp. 13-4). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 27 A.A.R. 237, effective April 4, 2021 (Supp. 21-1).

R9-22-704. Repealed**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-704 adopted as an emergency now adopted and amended as a permanent rule effective August 30 1982 (Supp. 82-4). Amended effective October 1, 1983 (Supp. 83-5). Amended subsection A., Paragraph 2. effective October 1, 1985 (Supp. 85-5). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Section repealed by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1).

R9-22-705. Payments by Contractors

- A. General requirements.** A contractor shall contract with providers to provide covered services to members enrolled with the contractor. The contractor is responsible for reimbursing providers and coordinating care for services provided to a member. Except as provided in subsection (A)(2), a contractor is not required to reimburse a noncontracting provider for services rendered to a member enrolled with the contractor.
1. **Providers.** A provider shall enter into a provider agreement with the Administration that meets the requirements of A.R.S. § 36-2904 and 42 CFR 431.107(b) as of March 6, 1992, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.
 2. A contractor shall reimburse a noncontracting provider for services rendered to a member enrolled with the contractor as specified in this Article if:
 - a. The contractor referred the member to the provider or authorized the provider to render the services and the claim is otherwise payable under this Chapter, or
 - b. The service is emergent under Article 2 of this Chapter.
- B. Timely submission of claims.**
1. Under A.R.S. § 36-2904, a contractor shall deem a paper or electronic claim as submitted on the date that the claim is received by the contractor. The contractor shall do one or more of the following for each claim the contractor receives:
 - a. Place a date stamp on the face of the claim,
 - b. Assign a system-generated claim reference number, or
 - c. Assign a system-generated date-specific number.
 2. Unless a shorter time period is specified in subcontract, a contractor shall not pay a claim for a covered service unless the claim is initially submitted within one of the following time limits, whichever is later:
 - a. Six months from the date of service or for an inpatient hospital claim, six months from the date of discharge; or
 - b. Six months from the date of eligibility posting.
 3. Unless a shorter time period is specified in subcontract, a contractor shall not pay a clean claim for a covered service unless the claim is submitted within one of the following time limits, whichever is later:
 - a. Twelve months from the date of service or for an inpatient hospital claim, 12 months from the date of discharge; or
 - b. Twelve months from the date of eligibility posting.
- C. Date of claim.**
1. A contractor's date of receipt of an inpatient or an outpatient hospital claim is the date the claim is received by the contractor as indicated by the date stamp on the claim, the system-generated claim reference number, or the system-generated date-specific number assigned by the contractor.
 2. A hospital claim is considered paid on the date indicated on the disbursement check.
 3. A denied hospital claim is considered adjudicated on the date of the claim's denial.
 4. For a claim that is pending for additional supporting documentation specified in A.R.S. § 36-2903.01 or 36-2904, the contractor shall assign a new date of receipt upon receipt of the additional documentation.
 5. For a claim that is pending for documentation other than the minimum required documentation specified in either A.R.S. § 36-2903.01 or 36-2904, the contractor shall not assign a new date of receipt.
 6. A contractor and a hospital may, through a contract approved as specified in R9-22-715, adopt a method for identifying, tracking, and adjudicating a claim that is different from the method described in this subsection.
- D. Payment for in-state inpatient hospital services for claims with discharge dates on or before September 30, 2014.** A contractor shall reimburse an in-state provider of inpatient hospital services rendered with a discharge date on or before September 30, 2014, at either a rate specified by subcontract or, in absence of the subcontract, the prospective tiered-per-diem amount in A.R.S. § 36-2903.01 and this Article. Subcontract rates, terms, and conditions are subject to review and approval or disapproval under A.R.S. § 36-2904 and R9-22-715. This subsection does not apply to an urban contractor as specified in R9-22-718 and A.R.S. § 36-2905.01.
- E. Payment for Inpatient out-of-state hospital payments for claims with discharge dates on or before September 30, 2014.** In the absence of a contract with an out-of-state hospital that specifies payment rates, a contractor shall reimburse out-of-state hospitals for covered inpatient services by multiplying covered charges by the most recent statewide urban cost-to-charge ratio as determined in R9-22-712.01(6)(b).
- F. Payment for inpatient hospital services for claims with discharge dates on and after October 1, 2014 regardless of admission date.** Subject to R9-22-718 and A.R.S. § 36-2905.01 regarding urban hospitals, a contractor shall reimburse an in-state or out-of-state provider of inpatient hospital services, at either a rate specified by subcontract or, in absence of a subcontract, the DRG rate established by the Administration and this Article. Subcontract rates, terms, and conditions are subject to review and approval or disapproval under A.R.S. § 36-2904 and R9-22-715.
- G. Payment for in-state outpatient hospital services.**
A contractor shall reimburse an in-state provider of outpatient hospital services rendered on or after July 1, 2005,

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at either a rate specified by a subcontract or, in absence of a subcontract, as provided under R9-22-712.10, A.R.S. § 36-2903.01 and other sections of this Article. The terms of the subcontract are subject to review and approval or disapproval under A.R.S. § 36-2904 and R9-22-715.

- H.** Outpatient out-of-state hospital payments. In the absence of a contract with an out-of-state hospital that specifies payment rates, a contractor shall reimburse out-of-state hospitals for covered outpatient services by applying the methodology described in R9-22-712.10 through R9-22-712.50. If the outpatient procedure is not assigned a fee schedule amount, the contractor shall pay the claim by multiplying the covered charges for the outpatient services by the statewide outpatient cost-to-charge ratio.
- I.** Payment for observation days. A contractor shall reimburse a provider and a noncontracting provider for the provision of observation days at either a rate specified by subcontract or, in the absence of a subcontract, as prescribed under R9-22-712, R9-22-712.10, and R9-22-712.45.
- J.** Review of claims and coverage for hospital supplies.
1. A contractor may conduct a review of any claims submitted and recoup any payments made in error.
 2. A hospital shall obtain prior authorization from the appropriate contractor for nonemergency admissions. When issuing prior authorization, a contractor shall consider the medical necessity of the service, and the availability and cost effectiveness of an alternative treatment. Failure to obtain prior authorization when required is cause for nonpayment or denial of a claim. A contractor shall not require prior authorization for medically necessary services provided during any prior period for which the contractor is responsible. If a contractor and a hospital agree to a subcontract, the parties shall abide by the terms of the subcontract regarding utilization control activities. A hospital shall cooperate with a contractor's reasonable activities necessary to perform concurrent review and shall make the hospital's medical records pertaining to a member enrolled with a contractor available for review.
 3. Regardless of prior authorization or concurrent review activities, a contractor may make prepayment or post-payment review of all claims, including but not limited to a hospital claim. A contractor may recoup an erroneously paid claim. If prior authorization was given for an inpatient hospital admission, a specific service, or level of care but subsequent medical review indicates that the admission, the service, or level of care was not medically appropriate, the contractor shall adjust the claim payment.
 4. A contractor and a hospital may enter into a subcontract that includes hospital claims review criteria and procedures if the subcontract meets the requirements of R9-22-715.
 5. Personal care items supplied by a hospital, including but not limited to the following, are not covered services:
 - a. Patient care kit,
 - b. Toothbrush,
 - c. Toothpaste,
 - d. Petroleum jelly,
 - e. Deodorant,
 - f. Septi soap,
 - g. Razor,
 - h. Shaving cream,
 - i. Slippers,
 - j. Mouthwash,
 - k. Disposable razor,
 - l. Shampoo,
 - m. Powder,
 - n. Lotion,
 - o. Comb, and
 - p. Patient gown.
6. The following hospital supplies and equipment, if medically necessary and used by the member, are covered services:
- a. Arm board,
 - b. Diaper,
 - c. Underpad,
 - d. Special mattress and special bed,
 - e. Gloves,
 - f. Wrist restraint,
 - g. Limb holder,
 - h. Disposable item used instead of a durable item,
 - i. Universal precaution,
 - j. Stat charge, and
 - k. Portable charge.
7. The contractor shall determine in a hospital claims review whether services rendered were:
- a. Covered services as defined in R9-22-201;
 - b. Medically necessary;
 - c. Provided in the most appropriate, cost-effective, and least restrictive setting; and
 - d. For claims with dates of admission on and after March 1, 1993, substantiated by the minimum documentation specified in A.R.S. § 36-2904.
8. If a contractor adjudicates a claim or recoups payment for a claim, a person may file a claim dispute challenging the adjudication or recoupment as described under 9 A.A.C. 34.
- K.** Non-hospital claims. A contractor shall pay claims for non-hospital services in accordance with contract, or in the absence of a contract, at a rate not less than the Administration's capped fee-for-service schedule or at a lower rate if negotiated between the two parties.
- L.** Payments to hospitals. A contractor shall pay for inpatient hospital admissions and outpatient hospital services rendered on or after March 1, 1993, as follows and as described in A.R.S. § 36-2904:
1. If the hospital bill is paid within 30 days from the date of receipt, the claim is paid at 99 percent of the rate.
 2. If the hospital bill is paid between 30 and 60 days from the date of receipt, the claim is paid at 100 percent of the rate.
 3. If the hospital bill is paid after 60 days from the date of receipt, the claim is paid at 100 percent of the rate plus a 1 percent penalty of the rate for each month or portion of the month following the 60th day of receipt of the bill until date of payment.
- M.** Interest payment. In addition to the requirements in subsection (L), a contractor shall pay interest for late claims as defined by contract.
- N.** For services subject to limitations or exclusions such as the number of hours, days, or visits covered as described in Article 2 of this Chapter, once the limit is reached the Administration will not reimburse the services.

Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-705 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Amended as a permanent rule effective May 16, 1983; text of the

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amended rule identical to emergency (Supp. 83-3). Former Section R9-22-705 repealed, new Section R9-22-705 adopted effective October 1, 1983 (Supp. 83-5).

Amended as an emergency effective October 25, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-5). Emergency expired. Permanent amendment adopted effective February 1, 1985 (Supp. 85-1).

Amended effective October 1, 1985 (Supp. 85-5).

Amended subsection (C) effective October 1, 1986 (Supp. 86-5). Amended subsection (C) effective October 1, 1987; amended subsection (C) effective December 22, 1987 (Supp. 87-4). Amended subsections (A) and (C) effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 5 A.A.R. 867, effective March 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 3222, effective October 1, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 1439, effective May 31, 2008 (Supp. 08-2). Amended by exempt rulemaking at 17 A.A.R. 1707, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-706. Repealed**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-706 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-706 repealed, new Section R9-22-706 adopted effective October 1, 1983 (Supp. 83-5). Adopted as an emergency effective May 18, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Amended as an emergency effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Amended as an emergency effective October 25, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-5).

Emergency expired. Permanent amendment adopted effective February 1, 1985 (Supp. 85-1). Amended effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1986 (Supp. 86-5). Amended subsections (A), (D), (E), (F), and (G) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (F) effective December 22, 1987 (Supp. 87-4). Amended subsections (A) and (F) effective May 30, 1989 (Supp. 89-2). Amended effective April 13, 1990 (Supp. 90-2). Amended effective September 29, 1992 (Supp. 92-3). Amended effective September 22, 1997 (Supp. 97-3). Section repealed by final rulemaking at 10 A.A.R. 4656, effective January 1, 2005 (Supp. 04-4).

R9-22-707. Repealed**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-

3). Former Section R9-22-707 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Repealed as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Repealed as a permanent action effective May 16, 1983 (Supp. 83-3).

New Section R9-22-707 adopted effective October 1, 1983 (Supp. 83-5). Adopted as an emergency effective May 18, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Adopted as an emergency effective August 16, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-4). Former Section R9-22-707 repealed, new Section R9-22-707 adopted effective October 1, 1985 (Supp. 85-5). Former Section R9-22-707 repealed, new Section R9-22-707 adopted effective October 1, 1986 (Supp. 86-5). Amended subsection (A) effective October 1, 1987 (Supp. 87-4). Amended effective September 29, 1992 (Supp. 92-3). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Section repealed by final rulemaking at 13 A.A.R. 856, effective May 5, 2007 (Supp. 07-1).

R9-22-708. Payments for Services Provided to Eligible American Indians

- A. For purposes of this Article “IHS enrolled” or “enrolled with IHS” means an American Indian who has elected to receive covered services through IHS instead of a contractor.
- B. For an American Indian who is enrolled with IHS, AHCCCS shall pay IHS the most recent all-inclusive inpatient, outpatient or ambulatory surgery rates published by Health and Human Services (HHS) in the Federal Register, or a separately contracted rate with IHS, for AHCCCS-covered services provided in an IHS facility. AHCCCS shall reimburse providers for the Medicare coinsurance and deductible amounts required to be paid by the Administration or contractor in Chapter 29, Article 3 of this Title.
- C. When IHS refers an American Indian enrolled with IHS to a provider other than an IHS or tribal facility, the provider to whom the referral is made shall obtain prior authorization from AHCCCS for services as required under Articles 2, 7 or 12 of this Chapter.
- D. For an American Indian enrolled with a contractor, AHCCCS shall pay the contractor a monthly capitation payment.
- E. Once an American Indian enrolls with a contractor, AHCCCS shall not reimburse any provider other than IHS or a Tribal facility.

Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-708 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-708 repealed, new Section R9-22-708 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-708 renumbered and amended as Section R9-22-709, new Section R9-22-708 adopted effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1986 (Supp. 86-5). Amended by final rulemaking at 10 A.A.R. 4656, effective January 1, 2005 (Supp. 04-4). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-709. Contractor’s Liability to Hospitals for the Provision of Emergency and Post-stabilization Care

A contractor is liable for emergency hospitalization and post-stabilization care as described in R9-22-210 and R9-22-210.01.

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Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-709 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-709 repealed, new Section R9-22-709 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-709 renumbered and amended as Section R9-22-713, former Section R9-22-708 renumbered and amended as Section R9-22-709 effective October 1, 1985 (Supp. 85-5). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 13 A.A.R. 856, effective May 5, 2007 (Supp. 07-1).

Editor's Note: The following Section was amended under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the agency was not required to hold public hearings on the rules; and the Attorney General did not certify this rule. This Section was subsequently amended through the regular rulemaking process.

R9-22-710. Payments for Non-hospital Services

- A.** Capped fee-for-service. The Administration shall provide notice of changes in methods and standards for setting payment rates for services in accordance with 42 CFR 447.205, December 19, 1983, incorporated by reference and on file with the Administration and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.
1. Non-contracted services. In the absence of a contract that specifies otherwise, a contractor shall reimburse a provider or noncontracting provider for non-hospital services according to the Administration's capped-fee-for-service schedule.
 2. Procedure codes. The Administration shall maintain a current copy of the National Standard Code Sets mandated under 45 CFR 160 (October 1, 2004) and 45 CFR 162 (October 1, 2004), incorporated by reference and on file with the Administration and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.
 - a. A person shall submit an electronic claim consistent with 45 CFR 160 (October 1, 2004) and 45 CFR 162 (October 1, 2004).
 - b. A person shall submit a paper claim using the National Standard Code Sets as described under 45 CFR 160 (October 1, 2004) and 45 CFR 162 (October 1, 2004).
 - c. The Administration may deny a claim for failure to comply with subsection (A) (2) (a) or (b).
 3. Fee schedule. The Administration shall pay providers, including noncontracting providers, at the lesser of billed charges or the capped fee-for-service rates specified in subsections (A)(3)(a) through (A)(3)(d) unless a different fee is specified in a contract between the Administration and the provider, or is otherwise required by law.

- a. Physician services. Fee schedules for payment for physician services are on file at the central office of the Administration for reference use during customary business hours.
 - b. Dental services. Fee schedules for payment for dental services are on file at the central office of the Administration for reference use during customary business hours.
 - c. Transportation services. Fee schedules for payment for transportation services are on file at the central office of the Administration for reference use during customary business hours. For dates of service beginning:
 - i. October 1, 2012 through September 30, 2013, the Administration and its contractors shall reimburse ambulance services at 68.59 percent of the ADHS rates that are in effect as of August 2, 2012.
 - ii. October 1, 2013 through September 30, 2014, the Administration and its contractors shall reimburse ambulance services at 68.59 percent of the ADHS rates that are in effect as of August 2, 2013.
 - iii. October 1, 2014 through September 30, 2015, the Administration and its contractors shall reimburse ambulance services at 74.74 percent of the ADHS rates that are in effect as of August 2, 2014.
 - d. Medical supplies and durable medical equipment (DME). Fee schedules for payment for medical supplies and DME are on file at the central office of the Administration for reference use during customary business hours. The Administration shall reimburse a provider once for purchase of DME during any two-year period, unless the Administration determines that DME replacement within that period is medically necessary for the member. Unless prior authorized by the Administration, no more than one repair and adjustment of DME shall be reimbursed during any two-year period.
- B.** Pharmacy services. The Administration shall not reimburse pharmacy services unless the services are provided by a pharmacy having a subcontract with a Pharmacy Benefit Manager (PBM) contracted with AHCCCS. Except as specified in subsection (C), the Administration shall reimburse pharmacy services according to the terms of the contract.
- C.** FQHC Pharmacy reimbursement.
1. For purposes of this Section the following terms are defined:
 - a. "340B Drug Pricing Program" means the discount drug purchasing program described in 42 U.S.C 256b.
 - b. "340B Ceiling Price" means the maximum price that drug manufacturers can charge covered entities participating in the 340B Drug Pricing Program as reported by the drug manufacturer to HRSA.
 - c. "340B entity" means a covered entity, eligible to participate in the 340B Drug Pricing Program, as defined by the Health Resources and Human Services Administration.
 - d. "Actual Acquisition Cost (AAC)" means the purchase price of a drug paid by a pharmacy net of discounts, rebates, chargebacks and other adjustments to the price of the drug. The AAC excludes dispensing fees.

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- e. "Contracted Pharmacy" means an arrangement through which a 340B entity may contract with an outside pharmacy to provide comprehensive pharmacy services utilizing medications subject to 340B pricing.
- f. "Dispensing Fee" means the amount paid for the professional services provided by the pharmacist for dispensing a prescription. The Dispensing Fee does not include any payment for the drugs being dispensed.
- g. "Federally Qualified Health Center" means a public or private non-profit health care organization that has been identified by HRSA and certified by CMS as meeting the criteria under sections 1861(aa)(4) and 1905(l)(2)(B) of the Social Security Act and receives funds under section 330 of the Public Health Service Act.
- h. "Federally Qualified Health Center Look-Alike" means a public or private non-profit health care organization that has been identified by HRSA and certified by CMS as meeting the definition of "health center" under section 330 of the Public Health Service Act, but does not receive grant funding under section 330.
- i. "FQHC or FQHC Look-Alike pharmacy" means a pharmacy that dispenses drugs to FQHC or FQHC-LA patients and that is owned and/or operated by an FQHC/FQHC-LA or by an entity that reports the costs of an FQHC/FQHC-LA on its Medicare Cost Report, whether or not collocated with an FQHC or an FQHC Look-Alike.
2. Effective the later of February 1, 2012, or CMS approval of a State Plan Amendment, an FQHC or FQHC Look-Alike shall:
- Notify the AHCCCS provider registration unit of its status as a 340B covered entity no later than:
 - 30 days after the effective date of this Section;
 - 30 days after registration with the Health Resources and Services Administration (HRSA) for participation in the 340B program, or
 - The time of application to become an AHCCCS provider.
 - Provide the 340B pricing file to the AHCCCS Administration upon request. The 340B pricing file shall be provided in the file format as defined by AHCCCS.
 - Identify 340B drug claims submitted to the AHCCCS FFS PBM or the Managed Care Contractors' PBMs for reimbursement. The 340B drug claim identification and claims processing for a drug claim submission shall be consistent with claim instructions issued and required by AHCCCS to identify such claims.
3. The FQHC and the FQHC Look-Alike pharmacies shall submit claims for AHCCCS members for drugs that are identified in the 340B pricing file, whether or not purchased under the 340B pricing file, with the lesser of:
- The actual acquisition cost, or
 - The 340B ceiling price.
4. The AHCCCS Fee-for-Service and Managed Care Contractors' PBMs shall reimburse claims for drugs which are identified in the 340B pricing file dispensed by FQHC and FQHC Look -Alike pharmacies, whether or not purchased under the 340B pricing file, at the amount submitted under subsection (C)(3) plus a dispensing fee listed in the AHCCCS Capped Fee-For-Service Schedule unless a contract between the 340B entity and a Managed Care Contractor's PBM specifies a different dispensing fee.
- Contracted pharmacies shall not submit claims for drugs dispensed under an agreement with the 340B entity as part of the 340B drug pricing program, and the AHCCCS Administration and Managed Care Contractors shall not reimburse such claims.
 - The AHCCCS Administration and Managed Care Contractors shall reimburse contracted pharmacies for drugs not dispensed under an agreement with the 340B entity as part of the 340B program at the price and dispensing fee set forth in the contract between the contracted pharmacy and the AHCCCS or its Managed Care Contractors' PBMs. Neither the Administration nor its Managed Care Contractors will reimburse a contracted pharmacy that does not have a contract with the Administration or MCO's PBM.
 - The AHCCCS Administration and its Managed Care Contractors shall reimburse FQHC and FQHC Look-Alike pharmacies for drugs that are not eligible under the 340B Drug Pricing Program at the price and dispensing fee set forth in their contract with the AHCCCS or its Managed Care Contractors' PBMs.
 - AHCCCS may periodically conduct audits to ensure compliance with this Section.

Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-710 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Amended as a permanent rule effective May 16, 1983; text of amended rule identical to emergency (Supp. 83-3). Former Section R9-22-710 repealed, new Section R9-22-710 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985. The capped fee-for-service schedules, deleted from Section R9-22-710, are now on file at the central office of the Administration (Supp. 85-5). Amended subsections (B) through (D) effective October 1, 1986 (Supp. 86-5). Amended subsection (B) effective July 1, 1988 (Supp. 88-3). Amended subsection (B) effective April 27, 1989 (Supp. 89-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended effective December 13, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 3830, effective November 12, 2005 (Supp. 05-3). Amended by exempt rulemaking at 18 A.A.R. 212, effective February 1, 2012 (Supp. 12-1). Amended by exempt rulemaking at 18 A.A.R. 1971, effective August 1, 2012 (Supp. 12-3). Amended by exempt rulemaking at 18 A.A.R. 2630, effective October 1, 2012 (Supp. 12-4). Amended by final rulemaking at 19 A.A.R. 1681, effective August 9, 2013 (Supp. 13-2). Amended by exempt rulemaking at 19 A.A.R. 3525, effective October 18, 2013 (Supp. 13-4)

R9-22-711. Copayments**A.** For purposes of this Article:

- A copayment is a monetary amount that a member pays directly to a provider at the time a covered service is rendered.

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2. An eligible individual is assigned to a hierarchy established in subsections (B) through (E), for the purposes of establishing a copayment amount.
 3. No refunds shall be made for a retroactive period if there is a change in an individual's status that alters the amount of a copayment.
- B.** The following services are exempt from AHCCCS copayments for all members:
1. Family planning services and supplies,
 2. Services related to a pregnancy or any other medical condition that may complicate the pregnancy, including tobacco cessation treatment for a pregnant woman,
 3. Emergency services as described in 42 CFR 447.56(2)(i),
 4. All services paid on a fee-for-service basis,
 5. Preventive services, such as well visits, immunizations, pap smears, colonoscopies, and mammograms,
 6. Provider preventable services.
- C.** The following individuals are exempt from AHCCCS copayments:
1. An individual under age 19, including individuals eligible for the KidsCare Program in A.R.S. § 36-2982;
 2. An individual determined to be Seriously Mentally Ill (SMI) by the Arizona Department of Health Services;
 3. An individual eligible for the Arizona Long-Term Care Program in A.R.S. § 36-2931;
 4. An individual eligible for QMB under Chapter 29;
 5. An individual eligible for the Children's Rehabilitative Services program under A.R.S. § 36-2906(E);
 6. An individual receiving nursing facility or HCBS services under R9-22-216;
 7. An individual receiving hospice care as defined in 42 U.S.C. 1396d(o);
 8. An American Indian individual enrolled in a health plan and has received services through an IHS facility, tribal 638 facility or urban Indian health program;
 9. An individual eligible in the Breast and Cervical Cancer program as described under Article 20;
 10. An individual who is pregnant and through the postpartum period following the pregnancy;
 11. An individual with respect to whom child welfare services are made available under Part B of Title IV of the Social Security Act on the basis of being a child in foster care, without regard to age;
 12. An individual with respect to whom adoption or foster care assistance is made available under Part E of Title IV of the Social Security Act, without regard to age; and
 13. An adult eligible under R9-22-1427(E), with income at or below 106% of the FPL.
- D.** Non-mandatory copayments. Unless otherwise listed in subsection (B) or (C), individuals under subsections (D)(1) through (6) are subject to the copayments listed in this subsection. A provider shall not deny a service when a member states to the provider an inability to pay a copayment.
1. A caretaker relative eligible under R9-22-1427(A);
 2. An individual eligible for Young Adult Transitional Insurance (YATI) in A.R.S. § 36-2901(6)(a)(iii);
 3. An individual eligible for State Adoption Assistance in R9-22-1433;
 4. An individual eligible for Supplemental Security Income (SSI);
 5. An individual eligible for SSI Medical Assistance Only (SSI/MAO) in Article 15; and
 6. An individual eligible for the Freedom to Work program in A.R.S. § 36-2901(6)(g).
 7. Copayment amount per service:
 - a. \$2.30 per prescription drug.
 - b. \$3.40 per outpatient visit, excluding an emergency room visit, if any of the services rendered during the visit are coded as evaluation and management services or non-emergent surgical procedures according to the National Standard Code Sets. An outpatient visit includes any setting where these services are performed such as a physician's office, an Ambulatory Surgical Center (ASC), or a clinic.
 - c. \$2.30 per visit, if a copayment is not being imposed under subsection (D)(7)(b) and any of the services rendered during the visit are coded as physical, occupational or speech therapy services according to the National Standard Code Sets.
- E.** Mandatory copayments.
1. Copayments for individuals eligible for Transitional Medical Assistance (TMA) under R9-22-1427(B)(1)(c)(i). Unless otherwise listed in subsection (C), an individual is required to pay the following copayments for prescription drugs and outpatient services unless the service is provided during an emergency room visit or the service is otherwise exempt under subsection (B). An outpatient visit includes any setting where these outpatient services are performed such as, an outpatient hospital, a physician's provider's office, HCBS setting, an Ambulatory Surgical Center (ASC), or a clinic:
 - a. \$2.30 per prescription drug.
 - b. \$4.00 per outpatient visit, if any of the services rendered during the visit are coded as evaluation and management services according to the National Standard Code Sets.
 - c. If a copayment is not being imposed under subsection (E)(1)(b), \$3.00 per visit if any of the services rendered during the visit are coded as physical, occupational or speech therapy services according to the National Standard Code Sets.
 - d. If a copayment is not being imposed under subsection (E)(1)(b) or (c), \$3.00 per visit, if any of the services rendered during the visit are coded as non-emergent surgical procedures according to the National Standard Code Sets.
 2. Copayments for persons eligible under R9-22-1427(E) with income above 106% of the FPL and for persons eligible under A.R.S. §§ 36-2907.10 and 36-2907.11. Subject to CMS approval, unless otherwise listed in subsection (C), these individuals are required to pay the following copayments for prescription drugs and outpatient services unless the service is provided during an emergency room visit or the service is otherwise exempt under subsection (B). An outpatient visit includes any setting where these outpatient services are performed such as, an outpatient hospital, a physician's provider's office, HCBS setting, an Ambulatory Surgical Center (ASC), or a clinic:
 - a. \$4.00 per prescription drug.
 - b. \$5.00 per outpatient visit when the AHCCCS fee schedule for the visit code is a rate from \$50 to less than \$100, if any of the services rendered during the visit are coded as evaluation and management services according to the National Standard Code Sets.
 - c. \$10.00 per outpatient visit when the AHCCCS fee schedule for the visit code is a rate of \$100 or greater, if any of the services rendered during the visit are coded as evaluation and management services according to the National Standard Code Sets.
 - d. If a copayment is not being imposed under subsection (E)(2)(b) or (E)(2)(c), for services coded as

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physical, occupational or speech therapy services according to the National Standard Code Sets.

- i. \$2.00 if the rate on the fee schedule is \$20 to \$39.99,
 - ii. \$4.00 if the rate on the fee schedule is \$40 to \$49.99, or
 - iii. \$5.00 if the rate on the fee schedule is \$50 and above per visit.
- e. If a copayment is not being imposed under subsection (E)(2)(b) – (E)(2)(d), for services coded as non-emergent surgical procedures according to the National Standard Code Sets,
- i. \$30.00 if the rate on the fee schedule is \$300 to \$499.99, or
 - ii. \$50.00 if the rate on the fee schedule is \$500 and above per visit.
- f. Unless the individual is otherwise exempt in subsection (C) or the service is exempted under subsection (B) the individual is required to pay \$2.00 per trip for non-emergency transportation in an urban area.
- g. Unless the individual is otherwise exempt in subsection (C) or the service is exempted under subsection (B) the individual is required to pay \$8.00 for non-emergency use of the emergency room.
- h. Unless the individual is otherwise exempt in subsection (C) or the service is exempted under subsection (B) the individual is required to pay \$75 for an Inpatient stay.
3. The provider may deny a service if the member does not pay the copayment required by subsection (E), however, a provider may choose to reduce or waive copayments under this subsection on a case-by-case basis.

F. A provider is responsible for collecting any copayment imposed under this Section.

G. The total aggregate amount of copayments under subsections (D) or (E) may not exceed 5% of the family's income as applied on a quarterly basis. The member may establish that the aggregate limit has been met on a quarterly basis by providing the Administration with records of copayments incurred during the quarter. In addition, the Administration shall also use claims and encounters information available to the Administration to establish when a member's copayment obligation has reached 5% of the family's income.

H. Reduction in payments to providers. The Administration and its contractors shall reduce the payment it makes to any provider by the amount of a member's copayment obligation under subsection (E), regardless of whether the provider successfully collects the copayments described in this Section.

Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Sections R9-22-711 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-711 repealed, new Section R9-22-711 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4).

Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3).

Amended by exempt rulemaking at 9 A.A.R. 4557, effective October 1, 2003 (Supp. 03-4). Amended by exempt rulemaking at 10 A.A.R. 2194, effective May 3, 2004 (Supp. 04-2). Amended by exempt rulemaking at 10 A.A.R. 4266, effective October 1, 2004 (Supp. 04-3). Amended by final rulemaking at 16 A.A.R. 1449, effective October 1, 2010 (Supp. 10-3). Section amended by exempt rulemaking at 18 A.A.R. 461, effective April 1, 2012 (Supp. 12-1). Section amended by final rulemaking at 19 A.A.R. 2954, effective November 11, 2013 (Supp. 13-3). Amended by exempt rulemaking at 20 A.A.R. 128, effective December 30, 2013 (Supp. 13-4). Amended by exempt rulemaking at 20 A.A.R. 2755, effective January 1, 2015 (Supp. 14-3).

Editor's Note: The following Section was adopted and amended under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the agency was not required to hold public hearings on the rules; and the Attorney General did not certify this rule. This Section was subsequently amended through the regular rulemaking process.

R9-22-712. Reimbursement: General

- A. Inpatient and outpatient discounts and penalties. If a claim is pending for additional documentation required under A.R.S. § 36-2903.01(G)(4), the period during which the claim is pending is not used in the calculation of the quick-pay discounts and slow-pay penalties under A.R.S. § 36-2903.01(G)(5).
- B. Inpatient and outpatient in-state or out-of-state hospital payments.
 1. Payment for inpatient out-of-state hospital services for claims with discharge dates on or before September 30, 2014. In the absence of a contract with an out-of-state hospital that specifies payment rates, AHCCCS shall reimburse out-of-state hospitals for covered inpatient services by multiplying covered charges by the most recent statewide urban cost-to-charge ratio as determined in R9-22-712.01(6)(d).
 2. Payment for inpatient in-state hospital services for claims with discharge dates on or before September 30, 2014. AHCCCS shall reimburse an in-state provider of inpatient hospital services rendered with a discharge date on or before September 30, 2014, at the prospective tiered-per-diem amount in A.R.S. § 36-2903.01 and this Article.
 3. Payment for inpatient in-state or out-of-state hospital services for claims with discharge dates on and after October 1, 2014 regardless of admission date. Subject to R9-22-718 and A.R.S. § 36-2905.01 regarding urban hospitals, a contractor shall reimburse an in-state or out-of-state provider of inpatient hospital services, at either a rate specified by subcontract or, in the absence of a subcontract, the DRG rate established by the Administration and this Article. Subcontract rates, terms, and conditions are subject to review and approval or disapproval under A.R.S. § 36-2904 and R9-22-715.
 4. Outpatient out-of-state hospital payments. In the absence of a contract with an out-of-state hospital that specifies payment rates, AHCCCS shall reimburse an out-of-state hospital for covered outpatient services by applying the methodology described in R9-22-712.10 through R9-22-712.50. If the outpatient procedure is not assigned a fee schedule amount, the Administration shall pay the claim by multiplying the covered charges for the outpatient services by the statewide outpatient cost-to-charge ratio.

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5. Outpatient in-state hospital payments. A contractor shall reimburse an in-state provider of outpatient hospital services rendered on or after July 1, 2005, at either a rate specified by a subcontract or, in absence of a subcontract, as provided under R9-22-712.10, A.R.S. § 36-2903.01 and other sections of this Article. The terms of the subcontract are subject to review and approval or disapproval under A.R.S. § 36-2904 and R9-22-715.
- C. Access to records. Subcontracting and noncontracting providers of outpatient or inpatient hospital services shall allow the Administration access to medical records regarding eligible persons and shall in all other ways fully cooperate with the Administration or the Administration's designated representative in performance of the Administration's utilization control activities. The Administration shall deny a claim for failure to cooperate.
- D. Prior authorization. The Administration or contractor may deny a claim if a provider fails to obtain prior authorization as required under R9-22-210.
- E. Review of claims. Regardless of prior authorization or concurrent review activities, the Administration may subject all hospital claims, including outliers, to prepayment medical review or post-payment review, or both. The Administration shall conduct post-payment reviews consistent with A.R.S. § 36-2903.01 and may recoup erroneously paid claims.
- F. Claim receipt.
1. The Administration's date of receipt of inpatient or outpatient hospital claims is the date the claim is received by the Administration as indicated by the date stamp on the claim and the system-generated claim reference number or system-generated date-specific number.
 2. Hospital claims are considered paid on the date indicated on disbursement checks.
 3. A denied claim is considered adjudicated on the date the claim is denied.
 4. Claims that are denied and are resubmitted are assigned new receipt dates.
 5. For a claim that is pending for additional supporting documentation specified in A.R.S. § 36-2903.01 or 36-2904, the Administration shall assign a new date of receipt upon receipt of the additional documentation.
 6. For a claim that is pending for documentation other than the minimum required documentation specified in either A.R.S. § 36-2903.01 or 36-2904, the Administration shall not assign a new date of receipt.
- G. Outpatient hospital reimbursement. The Administration shall pay for covered outpatient hospital services provided to eligible persons with dates of service from March 1, 1993 through June 30, 2005, at the AHCCCS outpatient hospital cost-to-charge ratio, multiplied by the amount of the covered charges.
1. Computation of outpatient hospital reimbursement. The Administration shall compute the cost-to-charge ratio on a hospital-specific basis by determining the covered charges and costs associated with treating eligible persons in an outpatient setting at each hospital. Outpatient operating and capital costs are included in the computation but outpatient medical education costs that are included in the inpatient medical education component are excluded. To calculate the outpatient hospital cost-to-charge ratio annually for each hospital, the Administration shall use each hospital's Medicare Cost Reports and a database consisting of outpatient hospital claims paid and encounters processed by the Administration for each hospital, subjecting both to the data requirements specified in R9-22-712.01. The Administration shall use the following methodology to establish the outpatient hospital cost-to-charge ratios:
 - a. Cost-to-charge ratios. The Administration shall calculate the costs of the claims and encounters for outpatient hospital services by multiplying the ancillary line item cost-to-charge ratios by the covered charges for corresponding revenue codes on the claims and encounters. Each hospital shall provide the Administration with information on how the revenue codes used by the hospital to categorize charges on claims and encounters correspond to the ancillary line items on the hospital's Medicare Cost Report. The Administration shall then compute the overall outpatient hospital cost-to-charge ratio for each hospital by taking the average of the ancillary line items cost-to-charge ratios for each revenue code weighted by the covered charges.
 - b. Cost-to-charge limit. To comply with 42 CFR 447.325, the Administration may limit cost-to-charge ratios to 1.00 for each ancillary line item from the Medicare Cost Report. The Administration shall remove ancillary line items that are non-covered or not applicable to outpatient hospital services from the Medicare Cost Report data for purposes of computing the overall outpatient hospital cost-to-charge ratio.
 2. New hospitals. The Administration shall reimburse new hospitals at the weighted statewide average outpatient hospital cost-to-charge ratio multiplied by covered charges. The Administration shall continue to use the statewide average outpatient hospital cost-to-charge ratio for a new hospital until the Administration rebases the outpatient hospital cost-to-charge ratios and the new hospital has a Medicare Cost Report for the fiscal year being used in the rebasing.
 3. Specialty outpatient services. The Administration may negotiate, at any time, reimbursement rates for outpatient hospital services in a specialty facility.
 4. Reimbursement requirements. To receive payment from the Administration, a hospital shall submit claims that are legible, accurate, error free, and have a covered charge greater than zero. The Administration shall not reimburse hospitals for emergency room treatment, observation hours or days, or other outpatient hospital services performed on an outpatient basis, if the eligible person is admitted as an inpatient to the same hospital directly from the emergency room, observation area, or other outpatient department. Services provided in the emergency room, observation area, and other outpatient hospital services provided before the hospital admission are included in the tiered per diem payment.
 5. Rebasing. The Administration shall rebase the outpatient hospital cost-to-charge ratios at least every four years but no more than once a year using updated Medicare Cost Reports and claim and encounter data.
 6. If a hospital files an increase in its charge master for an existing outpatient service provided on or after July 1, 2004, and on or before June 30, 2005, which represents an aggregate increase in charges of more than 4.7%, the Administration shall adjust the hospital-specific cost-to-charge ratio as calculated under subsection (G)(1) through (5) by applying the following formula:

$$CCR * [1.047 / (1 + \% \text{ increase})]$$

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Where “CCR” means the hospital-specific cost-to-charge ratio as calculated under subsection (G)(1) through (5) and “% increase” means the aggregate percentage increase in charges for outpatient services shown on the hospital charge master.

“Charge master” means the schedule of rates and charges as described under A.R.S. § 36-436 and the rules that relate to those rates and charges that are filed with the Director of the Arizona Department of Health Services.

Historical Note

Adopted as an emergency effective February 23, 1983 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Adopted as a permanent rule effective May 16, 1983; text of adopted rule identical to emergency (Supp. 83-3). Former Section R9-22-712 repealed, new Section R9-22-712 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-712 renumbered and amended as Section R9-22-1001 effective October 1, 1985 (Supp. 85-5). New Section R9-22-712 adopted under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended effective January 14, 1997 (Supp. 97-1). Amended by exempt rulemaking at 10 A.A.R. 3831, effective August 25, 2004 (Supp. 04-3). Amended by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 11 A.A.R. 3231, effective October 1, 2005 (Supp. 05-3). Amended by final rulemaking at 14 A.A.R. 1439, effective May 31, 2008 (Supp. 08-2). Amended by exempt rulemaking at 17 A.A.R. 1337, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.01. Inpatient Hospital Reimbursement for claims with admission dates and discharge dates from October 1, 1998 through September 30, 2014

Inpatient hospital reimbursement. The Administration shall pay for covered inpatient acute care hospital services provided to eligible persons for claims with admission dates and discharge dates from October 1, 1998 through September 30, 2014, on a prospective reimbursement basis. The prospective rates represent payment in full, excluding quick-pay discounts, slow-pay penalties, and third-party payments for both accommodation and ancillary department services. The rates include reimbursement for operating and capital costs. The Administration shall make reimbursement for direct graduate medical education as described in A.R.S. § 36-2903.01. For payment purposes, the Administration shall classify each AHCCCS inpatient hospital day of care into one of several tiers appropriate to the services rendered. The rate for a tier is referred to as the tiered per diem rate of reimbursement. The number of tiers is seven and the maximum number of tiers payable per continuous stay is two. Payment of outlier claims, transplant claims, or payment to out-of-state hospitals, freestanding psychiatric hospitals, and other specialty facilities may differ from the inpatient hospital tiered per diem rates of reimbursement described in this Section.

1. Tier rate data. The Administration shall base tiered per diem rates effective on and after October 1, 1998 on Medicare Cost Reports for Arizona hospitals for the fiscal year ending in 1996 and a database consisting of inpatient hospital claims and encounters for dates of service matching each hospital’s 1996 fiscal year end.

- a. Medicare Cost Report data. Because Medicare Cost Report years are not standard among hospitals and were not audited at the time of the rate calculation, the Administration shall inflate all the costs to a common point in time as described in subsection (2) for each component of the tiered per diem rates. The Administration shall not make any changes to the tiered per diem rates if the Medicare Cost Report data are subsequently updated or adjusted. If a single Medicare Cost Report is filed for more than one hospital, the Administration shall allocate the costs to each of the respective hospitals. A hospital shall submit information to assist the Administration in this allocation.
 - b. Claim and encounter data. For the database, the Administration shall use only those inpatient hospital claims paid by the Administration and encounters that were accepted and processed by the Administration at the time the database was developed for rates effective on and after October 1, 1998. The Administration shall subject the claim and encounter data to a series of data quality, reasonableness, and integrity edits and shall exclude from the database or adjust claims and encounters that fail these edits. The Administration shall also exclude from the database the following claims and encounters:
 - i. Those missing information necessary for the rate calculation,
 - ii. Medicare crossovers,
 - iii. Those submitted by freestanding psychiatric hospitals, and
 - iv. Those for transplant services or any other hospital service that the Administration would pay on a basis other than the tiered per diem rate.
2. Tier rate components. The Administration shall establish inpatient hospital prospective tiered per diem rates based on the sum of the operating and capital components. The rate for the operating component is a statewide rate for each tier except for the NICU and Routine tiers, which are based on peer groups. The rate for the capital component is a blend of statewide and hospital-specific values, as described in A.R.S. § 36-2903.01. The Administration shall use the following methodologies to establish the rates for each of these components.
 - a. Operating component. Using the Medicare Cost Reports and the claim and encounter database, the Administration shall compute the rate for the operating component as follows:
 - i. Data preparation. The Administration shall identify and group into department categories, the Medicare Cost Report data that provide ancillary department cost-to-charge ratios and accommodation costs per day. To comply with 42 CFR 447.271, the Administration shall limit cost-to-charge ratios to 1.00 for each ancillary department.
 - ii. Operating cost calculation. To calculate the rate for the operating component, the Administration shall derive the operating costs from claims and encounters by combining the Medicare Cost Report data and the claim and encounter database for all hospitals. In performing this calculation, the Administration shall match the revenue codes on the claims and encounters to the

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- departments in which the line items on the Medicare Cost Reports are grouped. The ancillary department cost-to-charge ratios for a particular hospital are multiplied by the covered ancillary department charges on each of the hospital's claims and encounters. The AHCCCS inpatient days of care on the particular hospital's claims and encounters are multiplied by the corresponding accommodation costs per day from the hospital's Medicare Cost Report. The ancillary cost-to-charge ratios and accommodation costs per day do not include medical education and capital costs. The Administration shall inflate the resulting operating costs for the claims and encounters of each hospital to a common point in time, December 31, 1996, using the DRI inflation factor and shall reduce the operating costs for the hospital by an audit adjustment factor based on available national data and Arizona historical experience in adjustments to Medicare reimbursable costs. The Administration shall further inflate operating costs to the midpoint of the rate year (March 31, 1999).
- iii. Operating cost tier assignment. After calculating the operating costs, the Administration shall assign the claims and encounters used in the calculation to tiers based on diagnosis, procedure, or revenue codes, or NICU classification level, or a combination of these. For the NICU tier, the Administration shall further assign claims and encounters to NICU Level II or NICU Level III peer groups, based on the hospital's certification by the Arizona Perinatal Trust. For the Routine tier, the Administration shall further assign claims and encounters to the general acute care hospital or rehabilitation hospital peer groups, based on state licensure by the Department of Health Services. For claims and encounters assigned to more than one tier, the Administration shall allocate ancillary department costs to the tiers in the same proportion as the accommodation costs. Before calculating the rate for the operating component, the Administration shall identify and exclude any claims and encounters that are outliers as defined in subsection (6).
 - iv. Operating rate calculation. The Administration shall set the rate for the operating component for each tier by dividing total statewide or peer group hospital costs identified in this subsection within the tier by the total number of AHCCCS inpatient hospital days of care reflected in the claim and encounter database for that tier.
- b. Capital component. For rates effective October 1, 1999 the capital component is calculated as described in A.R.S. § 36-2903.01.
 - c. Statewide inpatient hospital cost-to-charge ratio. For dates of service prior to October 1, 2007, the statewide inpatient hospital cost-to-charge ratio is used for payment of outliers, as described in subsections (4), (5), and (6), and out-of-state hospitals, as described in R9-22-712(B). The Administration shall calculate the AHCCCS statewide inpatient hospital cost-to-charge ratio by using the Medicare Cost Report data and claim and encounter database described in subsection (1) and used to determine the tiered per diem rates. For each hospital, the covered inpatient days of care on the claims and encounters are multiplied by the corresponding accommodation costs per day from the Medicare Cost Report. Similarly, the covered ancillary department charges on the claims and encounters are multiplied by the ancillary department cost-to-charge ratios. The accommodation costs per day and the ancillary department cost-to-charge ratios for each hospital are determined in the same way described in subsection (2)(a) but include costs for operating and capital. The Administration shall then calculate the statewide inpatient hospital cost-to-charge ratio by summing the covered accommodation costs and ancillary department costs from the claims and encounters for all hospitals and dividing by the sum of the total covered charges for these services for all hospitals.
 - d. Unassigned tiered per diem rates. If a hospital has an insufficient number of claims to set a tiered per diem rate, the Administration shall pay that hospital the statewide average rate for that tier.
3. Tier assignment. The Administration shall assign AHCCCS inpatient hospital days of care to tiers based on information submitted on the inpatient hospital claim or encounter including diagnosis, procedure, or revenue codes, peer group, NICU classification level, or a combination of these.
 - a. Tier hierarchy. In assigning claims for AHCCCS inpatient hospital days of care to a tier, the Administration shall follow the Hierarchy for Tier Assignment through September 30, 2014 in R9-22-712.09. The Administration shall not pay a claim for inpatient hospital services unless the claim meets medical review criteria and the definition of a clean claim. The Administration shall not pay for a hospital stay on the basis of more than two tiers, regardless of the number of interim claims that are submitted by the hospital.
 - b. Tier exclusions. The Administration shall not assign to a tier or pay AHCCCS inpatient hospital days of care that do not occur during a period when the person is eligible. Except in the case of death, the Administration shall pay claims in which the day of admission and the day of discharge are the same, termed a same day admit and discharge, including same day transfers, as an outpatient hospital claim. The Administration shall pay same day admit and discharge claims that qualify for either the maternity or nursery tiers based on the lesser of the rate for the maternity or nursery tier, or the outpatient hospital fee schedule.
 - c. Seven tiers. The seven tiers are:
 - i. Maternity. The Administration shall identify the Maternity Tier by a primary diagnosis code. If a claim has an appropriate primary diagnosis, the Administration shall pay the AHCCCS inpatient hospital days of care on the claim at the maternity tiered per diem rate.
 - ii. NICU. The Administration shall identify the NICU Tier by a revenue code. A hospital

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- does not qualify for the NICU tiered per diem rate unless the hospital is classified as either a NICU Level II or NICU Level III perinatal center by the Arizona Perinatal Trust. The Administration shall pay AHCCCS inpatient hospital days of care on the claim that meet the medical review criteria for the NICU tier and have a NICU revenue code at the NICU tiered per diem rate. The Administration shall pay any remaining AHCCCS inpatient hospital day on the claim that does not meet NICU Level II or NICU Level III medical review criteria at the nursery tiered per diem rate.
- iii. ICU. The Administration shall identify the ICU Tier by a revenue code. The Administration shall pay AHCCCS inpatient hospital days of care on the claim that meets the medical review criteria for the ICU tier and has an ICU revenue code at the ICU tiered per diem rate. The Administration may classify any AHCCCS inpatient hospital days on the claim without an ICU revenue code, as surgery, psychiatric, or routine tiers.
 - iv. Surgery. The Administration shall identify the Surgery Tier by a revenue code and a valid surgical procedure code that is not on the AHCCCS excluded surgical procedure list. The excluded surgical procedure list identifies minor procedures such as sutures that do not require the same hospital resources as other procedures. The Administration shall only split a surgery tier with an ICU tier. AHCCCS shall pay at the surgery tier rate only when the surgery occurs on a date during which the member is eligible.
 - v. Psychiatric. The Administration shall identify the Psychiatric Tier by either a psychiatric revenue code and a psychiatric diagnosis or any routine revenue code if all diagnosis codes on the claim are psychiatric. The Administration shall not split a claim with AHCCCS inpatient hospital days of care in the psychiatric tier with any tier other than the ICU tier.
 - vi. Nursery. The Administration shall identify the Nursery Tier by a revenue code. The Administration shall not split a claim with AHCCCS inpatient hospital days of care in the nursery tier with any tier other than the NICU tier.
 - vii. Routine. The Administration shall identify the Routine Tier by revenue codes. The routine tier includes AHCCCS inpatient hospital days of care that are not classified in another tier or paid under any other provision of this Section. The Administration shall not split the routine tier with any tier other than the ICU tier.
4. Annual update. The Administration shall annually update the inpatient hospital tiered per diem rates through September 30, 2011.
 5. New hospitals. For rates effective on and after October 1, 1998, the Administration shall pay new hospitals the statewide average rate for each tier, as appropriate. The Administration shall update new hospital tiered per diem rates through September 30, 2011.
 6. Outliers. The Administration shall reimburse hospitals for AHCCCS inpatient hospital days of care identified as outliers under this Section by multiplying the covered charges on a claim by the Medicare Urban or Rural Cost-to-Charge Ratio. The Urban cost-to-charge ratio will be used for hospitals located in a county of 500,000 residents or more. The Rural cost-to-charge ratio will be used for hospitals located in a county of fewer than 500,000 residents.
 - a. Outlier criteria. For rates effective on and after October 1, 1998, the Administration set the statewide outlier cost threshold for each tier at the greater of three standard deviations from the statewide mean operating cost per day within the tier, or two standard deviations from the statewide mean operating cost per day across all the tiers. If the covered costs per day on a claim exceed the urban or rural cost threshold for a tier, the claim is considered an outlier. Outliers will be paid by multiplying the covered charges by the applicable Medicare Urban or Rural CCR. The resulting amount will be the outlier payment. If there are two tiers on a claim, the Administration shall determine whether the claim is an outlier by using a weighted threshold for the two tiers. The weighted threshold is calculated by multiplying each tier rate by the number of AHCCCS inpatient hospital days of care for that tier and dividing the product by the total tier days for that hospital. Routine maternity stays shall be excluded from outlier reimbursement. A routine maternity is any one-day stay with a delivery of one or two babies. A routine maternity stay will be paid at tier.
 - b. Update. The CCR is updated annually by the Administration for dates of service beginning October 1, using the most current Medicare cost-to-charge ratios published or placed on display by CMS by August 31 of that year. The Administration shall update the outlier cost thresholds for each hospital through September 30, 2011 as described under A.R.S. § 36-2903.01. For inpatient hospital admissions with begin dates of service on and after October 1, 2011, AHCCCS will increase the outlier cost thresholds by 5% of the thresholds that were effective on September 30, 2011.
 - c. Medicare Cost-to-Charge Ratio Phase-In. AHCCCS shall phase in the use of the Medicare Urban or Rural Cost-to-Charge Ratios for outlier determination, calculation and payment. The three-year phase-in does not apply to out-of-state or new hospitals.
 - i. Medicare Cost-to-Charge Ratio Phase-In outlier determination and threshold calculation. For outlier claims with dates of service on or after October 1, 2007 through September 30, 2008, AHCCCS shall adjust each hospital specific inpatient cost-to-charge ratio in effect on September 30, 2007 by subtracting one-third of the difference between the hospital specific inpatient cost-to-charge ratio and the effective Medicare Urban or Rural Cost-to-Charge Ratio. For outlier claims with dates of service on or after October 1, 2008 through September 30, 2009, AHCCCS shall adjust each hospital specific inpatient cost-to-charge ratio in effect on

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- September 30, 2007 by subtracting two-thirds of the difference between the hospital specific inpatient cost-to-charge ratio and the effective Medicare Urban or Rural Cost-to-Charge Ratio. The adjusted hospital specific inpatient cost-to-charge ratios shall be used for all calculations using the Medicare Urban or Rural Cost-to-Charge Ratios, including outlier determination, and threshold calculation.
- ii. Medicare Cost-to-Charge Ratio Phase-In calculation for payment. For payment of outlier claims with dates of service on or after October 1, 2007 through September 30, 2008, AHCCCS shall adjust the statewide inpatient hospital cost-to-charge ratio in effect on September 30, 2007 by subtracting one-third of the difference between the statewide inpatient hospital cost-to-charge ratio and the effective Medicare urban or rural cost-to-charge ratio. For payment of outlier claims with dates of service on or after October 1, 2008 through September 30, 2009, AHCCCS shall adjust the statewide inpatient hospital cost-to-charge ratio in effect on September 30, 2007 by subtracting two-thirds of the difference between the statewide inpatient hospital cost-to-charge ratio and the effective Medicare urban or rural cost-to-charge ratio.
- iii. Medicare Cost-to-Charge Ratio for outlier determination, threshold calculation, and payment. For outlier claims with dates of service on or after October 1, 2009, the full Medicare Urban or Rural Cost-to-Charge Ratios shall be utilized for all outlier calculations.
- d. Cost-to-Charge Ratio used for qualification and payment of outlier claims.
 - i. For qualification and payment of outlier claims with begin dates of service on or after April 1, 2011 through September 30, 2011, the CCR will be equal to 95% of the ratios in effect on October 1, 2010.
 - ii. For qualification and payment of outlier claims with begin dates of service on or after October 1, 2011, the CCR will be equal to 90.25% of the most recent published Urban or Rural Medicare CCR as described in subsection (6)(b).
 - iii. For qualification and payment of outlier claims with begin dates of service on or after October 1, 2011 through September 30, 2012, AHCCCS will reduce the cost-to-charge ratio determined under subsection (6)(d)(ii) for a hospital that filed a charge master with ADHS on or after April 1, 2011 by an additional percentage equal to the total percent increase reported on the charge master.
 - iv. Subject to approval by CMS, for qualification and payment of outlier claims with begin dates of service on or after October 1, 2012, AHCCCS will reduce the cost-to-charge ratio determined under subsection (6)(d)(ii) for a hospital that filed a charge

master with ADHS on or after June 1, 2012 by an additional percentage equal to the total percent increase reported on the charge master.

- 7. Transplants. The Administration shall reimburse hospitals for an AHCCCS inpatient stay in which a covered transplant as described in R9-22-206 is performed through the terms of the relevant contract. If the Administration and a hospital that performs transplant surgery on an eligible person do not have a contract for the transplant surgery, the Administration shall not reimburse the hospital more than what would have been paid to the contracted hospital for that same surgery.
- 8. Ownership change. The Administration shall not change any of the components of a hospital's tiered per diem rates upon an ownership change.
- 9. Psychiatric hospitals. The Administration shall pay free-standing psychiatric hospitals an all-inclusive per diem rate based on the contracted rates used by the Department of Health Services.
- 10. Specialty facilities. The Administration may negotiate, at any time, reimbursement rates for inpatient specialty facilities or inpatient hospital services not otherwise addressed in this Section as provided by A.R.S. § 36-2903.01. For purposes of this subsection, "specialty facility" means a facility where the service provided is limited to a specific population, such as rehabilitative services for children.
- 11. Outliers for new hospitals. Outliers for new hospitals will be calculated using the Medicare Urban or Rural Cost-to-Charge Ratio times covered charges. If the resulting cost is equal to or above the cost threshold, the claim will be paid at the Medicare Urban or Rural Cost-to-Charge ratio.
- 12. Reductions to tiered per diem payment for inpatient hospital services. Inpatient hospital admissions with begin dates of service on or after October 1, 2011, shall be reimbursed at 95 percent of the tiered per diem rates in effect on September 30, 2011.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 3231, effective October 1, 2005 (Supp. 05-3). Amended by exempt rulemaking at 13 A.A.R. 3190, effective October 1, 2007 (Supp. 07-3). Amended by exempt rulemaking at 17 A.A.R. 1337, effective October 1, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 1914, effective July 18, 2012 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 3315, effective November 30, 2013 (Supp. 13-4). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.02. Reserved

R9-22-712.03. Reserved

R9-22-712.04. Reserved

R9-22-712.05. Graduate Medical Education Fund Allocation

- A. Graduate medical education (GME) reimbursement as of September 30, 1997. Subject to legislative appropriation, the Administration shall make a distribution based on direct graduate medical education costs as described in A.R.S. § 36-2903.01(G)(9)(a).
- B. Subject to available funds and approval by CMS, the Administration shall annually distribute monies appropriated for the expansions of GME programs approved by the Administration to hospitals for direct program costs eligible for funding under

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A.R.S. § 36-2903.01(G)(9)(b). A GME program is deemed to be established as of the date of its original accreditation. All determinations that are necessary to make distributions described by this subsection shall be made using information possessed by the Administration as of the date of reporting under subsection (B)(3).

1. Eligible health care facilities. A health care facility is eligible for distributions under subsection (B) if all of the following apply:
 - a. It is a hospital in Arizona that is the sponsoring institution of, or a participating institution in, one or more of the GME programs in Arizona;
 - b. It incurs direct costs for the training of residents in the GME programs, which costs are or will be reported on the hospital's Medicare Cost Report;
 - c. It is not administered by or does not receive its primary funding from an agency of the federal government.
2. Eligible resident positions. For purposes of determining program allocation amounts under subsection (B)(4) the following resident positions are eligible for consideration to the extent that the resident training takes place in Arizona and not at a health care facility made ineligible under subsection (B)(1)(c):
 - a. Filled resident positions in approved programs established as of October 1, 1999 at hospitals that receive funding as described in A.R.S. § 36-2903.01(G)(9)(a) that are additional to the number of resident positions that were filled as of October 1, 1999; and
 - b. All filled resident positions in approved programs other than GME programs described in A.R.S. § 36-2903.01(G)(9)(a) that were established before July 1, 2006.
3. Annual reporting. By April 1st of each year, each GME program and each hospital seeking a distribution under subsection (B) shall provide the applicable information listed in this subsection to the Administration:
 - a. A GME program shall provide all of the following:
 - i. The program name and number assigned by the accrediting organization;
 - ii. The original date of accreditation;
 - iii. The names of the sponsoring institution and all participating institutions current as of the date of reporting;
 - iv. The number of approved resident positions and the number of filled resident positions current as of the date of reporting;
 - v. For programs established as of October 1, 1999, the number of resident positions that were filled as of October 1, 1999, if the program has not already provided this information to the Administration;
 - b. A hospital seeking a distribution under subsection (B) shall provide all of the following that apply:
 - i. If the hospital uses the Intern and Resident Information System (IRIS) for tracking and reporting its resident activity to the fiscal intermediary, copies of the IRIS master and assignment files for the hospital's two most recently completed Medicare cost reporting years as filed with the fiscal intermediary;
 - ii. If the hospital does not use the IRIS or has less than two cost reporting years available in the form of the IRIS master and assignment files, the information normally contained in the IRIS master and assignment files in an alternative format for the hospital's two most recently completed Medicare cost reporting years;
4. Allocation of expansion funds. Annually the Administration shall allocate available funds to each approved GME program in the following manner:
 - a. Information provided by hospitals under subsection (B)(3)(b) shall be used to determine the program in which each eligible resident is enrolled and the number of days that each eligible resident worked in any area of the hospital complex or in a non-hospital setting under agreement with the reporting hospital during the period of assignment to that hospital. For this purpose, the Administration shall use data relating to the most recent 12-month period that is common to all information provided under subsections (B)(3)(b)(i) and (ii).
 - b. The number of eligible residents allocated to each participating institution within each approved GME program shall be determined as follows:
 - i. Total the number of days determined for each participating institution under subsection (B)(4)(a) and divide each total by 365.
 - ii. Proportionally adjust the result of subsection (B)(4)(b)(i) for each participating institution within each program according to the number of residents determined to be eligible under subsection (B)(2).
 - c. The number of allocated eligible residents determined under subsection (B)(4)(b)(ii) shall be adjusted for Arizona Medicaid utilization using the most recent Medicare Cost Report information on file with the Administration as of the date of reporting under subsection (B)(3) and the Administration's inpatient hospital claims and encounter data for the time period corresponding to the Medicare Cost Report information for each hospital. The Administration shall use only those inpatient hospital claims paid by the Administration and encounters that were adjudicated by the Administration as of the date of reporting under subsection (B)(3). The Medicaid-adjusted eligible residents shall be determined as follows:
 - i. For each hospital, the total AHCCCS inpatient hospital days of care shall be divided by the total Medicare Cost Report inpatient hospital days, multiplied by 100 and rounded up to the nearest multiple of 5 percent.
 - ii. The number of allocated eligible residents determined for each participating hospital under subsection (B)(4)(b)(ii) shall be multiplied by the percentage derived under subsection (B)(4)(c)(i) for that hospital. The number of allocated eligible residents determined under subsection (B)(4)(b)(ii) for a participating institution that is not a hospital and not a health care facility made ineligible under subsection (B)(1)(c) shall be multiplied by the percentage derived under subsection (B)(4)(c)(i) for the program's sponsoring institution or, if the sponsoring

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- institution is not a hospital, the sponsoring institution's affiliated hospital. The number of allocated eligible residents determined under subsection (B)(4)(b)(ii) for a participating institution that is made ineligible under subsection (B)(1)(c) shall be multiplied by zero percent.
- d. The total allocation for each approved program shall be determined by multiplying the Medicaid-adjusted eligible residents determined under subsection (B)(4)(c)(ii) by the per-resident conversion factor determined below and totaling the resulting dollar amounts for all participating institutions in the program. The per-resident conversion factor shall be determined as follows:
 - i. Calculate the total direct GME costs from the most recent Medicare Cost Reports on file with the Administration for all hospitals that have reported such costs.
 - ii. Calculate the total allocated residents determined under subsection (B)(4)(b)(i) for those hospitals described under subsection (B)(4)(d)(i).
 - iii. Divide the total GME costs calculated under subsection (B)(4)(d)(i) by the total allocated residents calculated under subsection (B)(4)(d)(ii).
5. Distribution of expansion funds. On an annual basis subject to available funds, the Administration shall distribute the allocated amounts determined under subsection (B)(4) in the following manner:
- a. The allocated amounts shall be distributed in the following order of priority:
 - i. To eligible hospitals that do not receive funding in accordance with A.R.S. § 36-2903.01(G)(9)(a) for the direct costs of programs established before July 1, 2006;
 - ii. To eligible hospitals that receive funding in accordance with A.R.S. § 36-2903.01(G)(9)(a) for the direct costs of programs established before July 1, 2006;
 - b. The allocated amounts shall be distributed to the eligible hospitals in each approved program in proportion to the number of Medicaid-adjusted eligible residents allocated to each hospital within that program under subsection (B)(4)(c)(ii).
 - c. If funds are insufficient to cover all distributions within any priority group described under subsection (B)(5)(a), the Administration shall adjust the distributions proportionally within that priority group.
- C. Subject to available funds and approval by CMS, the Administration shall annually distribute monies appropriated for the expansions of GME programs approved by the Administration to hospitals for direct program costs eligible for funding under A.R.S. § 36-2903.01(G)(9)(c)(i). A GME program is deemed to be established as of the date of its original accreditation. All determinations that are necessary to make distributions described by this subsection shall be made using information possessed by the Administration as of the date of reporting under subsection (C)(3).
1. Eligible health care facilities. A health care facility is eligible for distributions under subsection (C) if it meets all the conditions of subsections (B)(1)(a) through (c).
 2. Eligible resident positions. For purposes of determining program allocation amounts under subsection (C)(4), the following resident positions are eligible for consideration to the extent that the resident training takes place in Arizona and not at a health care facility made ineligible under subsection (B)(1)(c):
 - a. All filled resident positions in approved programs established on or after July 1, 2006; and
 - b. For approved programs established on or after July 1, 2006 that have been established for less than one year as of the date of reporting under subsection (C)(3) and have not yet filled their first-year resident positions, all prospective residents reasonably expected by the program to be enrolled as a result of the most recently completed annual resident match.
3. Annual reporting. By April 1st of each year, each GME program and each hospital seeking a distribution under subsection (C) shall provide to the Administration:
- a. A GME program shall provide all of the following:
 - i. The requirements of subsections (B)(3)(a)(i) through (iv);
 - ii. The academic year rotation schedule on file with the program current as of the date of reporting; and
 - iii. For programs described under subsection (C)(2)(b), the number of residents expected to be enrolled as a result of the most recently completed annual resident match.
 - b. A hospital seeking a distribution under subsection (C) shall provide the requirements of subsection (B)(3)(b).
4. Allocation of expansion funds. Annually the Administration shall allocate available funds to approved GME programs in the following manner:
- a. Information provided by hospitals in accordance with subsection (B)(3)(b) shall be used to determine the program in which each eligible resident is enrolled and the number of days that each eligible resident worked in any area of the hospital complex or in a non-hospital setting under agreement with the reporting hospital during the period of assignment to that hospital. For this purpose, the Administration shall use data relating to the most recent 12-month period that is common to all information provided in accordance with subsections (B)(3)(b)(i) and (ii).
 - b. For approved programs whose resident activity is not represented in the information provided in accordance with subsection (B)(3)(b), information provided by GME programs under subsection (C)(3)(a) shall be used to determine the number of days that each eligible resident is expected to work at each participating institution.
 - c. The number of eligible residents allocated to each participating institution for each approved GME program shall be determined by totaling the number of days determined under subsections (C)(4)(a) and (b) and dividing the totals by 365.
 - d. The number of allocated residents determined under subsection (C)(4)(c) shall be adjusted for Arizona Medicaid utilization in accordance with subsection (B)(4)(c).
 - e. The total allocation for each approved program shall be determined in accordance with subsection (B)(4)(d).
5. Distribution of expansion funds. On an annual basis subject to available funds, the Administration shall distribute the allocated amounts determined under subsection (C)(4) to the eligible hospitals in each approved program in proportion to the number of Medicaid-adjusted eligible

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- residents allocated to each within that program under subsection (C)(4)(d).
- D.** Subject to available funds and approval by CMS, the Administration shall annually distribute monies appropriated for GME programs approved by the Administration to hospitals for indirect program costs eligible for funding under A.R.S. § 36-2903.01(G)(9)(c)(ii). A GME program is deemed to be established as of the date of its original accreditation. All determinations that are necessary to make distributions described by this subsection shall be made using information possessed by the Administration as of the date of reporting under subsection (D)(3).
1. Eligible health care facilities. A health care facility is eligible for distributions under subsection (D) if all of the following apply:
 - a. It is a hospital in Arizona that is the sponsoring institution of, or a participating institution in, one or more of the GME programs in Arizona or is the base hospital for one or more of the GME programs in Arizona whose sponsoring institutions are not hospitals;
 - b. It incurs indirect program costs for the training of residents in the GME programs, which are or will be calculated on the hospital's Medicare Cost Report or are reimbursable under the Children's Hospitals Graduate Medical Education Payment Program administered by HRSA;
 - c. It is not administered by or does not receive its primary funding from an agency of the federal government.
 2. Eligible resident positions. For purposes of determining program allocation amounts under subsection (D)(4) the following resident positions are eligible for consideration to the extent that the resident training takes place in Arizona and not at a health care facility made ineligible under subsection (D)(1)(c):
 - a. Any filled resident position in an approved program that includes a rotation of at least one month per year in a county other than Maricopa or Pima whose population was less than 500,000 persons at the time the residency rotation was added to the academic year rotation schedule;
 - b. For approved programs that have been established for less than one year as of the date of reporting under subsection (D)(3) and have not yet filled their first-year resident positions, all prospective residents reasonably expected by the program to be enrolled as a result of the most recently completed annual resident match who will perform rotations of at least one month per year in a county other than Maricopa or Pima whose population was less than 500,000 persons at the time the residency rotation was added to the academic year rotation schedule.
 3. Annual reporting. By April 1st of each year, each GME program and each hospital seeking a distribution under subsection (D) shall provide to the Administration:
 - a. A GME program shall provide all of the following:
 - i. The requirements of subsections (B)(3)(a)(i) through (iv);
 - ii. The academic year rotation schedule on file with the program current as of the date of reporting;
 - iii. For programs described under subsection (D)(2)(c), the number of residents expected to be enrolled as a result of the most recently completed annual resident match.
 - b. A hospital seeking a distribution under subsection (D) shall provide the requirements of subsection (B)(3)(b)(iii).
 4. Allocation of funds for indirect program costs. Annually the Administration shall allocate available funds to approved GME programs in the following manner:
 - a. Using the information provided by programs under subsection (D)(3), the Administration shall determine for each program the number of residents in the program who are eligible under subsection (D)(2) and the number of months per year that each eligible resident will perform rotations in counties described by subsection (D)(2), multiply the number of eligible residents by the number of months and multiply the result by the per resident per month conversion factor determined under subsection (D)(4)(b).
 - b. Using the most recent Medicare Cost Reports on file with the Administration for all hospitals that have calculated a Medicare indirect medical education payment, the Administration shall determine a per resident per month conversion factor as follows:
 - i. Calculate each hospital's Medicare share by dividing the Medicare inpatient discharges on the Medicare Cost Report by the total inpatient hospital discharges on the Medicare Cost Report.
 - ii. Calculate the ratio of residents to beds by dividing the total allocated residents described in subsection (B)(4)(d)(ii) by the number of bed days available from the Medicare Cost Report and dividing the result by the number of days in the cost reporting period.
 - iii. Calculate the indirect medical education adjustment factor by adding 1 to the value calculated in (D)(4)(b)(ii), multiplying the result by the exponential value 0.405, subtracting 1 from the result, and multiplying that result by 1.35.
 - iv. Calculate each hospital's total indirect medical education cost by adding the DRG amounts other than outlier payments from the Medicare cost report and the managed care simulated payments from the Medicare Cost Report, multiplying the total by the indirect medical education adjustment factor determined in (D)(4)(b)(iii) and dividing the result by the Medicare share determined in (D)(4)(b)(i).
 - v. Calculate each hospital's Medicaid indirect medical education cost by multiplying the amount determined in (D)(4)(b)(iv) by the value determined in subsection (B)(4)(c)(i).
 - vi. Total the amounts determined in (D)(4)(b)(v) for all hospitals, divide the result by the total allocated residents described in subsection (B)(4)(d)(ii) for all hospitals, and divide that result by 12.
 5. Distribution of funds for indirect program costs. On an annual basis subject to available funds, the Administration shall distribute to each eligible hospital the amount calculated for the hospital at subsection (D)(4)(a).
- E.** Reallocation of funds. If funds appropriated for subsection (B) are not allocated by the Administration and funds appropriated for subsections (C) and (D) are insufficient to cover all distri-

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butions under subsections (C)(5) and (D)(5), the funds not allocated under subsection (B) shall be allocated under subsections (C) and (D) to the extent of the calculated distributions. If funds are insufficient to cover all distributions under subsections (C)(5) and (D)(5), the Administration shall adjust the distributions proportionally. If funds appropriated for subsections (C) and (D) are not allocated by the Administration and funds appropriated for subsection (B) are insufficient to cover all distributions under subsection (B)(5), the funds not allocated under subsections (C) and (D) shall be allocated under subsection (B) to the extent of the calculated distributions.

- F. The Administration may enter into intergovernmental agreements with local, county, and tribal governments wherein local, county and tribal governments may transfer funds or certify public expenditures to the Administration. Such funds or certification, subject to approval by CMS, will be used to qualify for additional federal funds. Those funds will be used for the purposes of reimbursing hospitals that are eligible under subsection (D)(1) and specified by the local, county, or tribal government for indirect program costs other than those reimbursed under subsection (D). The Administration shall allocate available funds in accordance with subsection (D) except that reimbursement with such funds is not limited to resident positions or rotations in counties with populations of less than 500,000 persons. On an annual basis subject to available funds, the Administration shall distribute to each eligible hospital the greatest among the following amounts, less any amounts distributed under subsection (D)(5):
1. The amount that results from multiplying the total number of eligible residents allocated to the hospital under subsection (B)(4)(d)(ii) by 12 by the per resident per month conversion factor determined under subsection (D)(4)(b);
 2. The amount calculated for the hospital at subsection (D)(4)(b)(v);
 3. The median of all amounts calculated at subsection (D)(4)(b)(v) if the hospital does not have an indirect medical education payment calculated on the Medicare Cost Report because it is a new training hospital; or
 4. If the hospital does not have an indirect medical education payment calculated on the Medicare Cost Report because it is a children's hospital, the median Medicaid indirect medical education payment costs shall be calculated as follows:
 - a. For each hospital with indirect medical education costs on the Medicare Cost Report, determine a per resident total indirect medical education cost by dividing the total indirect medical education costs determined under subsection (D)(4)(b) by the number of filled resident positions under subsection (B)(2).
 - b. Determine the median per resident amount under subsection (F)(4)(a).
 - c. For each hospital without an indirect medical education component on the Medicare cost report, multiply the median per resident amount under subsection (F)(4)(b) by the number of filled resident positions under subsection (B)(2) for that hospital and by the Medicaid utilization percent for that hospital determined in subsection (B)(4)(c)(i).

Historical Note

New Section made by final rulemaking at 13 A.A.R. 1782, effective June 30, 2007 (Supp. 07-2). Amended by exempt rulemaking at 13 A.A.R. 4032, effective November 1, 2007 (Supp. 07-4). Amended by final rulemaking at 21 A.A.R. 3469, effective January 30, 2016 (Supp. 15-

4). Amended by final rulemaking at 24 A.A.R. 185, effective January 9, 2018 (Supp. 18-1). Amended by final rulemaking at 24 A.A.R. 3321, effective January 5, 2019 (Supp. 18-4).

R9-22-712.06. Reserved**R9-22-712.07. Rural Hospital Inpatient Fund Allocation**

- A. For purposes of this Section, the following words and phrases have the following meanings unless the context specifically requires another meaning:
1. "Calculated inpatient costs" means the sum of inpatient covered charges multiplied by the Milliman study's implied cost-to-charge ratio of .8959.
 2. "Claims paid amount" means the sum of all claims paid by the Administration and contractors, as reported by the contractor to the Administration, to a rural hospital for covered inpatient services rendered for dates of service during the previous state fiscal year.
 3. "Fund" means any state funds appropriated by the Legislature for the purposes set forth in A.R.S. § 36-2905.02 and any federal funds that are available for matching the state funds.
 4. "Inpatient covered charges" means the sum of all covered charges billed by a hospital to the Administration or contractors, as reported by the contractors to the Administration, for inpatient services rendered during the previous state fiscal year.
 5. "Milliman study" means the report issued by Milliman USA on March 11, 2004, to the Arizona Hospital and Healthcare Association that updated a portion of a cost study entitled "Evaluation of the AHCCCS Inpatient Hospital Reimbursement System" prepared by Milliman USA for AHCCCS on November 15, 2002. A copy of each report is on file with the Administration.
 6. "Rural hospital" means a health care institution that is licensed as an acute care hospital by the Arizona Department of Health Services for the previous state fiscal year and is not an IHS hospital or a tribally owned or operated facility and:
 - a. Has 100 or fewer PPS beds, not including beds reported as sub provider beds on the hospital's Medicare Cost Report, and is located in a county with a population of less than 500,000 persons, or
 - b. Is designated as a critical access hospital for the majority of the previous state fiscal year.
- B. Each February, the Administration shall allocate the Fund to the following three pools for the fiscal year:
1. Rural hospitals with 25 or fewer PPS beds not including sub provider beds and all Critical Access Hospitals, regardless of the number of beds in the Critical Access Hospital;
 2. Rural hospitals other than Critical Access Hospitals with 26 to 75 PPS beds not including sub provider beds; and
 3. Rural hospitals other than Critical Access Hospitals with 76 to 100 PPS beds not including sub provider beds.
- C. The Administration shall allocate the Fund to each pool according to the ratio of claims paid amount for all hospitals assigned to the pool to total claims paid amount for all rural hospitals.
- D. The Administration shall determine each hospital's claims paid amount and allocate the funds in each pool to each hospital in the pool based on the ratio of each hospital's claims paid amount to the sum of the claims paid amount for all hospitals assigned to the pool.
- E. The Administration shall not make a Fund payment to a hospital that will result in the hospital's claims paid amount plus

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that hospital's Fund payment being greater than that hospital's calculated inpatient costs.

1. If a hospital's claims paid amount plus the hospital's Fund payment would be greater than the hospital's calculated inpatient costs, the Administration shall make a Fund payment to the hospital equal to the difference between the hospital's calculated inpatient costs and the hospital's claims paid amount.
2. The Administration shall reallocate any portion of a hospital's Fund allocation that is not paid to the hospital due to the reason in subsection (E)(1) to the other eligible hospitals in the pool based upon the ratio of the claims paid amount for each hospital remaining in the pool to the sum of the claims paid amount for each hospital remaining in the pool.

F. If funds remain in a pool after allocations to each hospital in the pool under subsections (D) and (E), the Administration

shall reallocate the remaining funds to the other pools based upon the ratio of each pool's original allocation of the Fund as determined under subsection (C) to the sum of the remaining pools' original Fund allocations under subsection (C). The Administration shall allocate remaining funds to the hospitals in the remaining pools under subsection (D) and (E). See Exhibit 1 for an example.

G. Subject to CMS approval of the method and distribution of the Fund, the administration or its contractors will distribute the Fund as a lump sum allocation to the rural hospitals in either one or two installments by the end of each state fiscal year.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 2188, effective June 6, 2006 (Supp. 06-2). Amended by final rulemaking at 22 A.A.R. 3476, effective January 30, 2016 (Supp. 15-4).

Exhibit 1. Pool Example

Pool A receives \$2,000,000. Pool B receives \$7,000,000. Pool C receives \$3,000,000.

If all of the funds in Pool B are paid to eligible hospitals and there is \$1,000,000 remaining, the remaining funds would be allocated to Pool A and Pool C based on the ratio of each pool's original allocation (original allocations of \$2,000,000 and \$3,000,000) to the total of their original allocation (\$2,000,000 + \$3,000,000 = \$5,000,000).

Pool A would receive 2/5 of the remaining funds (\$400,000) and Pool C would receive 3/5 of the remaining funds (\$600,000).

Historical Note

Exhibit 1 made by final rulemaking at 12 A.A.R. 2188, effective June 6, 2006 (Supp. 06-2).

R9-22-712.08. Reserved

R9-22-712.09. Hierarchy for Tier Assignment through September 30, 2014

TIER	IDENTIFICATION CRITERIA	ALLOWED SPLITS
MATERNITY	A primary diagnosis defined as maternity 640.xx - 643.xx, 644.2x - 676.xx, v22.xx - v24.xx or v27.xx.	None
NICU	Revenue Code of 174 and the provider has a Level II or Level III NICU.	Nursery
ICU	Revenue Codes of 200-204, 207-212, or 219.	Surgery Psychiatric Routine
SURGERY	Surgery is identified by a revenue code of 36x. To qualify in this tier, there must be a valid surgical procedure code that is not on the excluded procedure list.	ICU
PSYCHIATRIC	Psychiatric Revenue Codes of 114, 124, 134, 144, or 154 AND primary Psychiatric Diagnosis = 290.xx - 316.xx. If a routine revenue code is present and all diagnoses codes on the claim are equal to 290.xx - 316.xx, classify as a psychiatric claim.	ICU
NURSERY	Revenue Code of 17x, not equal to 174.	NICU
ROUTINE	Revenue Codes of 100 - 101, 110-113, 116 - 123, 126 - 133, 136 - 143, 146 - 153, 156 - 159, 16x, 206, 213, or 214.	ICU

Historical Note

New Section made by final rulemaking at 11 A.A.R. 3231, effective October 1, 2005 (Supp. 05-3). Amended by exempt rulemaking at 17 A.A.R. 1707, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.10. Outpatient Hospital Reimbursement: General

- A. Effective rule. The outpatient hospital reimbursement rules apply to dates of service beginning July 1, 2005, subject to Laws 2004, Ch. 279, § 19.
- B. Basis For Payment. Except as provided under R9-22-712.30, AHCCCS shall pay for designated outpatient procedures provided to AHCCCS members according to the AHCCCS Outpatient Capped Fee-For-Service Schedule as defined in R9-22-712.20.
- C. Data. AHCCCS shall use Medicare Cost Report and adjudicated claim and encounter data from non-IHS acute care hospitals located in the state of Arizona to develop fees for the AHCCCS Outpatient Capped Fee-For-Service Schedule.
- D. Hospital Services Subject To Fees. AHCCCS shall reimburse services, in the following outpatient hospital categories under the AHCCCS Outpatient Capped Fee-For-Service Schedule:
 1. Surgery,
 2. Emergency Department,
 3. Laboratory,
 4. Radiology,
 5. Clinic, and
 6. Other services.
- E. Reimbursement. AHCCCS shall reimburse outpatient hospital services by procedure codes, in proper combination with revenue codes, as prescribed by AHCCCS.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2).

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R9-22-712.11. Reserved**R9-22-712.12. Reserved****R9-22-712.13. Reserved****R9-22-712.14. Reserved****R9-22-712.15. Outpatient Hospital Reimbursement: Affected Hospitals**

Except as provided in R9-22-712(G), the AHCCCS Outpatient Capped Fee-For-Service Schedule shall apply to AHCCCS payments for outpatient services in all non-IHS acute hospitals.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2).

R9-22-712.16. Reserved**R9-22-712.17. Reserved****R9-22-712.18. Reserved****R9-22-712.19. Reserved****R9-22-712.20. Outpatient Hospital Reimbursement: Methodology for the AHCCCS Outpatient Capped Fee-For-Service Schedule**

A. To establish the AHCCCS Outpatient Capped Fee-for-service Schedule for all claims with a begin date of service on or before September 30, 2011, AHCCCS shall:

1. Define the dataset of claims and encounters that shall be used to establish the AHCCCS Outpatient Capped Fee-for-service Schedule.
2. Identify all the claims and encounters from non-IHS acute hospitals located in Arizona for services to be paid under the AHCCCS Outpatient Capped Fee-for-service Schedule.
3. Match the revenue code on each detail of each claim and encounter to the ancillary line item CCR as reported on hospital-specific mapping documents and hospital-specific Medicare Cost Report for those hospitals that have submitted Medicare Cost Reports FYE 2002.
4. Multiply the line item CCR from subsection (A)(3) by the covered billed charge for that revenue code to establish the cost for the service.
5. Inflate the cost for the service from subsection (A)(4) using Global Insight Health-care Cost Review inflation factors from date of service month to the midpoint of the rate year in which the fees are initially effective.
6. Include associated costs under R9-22-712.25 to calculate the rates for emergency room and surgery services.
7. Combine data from all Arizona hospitals identified in subsection (A)(3) for each procedure code to establish the statewide median cost for each procedure.
8. Group procedure codes according to the Ambulatory Payment Classification (APC) System groups as listed in 69 FR 65682, November 15, 2004, and establish a statewide median cost for each APC. Multiply each statewide median APC cost by 116 percent to establish the AHCCCS-based fee for each procedure in that specific APC group. AHCCCS shall assign each procedure in the group the same fee.
9. For those procedure codes that are not grouped into any APC, establish a procedure-specific fee using either:
 - a. The AHCCCS Non-hospital Capped Fee-for-service Fee Schedule,
 - b. 116 percent of the procedure-specific median cost AHCCCS-based fee, or

c. The Medicare Clinical Laboratory Fee Schedule for laboratory services.

10. Compare the AHCCCS-based fee established in subsections (A)(8) and (9) against the comparable Medicare fee established for the Medicare APC group as listed in the 69 FR 65682, November 15, 2004. The fee for each procedure shall be the greater of the AHCCCS-based fee or the Medicare fee but no more than 150 percent of the AHCCCS-based fee; however, for those laboratory services for which a limit is established in the Medicare Clinical Laboratory Fee Schedule, the fee shall not exceed that limit.
 11. Assign the 2005 Medicare fee in the AHCCCS Outpatient Capped Fee-for-service Schedule for those procedures for which there are fewer than 20 occurrences of the procedure code in the dataset, either independently, or, if applicable, for all procedure codes within an APC Group.
- B. For all claims with a begin date of service on or after October 1, 2011, the AHCCCS Outpatient Capped Fee-for-Service Schedule shall be derived from the CMS Medicare Outpatient Prospective Payment System (OPPS) fee schedule modified by an Arizona conversion factor determined annually.
1. When clinic services are billed using 51X revenue codes, the reimbursement to the hospital is the difference between the facility and non-facility rates payable to the practitioner for the procedures listed in the Administration's Capped Fee-for-service Schedule under R9-22-710.
 2. Observation services, when not billed in conjunction with a service for which a single payment is made under R9-22-712.25, are reimbursed at an hourly rate published in the Outpatient Capped Fee-for-service Schedule. This hourly rate includes reimbursement for associated services.
- C. The AHCCCS Outpatient Capped Fee-for-service Schedule including the effective date of any changes to the listing are on file and posted on AHCCCS' web site.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 17 A.A.R. 1460, effective October 1, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 1914, effective July 18, 2012 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 3315, effective November 30, 2013 (Supp. 13-4).

R9-22-712.21. Reserved**R9-22-712.22. Reserved****R9-22-712.23. Reserved****R9-22-712.24. Reserved****R9-22-712.25. Outpatient Hospital Fee Schedule Calculations: Associated Service Costs**

- A. AHCCCS shall include the costs of associated services, as defined by revenue codes and procedure codes, when determining the specific fees for the outpatient hospital procedures for emergency department and surgery services.
- B. Payment made under subsection (A) or R9-22-712.20(B)(2) is inclusive of all services on the claim regardless of whether the services are provided on one or more days.
- C. A complete listing of the revenue codes and procedure codes for associated costs included in the payment for emergency and surgery services including the effective date of any changes to the listing are on file and posted on AHCCCS' web site.

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New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 17 A.A.R. 1460, effective October 1, 2011 (Supp. 11-3).

R9-22-712.26. Reserved

R9-22-712.27. Reserved

R9-22-712.28. Reserved

R9-22-712.29. Reserved

R9-22-712.30. Outpatient Hospital Reimbursement: Payment for a Service Not Listed in the AHCCCS Outpatient Capped Fee-For-Service Schedule

- A. AHCCCS shall calculate a statewide CCR for a service where a specific fee cannot be determined under R9-22-712.20.
- B. For claims with a begin date of service on or before September 30, 2011, the statewide CCR shall be calculated based on the costs and covered charges associated with a service under subsection (A) for all Arizona hospitals, using the method specified in R9-22-712.20(A)(3).
- C. For all claims with a begin date of service on or after October 1, 2011, the statewide CCR calculation shall equal either the CMS Medicare Outpatient Urban Cost-to-charge Ratio or the CMS Medicare Outpatient Rural Cost-to-charge Ratio published by CMS for the state of Arizona. AHCCCS shall use the urban cost-to-charge ratio for hospitals located in a county of 500,000 residents or more and for out-of-state hospitals. AHCCCS shall use the rural cost-to-charge ratio for hospitals located in a county of fewer than 500,000 residents. On October 1st of each year, AHCCCS shall adjust urban and rural CCRs to the CCRs as published by CMS in the *Federal Register* on or before August 1st of that year.
- D. To determine the payment amount for procedures where a specific fee is not determined under R9-22-712.20, the statewide CCR is multiplied by the covered charges.
- E. Reductions to payments for outpatient hospital services not listed in the AHCCCS Outpatient Capped Fee-For-Service Schedule. Outpatient hospital services not listed in the AHCCCS Outpatient Capped Fee-For-Service Schedule with dates of service on or after October 1, 2011, shall be reimbursed at 95 percent of the rate published by CMS pursuant to subsection (C) of this Section.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 17 A.A.R. 1460, effective October 1, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 1914, effective July 18, 2012 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 3315, effective November 30, 2013 (Supp. 13-4).

R9-22-712.31. Reserved

R9-22-712.32. Reserved

R9-22-712.33. Reserved

R9-22-712.34. Reserved

R9-22-712.35. Outpatient Hospital Reimbursement: Adjustments to Fees

- A. For all claims with a begin date of service on or before September 30, 2011, AHCCCS shall increase the Outpatient Capped Fee-for-service Schedule established under R9-22-712.20 (except for laboratory services and out-of-state hospital services) for the following hospitals submitting any claims:
 1. By 48 percent for public hospitals on July 1, 2005, and hospitals that were public anytime during the calendar year 2004;
 2. By 45 percent for hospitals in counties other than Maricopa and Pima with more than 100 Medicare PPS beds during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective;
 3. By 50 percent for hospitals in counties other than Maricopa and Pima with 100 or less Medicare PPS beds during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective;
 4. By 115 percent for hospitals designated as Critical Access Hospitals or hospitals that have not been designated as Critical Access Hospitals but meet the criteria during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective;
 5. By 113 percent for a Freestanding Children's Hospital with at least 110 pediatric beds during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective; or
 6. By 14 percent for a University Affiliated Hospital which is a hospital that has a majority of the members of its board of directors appointed by the Board of Regents during the contract year in which the Outpatient Capped Fee-for-service Schedule rates are effective.
- B. For all claims with a begin date of service on or after October 1, 2011, AHCCCS shall increase the Outpatient Capped Fee-for-service Schedule (except for laboratory services, and out-of-state hospital services) for the following hospitals. A hospital shall receive an increase from only one of the following categories:
 1. By 73 percent for public hospitals;
 2. By 31 percent for hospitals in counties other than Maricopa and Pima with more than 100 licensed beds as of October 1 of that contract year;
 3. By 37 percent for hospitals in counties other than Maricopa and Pima with 100 or fewer licensed beds as of October 1 of that contract year;
 4. By 100 percent for hospitals designated as Critical Access Hospitals or hospitals that have not been designated as Critical Access Hospitals but meet the critical access criteria;
 5. By 78 percent for a Freestanding Children's Hospital with at least 110 pediatric beds as of October 1 of that contract year; or
 6. By 41 percent for a University Affiliated Hospital, this is a hospital that has a majority of the members of its board of directors appointed by the Arizona Board of Regents.
- C. In addition to subsections (A) and (B), an Arizona Level 1 trauma center as defined by R9-22-2101 shall receive a 50 percent increase to the Outpatient Capped Fee-for-service Schedule (except for laboratory services and out-of-state hospital services) for Level 2 and 3 emergency department procedures.
- D. Hospitals with greater than 100 pediatric beds not receiving an increase under subsection (B) shall receive an 18 percent increase to the Outpatient Capped Fee-for-service Schedule (except for laboratory services, and out-of-state hospital services).
- E. For outpatient services with dates of service from October 1, 2020 through September 30, 2021, the payment otherwise required for outpatient hospital services provided by qualifying hospitals shall be increased by a percentage established by the administration. The percentage is published on the Administration's public website as part of its fee schedule subsequent to the public notice published no later than September 1, 2020.

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A hospital will qualify for an increase if it meets the criteria specified below for the applicable hospital subtype.

1. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children's will qualify for an increase if it meets the criteria in (E)(1)(a), (b), (c), (d), or (e):
 - a. By May 27, 2020, a hospital which did not receive Differential Adjusted Payments from October 1, 2019 through September 30, 2020, submits a Letter of Intent to AHCCCS and a qualifying Health Information Exchange (HIE) organization in which the hospital agrees to achieve all of the following:
 - i. By May 27, 2020, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;
 - ii. By June 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of qualifying HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department;
 - iii. By August 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;
 - iv. By September 1, 2020, or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - v. By September 1, 2020, or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - vi. Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;
 - vii. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;
 - viii. By November 1, 2020, the hospital must approve and authorize a formal scope of work (SOW) with a qualifying HIE organization to initiate and complete a Phase 1 data quality improvement effort, as defined by the qualifying HIE organization in collaboration with the qualifying HIE organization;
 - ix. By January 1, 2021, the hospital must complete the Phase 1 initial data quality profile with a qualifying HIE organization;
 - x. By May 1, 2021, the hospital must complete the Phase 1 final data quality profile with a qualifying HIE organization;
- b. By May 27, 2020, a hospital which received Differential Adjusted Payments October 1, 2019 through September 30, 2020, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:
 - i. By May 27, 2020, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;
 - ii. By June 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department, laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instruction, active medication, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;
 - iii. By September 1, 2020, or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - iv. By September 1, 2020 or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - v. Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;

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- vi. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;
 - vii. By November 1, 2020, the hospital must approve and authorize a formal SOW to initiate and complete a Phase 2 data quality improvement effort, as defined by the qualifying HIE organization and in collaboration with the qualifying HIE organization;
 - viii. By January 1, 2021, the hospital must complete the Phase 2 initial data quality profile with a qualifying HIE organization;
 - ix. By May 1, 2021, the hospital must complete the Phase 2 final data quality profile with a qualifying HIE organization;
 - x. Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases:
 - (1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on July 2019 data, to the final data quality profile, based on March 2020 data.
 - (2) Meet a minimum performance standard of at least 60% based on March 2020 data.
 - (3) If performance meets or exceeds an upper threshold of 90% based on March 2020 data the hospital meets the criteria. Regardless of the percentage improvement from the baseline measurements;
 - c. Meet or exceed the statewide average on May 12, 2020 for the Severe Sepsis/Septic Shock (SEP-1) performance measure from the Medicare Hospital Compare website;
 - d. Be a participant in the Improving Pediatric Sepsis Outcomes collaborative in 2020;
 - e. For dates of services from October 1, 2020 through September 30, 2021, hospitals subject to APR-DRG reimbursement (Provider Type 02) may qualify for a DAP on codes J7296-J7298, J7300-J7301, and J7307 billed on the 1500 or UB-04 forms for long-acting reversible contraception devices.
2. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if it meets this criteria. By May 27, 2020, a hospital which received Differential Adjusted Payments October 1, 2019 through September 30, 2020, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:
 - a. By May 27, 2020, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;
 - b. By June 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department, laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;
 - c. By September 1, 2020, or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - d. By September 1, 2020 or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - e. Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;
 - f. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;
 - g. By November 1, 2020, the hospital must approve and authorize a formal SOW to initiate and complete a Phase 2 data quality improvement effort, as defined by the qualifying HIE organization and in collaboration with the qualifying HIE organization;
 - h. By January 1, 2021, the hospital must complete the Phase 2 initial data quality profile with a qualifying HIE organization;
 - i. By May 1, 2021, the hospital must complete the Phase 2 final data quality profile with a qualifying HIE organization;
 - j. Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases:
 - i. Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on July 2019 data, to the final data quality profile, based on March 2020 data;
 - ii. Meet a minimum performance standard of at least 60% based on March 2020 data;
 - iii. If performance meets or exceeds an upper threshold of 90% based on March 2020 data the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements;
 3. A hospital designated as type: hospital, subtype: long term, psychiatric, or rehabilitation by the Arizona Department of Health Services Division of Licensing Services will qualify for an increase if it meets the criteria specified in (E)(3)(a), (b), (c), (d), or (e):
 - a. By May 27, 2020, a hospital which did receive Differential Adjusted Payments from October 1, 2019 through September 30, 2020, submits a Letter of

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Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:

- i. By May 27, 2020, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;
 - ii. By June 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department;
 - iii. By August 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;
 - iv. By September 1, 2020, or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - v. By September 1, 2020 or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - vi. Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;
 - vii. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;
 - viii. By November 1, 2020, the hospital must approve and authorize a formal SOW with a qualifying HIE organization to initiate and complete a Phase 1 data quality improvement effort, as defined by the qualifying HIE organization and in collaboration with the qualifying HIE organization;
 - ix. By January 1, 2021, the hospital must complete the Phase 1 initial data quality profile with a qualifying HIE organization;
 - x. By May 1, 2021, the hospital must complete the Phase 1 final data quality profile with a qualifying HIE organization;
- b. By May 27, 2020, a hospital which received Differential Adjusted Payments October 1, 2019 through September 30, 2020, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:
 - i. By May 27, 2020, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;
 - ii. By June 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department, laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;
 - iii. By September 1, 2020 or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - iv. By September 1, 2020 or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - v. Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;
 - vi. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;
 - vii. By November 1, 2020, the hospital must approve and authorize a formal SOW to initiate and complete a Phase 2 data quality improve-

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- ment effort, as defined by the qualifying HIE organization and in collaboration with a qualifying HIE organization;
 - viii. By January 1, 2021, the hospital must complete the Phase 2 initial data quality profile with a qualifying HIE organization;
 - ix. By May 1, 2021, the hospital must complete the Phase 2 final data quality profile with a qualifying HIE organization;
 - x. Performance Criteria: Hospitals that meet each of the following HIE data quality performance criteria will be eligible to DAP increases;
 - (1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on July 2019 data, to the final data quality profile, based on March 2020 data;
 - (2) Meet a minimum performance standard of at least 60% based on March 2020 data;
 - (3) If performance meets or exceeds an upper threshold of 90% based on March 2020 data the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.
 - c. On May 12, 2020 is identified as a Medicare Annual Payment Update recipients on the QualityNet.org website;
 - d. On May 12, 2020 meets or falls below the national average for the rate of pressure ulcers that are new or worsened from the Medicare Long Term Hospital Compare website;
 - e. On May 12, 2020 meets or falls below the national average for the rate of pressure ulcers that are new or worsened from the Medicare Inpatient Rehabilitation Facility Compare website.
4. A hospital designated as type: hospital by the Arizona Department of Health Services Division of Licensing Services and is owned and/or operated by Indian Health Services (HIS) or under Tribal authority will qualify for an increase if it meets this criteria. By May 27, 2020, a hospital submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:
- a. By May 27, 2020, the facility must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;
 - b. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf;
 - c. By December 1, 2020, the facility must approve and authorize a formal SOW with a qualifying HIE organization to develop and implement the data exchange necessary to meet the requirements of Milestones d, e and f;
 - d. By April 1, 2021 the facility must electronically submit actual patient identifiable information to the production environment of a qualifying HIE organization, including admission, discharge, and transfer information (generally known as ADT

- information), including data from the hospital emergency department if the facility has an emergency department;
 - e. By June 1, 2021 the facility must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;
 - f. If the facility has ambulatory and/or behavioral health practices, then no later than June 1, 2021 the facility must submit actual patient identifiable information to the production environment of a qualifying HIE, including registration, encounter summary, and SMI data elements as defined by the qualifying HIE organization.
- F. If a hospital submits a Letter of Intent to AHCCCS and received the Differential Adjusted Payments October 1, 2019 through September 30, 2020, but fails to achieve or maintain one or more of the required criteria by the specified date, that hospital will be ineligible to receive any Differential Adjusted Payments for dates of service from October 1, 2020 through September 30, 2021 if a Differential Adjusted Payment is available at that time.
- G. Fee adjustments made under subsections (A), (B), (C), (D), and (E) are on file with AHCCCS and current adjustments are posted on AHCCCS' website.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 3584, effective October 1, 2007 (Supp. 07-4). Amended by final rulemaking at 14 A.A.R. 1439, effective May 31, 2008 (Supp. 08-2). Amended by final rulemaking at 17 A.A.R. 1460, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4). Amended by final rulemaking at 23 A.A.R. 2338, effective October 1, 2017 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 2851, effective October 1, 2018 (Supp. 18-3). Amended by final rulemaking at 25 A.A.R. 3114, effective October 1, 2019 (Supp. 19-4). Amended by final rulemaking at 26 A.A.R. 3025, with an immediate effective date of November 3, 2020 (Supp 20-4).

- R9-22-712.36. Reserved**
- R9-22-712.37. Reserved**
- R9-22-712.38. Reserved**
- R9-22-712.39. Reserved**

R9-22-712.40. Outpatient Hospital Reimbursement: Annual and Periodic Update

- A. Procedure codes. When procedure codes are issued by CMS and added to the Current Procedural Terminology published by the American Medical Association, AHCCCS shall add to the Outpatient Capped Fee-for-Service Schedule the new procedure codes for covered outpatient services and shall either assign the default CCR under R9-22-712.40(F)(2), the Medicare rate, or calculate an appropriate fee.

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- B.** APC changes. AHCCCS may reassign procedure codes to new or different APC groups when APC groups are revised by CMS. AHCCCS may reassign procedure codes to a different APC group than Medicare. If AHCCCS determines that utilization of a procedure code within the Medicare program is substantially different from utilization of the procedure code in the AHCCCS program, AHCCCS may choose not to assign the procedure code to any APC group. For procedure codes not grouped into an APC by Medicare, AHCCCS may assign the code to an APC group when AHCCCS determines that the cost and resources associated with the non-assigned code are substantially similar to those in the APC group.
- C.** Annual update for Outpatient Hospital Fee Schedule. Beginning October 1, 2006, through September 30, 2011, AHCCCS shall adjust outpatient fee schedule rates:
1. Annually by multiplying the rates effective during the prior year by the Global Insight Prospective Hospital Market Basket Inflation Index; or
 2. In a particular year the director may substitute the increases in subsection (C)(1) by calculating the dollar value associated with the inflation index in subsection (C)(1), and applying the dollar value to adjust rates at varying levels.
- D.** Reductions to the Outpatient Capped Fee-For-Service Schedule. Claims paid using the Outpatient Capped Fee-For-Service Schedule with dates of service on or after October 1, 2011, shall be reimbursed at 95 percent of the rates in effect on September 30, 2011, subject to the annual adjustments to procedure codes and APCs under this Section.
- E.** Rebase. AHCCCS shall rebase the outpatient fees every five years.
- F.** Statewide CCR:
1. For begin dates of service on or before September 30, 2011, the statewide CCR calculated in R9-22-712.30 shall be recalculated at the time of rebasing. When rebasing, AHCCCS may recalculate the statewide CCR based on the costs and charges for services excluded from the outpatient hospital fee schedule.
 2. For begin dates of service on or after October 1, 2011, the statewide CCR shall be set under R9-22-712.30(C).
- G.** Other Updates. In addition to the other updates provided for in this Section, the Administration may adjust the Outpatient Capped Fee-For-Service Fee Schedule and the Statewide CCR to the extent necessary to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available at least to the extent that such care and services are available to the general population in the geographic area.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 13 A.A.R. 3584, effective October 1, 2007 (Supp. 07-4). Amended by final rulemaking at 14 A.A.R. 1439, effective May 31, 2008 (Supp. 08-2). Amended by final rulemaking at 17 A.A.R. 1460, effective October 1, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 1914, effective July 18, 2012 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 3315, effective November 30, 2013 (Supp. 13-4). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.41. Reserved**R9-22-712.42. Reserved****R9-22-712.43. Reserved****R9-22-712.44. Reserved****R9-22-712.45. Outpatient Hospital Reimbursement: Outpatient Payment Restrictions**

- A.** AHCCCS shall not reimburse hospitals for emergency room treatment, observation hours, or other outpatient hospital services performed on an outpatient basis if the member is admitted as an inpatient to the same hospital directly from the emergency room, observation, or other outpatient department.
- B.** AHCCCS shall include payment for the emergency room, observation, and other outpatient hospital services provided to the member before the hospital admission in the AHCCCS Inpatient Tiered Per Diem Capped Fee-For-Service Schedule under Article 7 of this Chapter.
- C.** Same day admit and discharge.
1. For discharges before September 30, 2014. Same day admit and discharge claims that qualify for either the maternity or nursery tiers shall be paid based on the lesser of the rate for the maternity or nursery tier, or the outpatient hospital fee schedule.
 2. For discharge dates on and after October 1, 2014. Same day admit and discharge claims are paid for through the outpatient fee schedule.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.46. Reserved**R9-22-712.47. Reserved****R9-22-712.48. Reserved****R9-22-712.49. Reserved****R9-22-712.50. Outpatient Hospital Reimbursement: Billing**

To receive appropriate reimbursement, hospitals shall:

1. Bill outpatient hospital services on the CMS approved Uniform Billing Form or in electronic format using the appropriate HIPAA transaction.
2. Follow the UB Manual Guidelines, as published by the National Uniform Billing Committee, and use the appropriate revenue code and procedure code combination as prescribed by AHCCCS and on file and online with AHCCCS.

Historical Note

New Section made by exempt rulemaking at 11 A.A.R. 2297, effective July 1, 2005 (Supp. 05-2).

R9-22-712.51. Reserved**R9-22-712.52. Reserved****R9-22-712.53. Reserved****R9-22-712.54. Reserved****R9-22-712.55. Reserved****R9-22-712.56. Reserved****R9-22-712.57. Reserved****R9-22-712.58. Reserved**

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R9-22-712.59. Reserved**R9-22-712.60. Diagnosis Related Group Payments**

- A. Inpatient hospital services with discharge dates on or after October 1, 2014, shall be reimbursed using the diagnosis related group (DRG) payment methodology described in this Section and sections R9-22-712.61 through R9-22-712.81.
- B. Payments made using the DRG methodology shall be the sole reimbursement to the hospital for all inpatient hospital services and related supplies provided by the hospital. Services provided in the emergency room, observation area, or other outpatient departments that are directly followed by an inpatient admission to the same hospital are not reimbursed separately. Are reimbursed through the DRG methodology and not reimbursed separately.
- C. Each claim for an inpatient hospital stay shall be assigned a DRG code and a DRG relative weight based on the All Patient Refined Diagnosis Related Group (APR-DRG) classification system established by 3M Health Information Systems. The applicable version of the APR-DRG classification system shall be available on the agency's website.
- D. Payments for inpatient hospital services reimbursed using the DRG payment methodology are subject to quick pay discounts and slow pay penalties under A.R.S. 36-2904.
- E. Payments for inpatient hospital services reimbursed using the DRG payment methodology are subject to the Urban Hospital Reimbursement Program under R9-22-718.
- F. For purposes of this Section and sections R9-22-712.61 through R9-22-712.81:
1. "DRG National Average length of stay" means the national arithmetic mean length of stay published in the All Patient Refined Diagnosis Related Group (APR-DRG) classification established by 3M Health Information Systems.
 2. "Length of stay" means the total number of calendar days of an inpatient stay beginning with the date of admission through discharge, but not including the date of discharge (including the date of a discharge to another hospital, i.e., a transfer) unless the member expires.
 3. "Medicare" means Title XVIII of the Social Security Act, 42 U.S.C. 1395 et seq.
 4. "Medicare labor share" means a hospital's labor costs as a percentage of its total costs as determined by CMS for purposes of the Medicare Inpatient Prospective Payment System.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4).

R9-22-712.61. DRG Payments: Exceptions

- A. Notwithstanding section R9-22-712.60, claims for inpatient services from the following hospitals shall be paid on a per diem basis, including provisions for outlier payments, where rates and outlier thresholds are included in the capped fee schedule published by the Administration on its website and available for inspection during normal business hours at 701 E. Jefferson, Phoenix, Arizona. If the covered costs per day on a claim exceed the published threshold for a day, the claim is considered an outlier. Outliers will be paid by multiplying the covered charges by the outlier CCR. The outlier CCR will be the sum of the urban or rural default operating CCR appropriate to the location of the hospital and the statewide capital cost-to-charge ratio in the data file established as part of the Medicare Inpatient Prospective Payment System by CMS. The

resulting amount will be the total reimbursement for the claim. There is no provision for outlier payments for hospitals described under subsection (A)(3).

1. Hospitals designated as type: hospital, subtype; rehabilitation in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website in March of each year;
 2. Hospitals designated as type: hospital, subtype: long term in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for March of each year;
 3. Hospitals designated as type: hospital, subtype; psychiatric in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for March of each year;
- B. Notwithstanding section R9-22-712.60, claims for inpatient services that are covered by a RBHA or TRBHA, where the principal diagnosis on the claim is a behavioral health diagnosis, shall be reimbursed as prescribed by a per diem rate described by a fee schedule established by the Administration; however, if the principal diagnosis is a physical health diagnosis, the claim shall be processed under the DRG methodology described in this section, even if behavioral health services are provided during the inpatient stay.
- C. Notwithstanding section R9-22-712.60, claims for services associated with transplant services shall be paid in accordance with the contract between the AHCCCS administration and the transplant facility.
- D. Notwithstanding section R9-22-712.60, claims from an IHS facility or 638 Tribal provider shall be paid the all-inclusive rate on a per visit basis in accordance with the rates published annually by IHS in the federal register.
- E. For hospitals that have contracts with the Administration for the provision of transplant services, inpatient days associated with transplant services are paid in accordance with the terms of the contract.
- F. For inpatient services with a date of admission from October 1, 2020 through September 30, 2021, provided by a hospital in subsection (A) that qualifies, the administration shall pay the hospital an Inpatient Differential Adjusted Payment equal to the sum of the payment otherwise provided for in subsection (A) plus the product of the amount otherwise provided for in subsection (A) and a percentage published on the Administration's public website as part of its fee schedule, subsequent to a public notice published no later than September 1, 2020. A hospital will qualify for an increase if it meets the criteria specified below for the applicable hospital subtype.
1. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children's will qualify for an increase if it meets the criteria in subsection (F)(1)(a), (i) through (x), (F)(1)(b), (i) through (x), and (1) through (3); (F)(1)(c); (F)(1)(d), or (F)(1)(e):
 - a. By May 27, 2020, a hospital which did not receive Differential Adjusted Payments from October 1, 2019 through September 30, 2020, submits a Letter of Intent to AHCCCS and a qualifying Health Information Exchange (HIE) organization in which the hospital agrees to achieve all of the following:
 - i. By May 27, 2020, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to

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- achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;
- ii. By June 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of qualifying HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department;
 - iii. By August 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;
 - iv. By September 1, 2020, or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - v. By September 1, 2020, or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - vi. Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;
 - vii. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;
 - viii. By November 1, 2020, the hospital must approve and authorize a formal scope of work (SOW) with a qualifying HIE organization to initiate and complete a Phase 1 data quality improvement effort, as defined by the qualifying HIE organization in collaboration with the qualifying HIE organization;
 - ix. By January 1, 2021, the hospital must complete the Phase 1 initial data quality profile with a qualifying HIE organization;
 - x. By May 1, 2021, the hospital must complete the Phase 1 final data quality profile with a qualifying HIE organization;
- b. By May 27, 2020, a hospital which received Differential Adjusted Payments October 1, 2019 through September 30, 2020, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:
 - i. By May 27, 2020, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;
 - ii. By June 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department, laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instruction, active medication, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;
 - iii. By September 1, 2020, or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - iv. By September 1, 2020 or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - v. Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;
 - vi. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;
 - vii. By November 1, 2020, the hospital must approve and authorize a formal SOW to initiate and complete a Phase 2 data quality improvement effort, as defined by the qualifying HIE organization and in collaboration with the qualifying HIE organization;
 - viii. By January 1, 2021, the hospital must complete the Phase 2 initial data quality profile with a qualifying HIE organization;

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- ix. By May 1, 2021, the hospital must complete the Phase 2 final data quality profile with a qualifying HIE organization;
 - x. Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases:
 - (1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on July 2019 data, to the final data quality profile, based on March 2020 data;
 - (2) Meet a minimum performance standard of at least 60% based on March 2020 data;
 - (3) If performance meets or exceeds an upper threshold of 90% based on March 2020 data the hospital meets the criteria. Regardless of the percentage improvement from the baseline measurements;
 - c. Meet or exceed the statewide average on May 12, 2020 for the Severe Sepsis/Septic Shock (SEP-1) performance measure from the Medicare Hospital Compare website;
 - d. Be a participant in the Improving Pediatric Sepsis Outcomes collaborative in 2020;
 - e. For dates of services from October 1, 2020 through September 30, 2021, hospitals subject to APR-DRG reimbursement (Provider Type 02) may qualify for a DAP on codes J7296-J7298, J7300-J7301, and J7307 billed on the 1500 or UB-04 forms for long-acting reversible contraception devices.
2. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if it meets this criteria. By May 27, 2020, a hospital which received Differential Adjusted Payments October 1, 2019 through September 30, 2020, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:
- a. By May 27, 2020, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;
 - b. By June 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department, laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;
 - c. By September 1, 2020, or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - d. By September 1, 2020 or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - e. Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;
 - f. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;
 - g. By November 1, 2020, the hospital must approve and authorize a formal SOW to initiate and complete a Phase 2 data quality improvement effort, as defined by the qualifying HIE organization and in collaboration with the qualifying HIE organization;
 - h. By January 1, 2021, the hospital must complete the Phase 2 initial data quality profile with a qualifying HIE organization;
 - i. By May 1, 2021, the hospital must complete the Phase 2 final data quality profile with a qualifying HIE organization;
 - j. Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases:
 - i. Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on July 2019 data, to the final data quality profile, based on March 2020 data;
 - ii. Meet a minimum performance standard of at least 60% based on March 2020 data;
 - iii. If performance meets or exceeds an upper threshold of 90% based on March 2020 data the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4). Amended by final rulemaking at 23 A.A.R. 2338, effective October 1, 2017 (Supp. 17-3). Amended by final rulemaking at 24 A.A.R. 2851, effective October 1, 2018 (Supp. 18-3). Amended by final rulemaking at 25 A.A.R. 3111 and at 25 A.A.R. 3114, effective October 1, 2019 (Supp. 19-4). Amended by final rulemaking at 26 A.A.R. 3025, with an immediate effective date of November 3, 2020 (Supp 20-4).

R9-22-712.62. DRG Base Payment

- A.** The initial DRG base payment is the product of the DRG base rate, the DRG relative weight for the post-HCAC DRG code assigned to the claim, and any applicable provider and service policy adjusters.
- B.** The DRG base rate for each hospital is the statewide standardized amount of which the hospital's labor-related share of that amount is adjusted by the hospital's wage index. The hospital's labor share is determined based on the labor share for the

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Medicare inpatient prospective payment system published in Volume 81 of the Federal Register at page 57312 published August 22, 2016. The hospital's wage index is determined based on the wage index tables reference in Volume 81 of the Federal Register at page 57311 published August 22, 2016. The statewide standardized amount is included in the AHCCCS capped fee schedule available on the agency's website.

- C. Claims shall be assigned both a DRG code derived from all diagnosis and surgical procedure codes included on the claim (the "pre-HCAC" DRG code) and a DRG code derived excluding diagnosis and surgical procedure codes associated with the health care acquired conditions that were not present on admission or any other provider-preventable conditions (the "post-HCAC" DRG code). The DRG code with the lower relative weight shall be used to process claims using the DRG methodology.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4).

R9-22-712.63. DRG Base Payments Not Based on the Statewide Standardized Amount

- A. Notwithstanding Section R9-22-712.62, a select specialty hospital standardized amount shall be used in place of the statewide standardized amount in subsection R9-22-712.62(B) to calculate the DRG base rate for the following hospitals:
1. Hospitals located in a city with a population greater than one million, which on average have at least 15 percent of inpatient days for patients who reside outside of Arizona, and at least 50 percent of discharges as reported on the 2011 Medicare Cost Report are reimbursed by Medicare.
 2. Hospitals designated as type: hospital, subtype: short-term that has a license number beginning "SH" in the Provider & Facility Database for Arizona Medical Facilities posted by the ADHS Division of Licensing Services on its website for March of each year.
- B. The select specialty hospital standardized amount is included in the AHCCCS capped fee schedule available on the agency's website.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4).

R9-22-712.64. DRG Base Payments and Outlier CCR for Out-of-State Hospitals

- A. DRG Base payment:
1. For high volume out-of-state hospitals defined in subsection (C), the wage adjusted DRG base payment is determined as described in R9-22-712.62.
 2. Notwithstanding subsection R9-22-712.62 the wage adjusted DRG base rate for out-of-state hospitals that are not high volume hospitals shall be included in the AHCCCS capped fee schedule available on the agency's website.
- B. Outlier CCR:
1. Notwithstanding subsection R9-22-712.68, the CCR used for the outlier calculation for out-of-state hospitals that are not high volume hospitals shall be the sum of the statewide urban default operating cost-to-charge ratio and the statewide capital CCR in the data file established as part of the Medicare Inpatient Prospective Payment System by CMS.

2. The CCR used for the outlier calculation for high volume out-of-state hospitals is the same as in-state hospitals as described in R9-22-712.68.

- C. A high volume out-of-state hospital is a hospital not otherwise excluded under R9-22-712.61, that is located in a county that borders the State of Arizona and had 500 or more AHCCCS covered inpatient days for the fiscal year beginning October 1, 2015.
- D. Other than as required by this Section, DRG reimbursement for out-of-state hospitals is determined under R9-22-712.60 through R9-22-712.81.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4).

R9-22-712.65. DRG Provider Policy Adjustor

- A. After calculating the DRG base payment as required in sections R9-22-712.62, R9-22-712.63, or R9-22-712.64, for claims from a high-utilization hospital, the product of the DRG base rate and the DRG relative weight for the post-HCAC DRG code shall be multiplied by a provider policy adjustor that is included in the AHCCCS capped fee schedule available on the agency's website.
- B. A hospital is a high-utilization hospital if the hospital had:
1. Covered inpatient days subject to DRG reimbursement, determined using adjudicated claim and encounter data during the fiscal year beginning October 1, 2015, equal to at least four hundred percent of the statewide average number of AHCCCS-covered inpatient days at all hospitals;
 2. A Medicaid inpatient utilization rate greater than 30% calculated as the ratio of AHCCCS-covered inpatient days to total inpatient days as reported in the hospital's Medicare Cost Report for the fiscal year ending 2016; and,
 3. Received less than \$2 million in add-on payment for outliers under R9-22-712.68, based on adjudicated claims and encounters for fiscal year beginning October 1, 2015.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4).

R9-22-712.66. DRG Service Policy Adjustor

In addition to Section R9-22-712.65, for claims with DRG codes in the following categories, the product of the DRG base rate, the DRG relative weight for the post-HCAC DRG code, and the DRG provider policy adjustor shall be multiplied by the service policy adjustor listed in the AHCCCS capped fee schedule, available on the agency's website, corresponding to the following DRG codes:

1. Normal newborn DRG codes,
2. Neonates DRG codes,
3. Obstetrics DRG codes,
4. Psychiatric DRG codes,
5. Rehabilitation DRG codes,
6. Burn DRG codes.
7. Claims for members under age 19 assigned DRG codes other than listed above:
 - a. For dates of discharge occurring on or after October 1, 2014 and ending no later than December 31, 2015 regardless of severity of illness level,
 - b. For dates of discharge on or after January 1, 2016, for severity of illness levels 1 and 2,

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- c. For dates of discharge on or after January 1, 2016 and before January 1, 2017, for severity of illness levels 3 and 4.
 - d. For dates of discharge on or after January 1, 2017, and before January 1, 2018 for severity of illness levels 3 and 4.
 - e. For dates of discharge on or after January 1, 2018, for severity of illness levels 3 and 4.
8. Claims for members assigned DRG codes other than listed above.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4).

R9-22-712.67. DRG Reimbursement: Transfers

- A. For purposes of this Section a “transfer” means the transfer of a member from a hospital to a short-term general hospital for inpatient care, a designated cancer center, children’s hospital, or a critical access hospital except when a member is moved for the purpose of receiving sub-acute services.
- B. Designated cancer center or children’s hospitals are those hospitals identified as such in the UB-04 billing manual published by the National Uniform Billing Committee.
- C. The hospital the member is transferred from shall be reimbursed either the initial DRG base payment or the transfer DRG base payment, whichever is less.
- D. The transfer DRG base payment is an amount equal to the initial DRG base payment, as determined after making any provider or service policy adjustors, divided by the DRG National Average length of stay for the DRG code multiplied by the sum of one plus the length of stay.
- E. The hospital the member is transferred to shall be reimbursed under the DRG payment methodology without a reduction due to the transfer.
- F. Unadjusted DRG base payment. The unadjusted DRG base payment is either the initial DRG base payment, as determined after making any provider or service policy adjustors, or the transfer DRG base payment, whichever is less.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4).

R9-22-712.68. DRG Reimbursement: Unadjusted Outlier Add-on Payment

- A. Claims for inpatient hospital services qualify for an outlier add-on payment if the claim cost exceeds the outlier cost threshold.
- B. The claim cost is determined by multiplying covered charges by an outlier CCR as described by the following subsections:
 - 1. For hospitals designated as type: hospital, subtype: children’s in the Provider & Facility Database for Arizona Medical Facilities posted by the ADHS Division of Licensing Services on its website for March of each year. The outlier CCR will be calculated by dividing the hospital total costs by the total charges using the most recent Medicare Cost Report available as of September 1 of that year.
 - 2. For Critical Access Hospitals the outlier CCR will be the sum of the statewide rural default operating cost-to-charge ratio and the statewide capital cost-to-charge ratio

in the data file established as part of the Medicare Inpatient Prospective Payment System by CMS.

- 3. For all other hospitals the outlier CCR will be the sum of the operating cost-to-charge ratio and the capital cost-to-charge ratio established for each hospital in the impact file established as part of the Medicare Inpatient Prospective Payment System by CMS.
- C. AHCCCS shall update the CCRs described in subsection (B) to conform to the most recent CCRs established by CMS as of September 1 of each year, and the CCRs so updated shall be used for claims with dates of discharge on or after October 1 of that year.
 - D. The outlier threshold is equal to the sum of the unadjusted DRG base payment plus the fixed loss amount. The fixed loss amount for critical access hospitals and for all other hospitals are included in the AHCCCS capped fee schedule available on the agency’s website.
 - E. For those inpatient hospital claims that qualify for an outlier add-on payment, the payment is calculated by subtracting the outlier threshold from the claim cost and multiplying the result by the DRG marginal cost percentage. The DRG marginal cost percentage for claims assigned DRG codes associated with the treatment of burns and for all other claims are included in the AHCCCS capped fee schedule available on the agency’s website.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4).

R9-22-712.69. DRG Reimbursement: Covered Day Adjusted DRG Base Payment and Covered Day Adjusted Outlier Add-on Payment

Adjustments to the payments are made to account for days not covered by AHCCCS as follows:

- 1. A covered day reduction factor unadjusted is determined if the member is not eligible on the first day of the inpatient stay but is eligible for subsequent days during the inpatient stay. In this case, a covered day reduction factor unadjusted is calculated by dividing the number of AHCCCS covered days by the DRG National Average length of stay. The number of AHCCCS covered days is equal to the number of days the member is eligible during the inpatient stay.
- 2. A covered day reduction factor unadjusted is also determined if the member is eligible on the first day of the inpatient stay but is determined ineligible for one or more days prior to the date of discharge. In this case, a covered day reduction factor unadjusted is calculated by adding one to the number of AHCCCS covered days and dividing the result by the DRG National Average length of stay. The number of AHCCCS covered days is equal to the number of days the member is eligible during the inpatient stay.
- 3. If the covered day reduction factor unadjusted is greater than one, then the covered day reduction factor final is one; otherwise, the covered day reduction factor final is equal to the covered day reduction factor unadjusted.
- 4. The covered day adjusted DRG base payment is an amount equal to the product of the unadjusted DRG base payment and the covered day reduction factor final.
- 5. The covered day adjusted DRG outlier add-on payment is an amount equal to the product of the unadjusted DRG outlier add-on payment and the covered day reduction factor final.

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Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.70. Covered Day Adjusted DRG Base Payment and Covered Day Adjusted Outlier Add-on Payment for FES members

In addition to the covered day reduction factor in R9-22-712.69, a covered day reduction factor unadjusted is determined for an inpatient stay during which an FES member receives services for the treatment of an emergency medical condition and also receives services once the condition no longer meets the criteria as an emergency medical condition described in R9-22-217.

1. A covered day reduction factor unadjusted is calculated by adding one to the AHCCCS covered days and dividing the result by the DRG National Average length of stay. The number of AHCCCS covered days is equal to the number of inpatient days during which an FES member receives services for an emergency medical condition as described in R9-22-217. For purposes of this adjustment, any portion of a day during which the FES member receives treatment for an emergency medical condition is counted as an AHCCCS covered day.
2. If the covered day reduction factor unadjusted is greater than one, then the covered day reduction factor final is one; otherwise, the covered day reduction factor final is equal to the covered day reduction factor unadjusted.
3. The covered day adjusted DRG base payment is an amount equal to the product of the unadjusted DRG base payment and the covered day reduction factor final.
4. The covered day adjusted DRG outlier add-on payment is an amount equal to the product of the unadjusted DRG outlier add-on payment and the covered day reduction factor final.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.71. Final DRG Payment

The final DRG payment is the sum of the final DRG base payment, the final DRG outlier add-on payment, and the Differential Adjusted Payment.

1. The final DRG base payment is an amount equal to the product of the covered day adjusted DRG base payment and a hospital-specific factor established to limit the financial impact to individual hospitals of the transition from the tiered per diem payment methodology and to account for improvements in documentation and coding that are expected as a result of the transition.
2. The final DRG outlier add-on payment is an amount equal to the product of the covered day adjusted DRG outlier add-on payment and a hospital-specific factor established to limit the financial impact to individual hospitals of the transition from the tiered per diem payment methodology and to account for improvements in documentation and coding that are expected as a result of the transition.
3. The factor for each hospital and for each federal fiscal year is published as part of the AHCCCS capped fee schedule and is available on the AHCCCS administration's website and is on file for public inspection at the AHCCCS administration located at 701 E. Jefferson Street, Phoenix, Arizona.
4. For inpatient services with a date of discharge from October 1, 2020 through September 30, 2021, the Inpatient Differential Adjusted Payment is the sum of the final DRG base payment and the final DRG outlier add-on

payment multiplied by a percentage published on the Administration's public website as part of its fee schedule, subsequent to the public notice published no later than September 1, 2020. A hospital will qualify for an increase if it meets the criteria specified below for the applicable hospital subtype.

- a. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: short-term or children's will qualify for an increase if it meets the criteria in (4)(a)(i), (1) through (10); (4)(a)(ii), (1) through (10)(a) through (c); and (4)(iii), (iv), or (v):
 - i. By May 27, 2020, a hospital which did not receive Differential Adjusted Payments from October 1, 2019 through September 30, 2020, submits a Letter of Intent to AHCCCS and a qualifying Health Information Exchange (HIE) organization in which the hospital agrees to achieve all of the following:
 - (1) By May 27, 2020, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;
 - (2) By June 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of qualifying HIE organization: admission, discharge, and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department;
 - (3) By August 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;
 - (4) By September 1, 2020, electronically submit laboratory, radiology, transcription, and medication information, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination to a qualifying HIE or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if appli-

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- (5) By September 1, 2020, or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - (6) Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;
 - (7) By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;
 - (8) By November 1, 2020, the hospital must approve and authorize a formal scope of work (SOW) with a qualifying HIE organization to initiate and complete a Phase 1 data quality improvement effort, as defined by the qualifying HIE organization in collaboration with the qualifying HIE organization;
 - (9) By January 1, 2021, the hospital must complete the Phase 1 initial data quality profile with a qualifying HIE organization;
 - (10) By May 1, 2021, the hospital must complete the Phase 1 final data quality profile with a qualifying HIE organization;
- ii. By May 27, 2020, a hospital which received Differential Adjusted Payments October 1, 2019 through September 30, 2020, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:
 - (1) By May 27, 2020, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;
 - (2) By June 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department, laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instruction, active medication, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;
 - (3) By September 1, 2020, or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - (4) By September 1, 2020 or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - (5) Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;
 - (6) By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;
 - (7) By November 1, 2020, the hospital must approve and authorize a formal SOW to initiate and complete a Phase 2 data quality improvement effort, as defined by the qualifying HIE organization and in collaboration with the qualifying HIE organization;
 - (8) By January 1, 2021, the hospital must complete the Phase 2 initial data quality profile with a qualifying HIE organization;
 - (9) By May 1, 2021, the hospital must complete the Phase 2 final data quality profile with a qualifying HIE organization;
 - (10) Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases:
 - (a) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on July 2019 data, to the final data quality profile, based on March 2020 data;
 - (b) Meet a minimum performance standard of at least 60% based on March 2020 data;
 - (c) If performance meets or exceeds an upper threshold of 90% based on March 2020 data the hospital meets the criteria. Regardless of the percentage improvement from the baseline measurements;
- iii. Meet or exceed the statewide average on May 12, 2020 for the Severe Sepsis/Septic Shock

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- (SEP-1) performance measure from the Medicare Hospital Compare website;
- iv. Be a participant in the Improving Pediatric Sepsis Outcomes collaborative in 2020;
 - v. For dates of services from October 1, 2020 through September 30, 2021, hospitals subject to APR-DRG reimbursement (Provider Type 02) may qualify for a DAP on codes J7296-J7298, J7300-J7301, and J7307 billed on the 1500 or UB-04 forms for long-acting reversible contraception devices.
- b. A hospital designated by the Arizona Department of Health Services Division of Licensing Services as type: hospital, subtype: critical access hospital will qualify for an increase if by May 27, 2020, a hospital which received Differential Adjusted Payments October 1, 2019 through September 30, 2020, submits a Letter of Intent to AHCCCS and a qualifying HIE organization in which the hospital agrees to achieve all of the following:
- i. By May 27, 2020, the hospital must have in place an active participation agreement with a qualifying HIE organization and submit a LOI to AHCCCS and the HIE, in which it agrees to achieve the following milestones by the specified dates, or maintain its participation in the milestone activities if they have already been achieved;
 - ii. By June 1, 2020, the hospital must electronically submit the following actual patient identifiable information to the production environment of a qualifying HIE organization: admission, discharge and transfer information (generally known as ADT information), including data from the hospital emergency department if the provider has an emergency department, laboratory and radiology information (if the provider has these services), transcription, medication information, immunization data, and discharge summaries that include, at a minimum, discharge orders, discharge instructions, active medications, new prescriptions, active problem lists (diagnosis), treatments and procedures conducted during the stay, active allergies, and discharge destination;
 - iii. By September 1, 2020, or within 30 days of initiating COVID-19 lab testing, submit all COVID-19 lab test codes and the associated LOINC codes to qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - iv. By September 1, 2020 or within 30 days of initiating COVID-19 antibody testing, submit all COVID-19 antibody test codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of lab results within the HIE system if applicable;
 - v. Within 30 days of initiating COVID-19 immunizations, submit all COVID-19 immunization codes and the associated LOINC codes to the qualifying HIE to ensure proper processing of immunizations within the HIE system if applicable;
 - vi. By October 1, 2020, hospitals that utilize external reference labs for any lab result processing must submit necessary provider authorization forms to the qualifying HIE, if required by the external reference lab, to have all outsourced lab test results flow to the qualifying HIE on their behalf if applicable;
 - vii. By November 1, 2020, the hospital must approve and authorize a formal SOW to initiate and complete a Phase 2 data quality improvement effort, as defined by the qualifying HIE organization and in collaboration with the qualifying HIE organization;
 - viii. By January 1, 2021, the hospital must complete the Phase 2 initial data quality profile with a qualifying HIE organization;
 - ix. By May 1, 2021, the hospital must complete the Phase 2 final data quality profile with a qualifying HIE organization;
 - x. Hospitals that meet each of the following HIE data quality performance criteria will be eligible to receive DAP increases:
 - (1) Demonstrate a 10% improvement from baseline measurements in the initial data quality profile, based on July 2019 data, to the final data quality profile, based on March 2020 data;
 - (2) Meet a minimum performance standard of at least 60% based on March 2020 data;
 - (3) If performance meets or exceeds an upper threshold of 90% based on March 2020 data the hospital meets the criteria, regardless of the percentage improvement from the baseline measurements.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4). Amended by final rulemaking at 23 A.A.R. 2338, effective October 1, 2017 (Supp. 17-3). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4). Amended by final rulemaking at 24 A.A.R. 2851, effective October 1, 2018 (Supp. 18-3). Amended by final rulemaking at 25 A.A.R. 3114, effective October 31, 2019 (Supp. 19-4). Amended by final rulemaking at 26 A.A.R. 3025, with an immediate effective date of November 3, 2020 (Supp 20-4).

R9-22-712.72. DRG Reimbursement: Enrollment Changes During an Inpatient Stay

- A. If a member's enrollment changes during an inpatient stay, including changing enrollment from fee-for-service to a contractor, or vice versa, or changing from one contractor to another contractor, the contractor with whom the member is enrolled on the date of discharge shall be responsible for reimbursing the hospital for the entire length of stay under the DRG payment rules in sections R9-22-712.60 through R9-22-712.81. If the member is eligible but not enrolled with a contractor on the date of discharge, then the AHCCCS administration shall be responsible for reimbursing the hospital for the entire length of stay under the DRG payment rules in sections R9-22-712.60 through R9-22-712.81.
- B. When a member's enrollment changes during an inpatient stay, the hospital shall use the date of enrollment with the payer responsible on the date of discharge as the "from" date of service on the claim regardless of the date of admission.
- C. Interim claims submitted to a payer other than the payer responsible on the day of discharge shall be processed in the

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same manner as other interim claims as described in R9-22-712.76.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4).

R9-22-712.73. DRG Reimbursement: Inpatient Stays for Members Eligible for Medicare

If the hospital receives less than the full Medicare payment for a member eligible for benefits under Part A of Medicare because the member has exceeded the maximum benefit permitted under Part A of Medicare, the hospital shall submit a separate claim for services performed after the date the maximum Medicare Part A benefit is exceeded. The claim may include all diagnosis codes for the entire inpatient stay, but the hospital is only required to include revenue codes, surgical procedure codes, service units, and charges for services performed after the date the Medicare Part A benefit is exceeded. A claim so submitted shall be reimbursed using the DRG payment methodology.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.74. DRG Reimbursement: Third Party Liability DRG payments are subject to reduction based on cost avoidance under Section R9-22-1003 and other rules regarding first-and third-party liability under Article 10 of this Chapter including cost avoidance for claims for ancillary services covered under Part B of Medicare.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.75. DRG Reimbursement: Payment for Administrative Days

- A.** Categories of Administrative Days. Administrative days fall into one of two categories, either subsection (A)(1) or (A)(2).
1. Administrative days due to lack of appropriate placement options and not meeting inpatient medical criteria. Administrative days are days in which a member is admitted as an inpatient to an acute care hospital, does not meet the criteria for an acute inpatient stay, but is admitted or not discharged because; (1) an appropriate placement outside the hospital is not available, (2) the member cannot be safely discharged or transferred, or (3) the Administration or the contractor failed to provide for the appropriate placement outside the hospital in a timely manner.
 - a. Administrative days may occur prior to an acute care episode, for example, when a woman with a high-risk pregnancy is admitted to a hospital while awaiting delivery.
 - b. Administrative days may also occur at the end of an acute care episode, for example, when a member is not discharged while awaiting placement in a nursing facility or other sub-acute or post-acute setting.
 - c. Administrative days may also include days in a receiving hospital when the member has been discharged from one acute care hospital for the purpose of receiving sub-acute services at the receiving hospital.
 - d. Administrative days do not include days when the member is awaiting appropriate placement or services that are currently available but the hospital has

not transferred or discharged the member because of the hospital's administrative or operational delays.

- e. Administrative days include inpatient claims covered by a RBHA or TRBHA that otherwise meet the criteria in subsection (A)(1).
 2. Administrative days for claims with the principal diagnosis of behavioral health meeting inpatient medical criteria. Administrative days are days with dates of discharge on or after October 1, 2018, in which a member is admitted as an inpatient to an acute care hospital, meets the criteria for an acute inpatient stay, and the principal diagnosis on the hospital claim is a behavioral health diagnosis. Inpatient claims covered by a RBHA or TRBHA are not considered administrative days under subsection (A)(2) regardless of the principal diagnosis on the hospital claim.
- B.** Reimbursement of Administrative Days.
1. Administrative days under subsection (A)(1) are reimbursed at the rate the claim would have paid had the services not been provided in an inpatient hospital setting but had been provided at the appropriate level of care such as the rate paid for stays at a nursing facility.
 2. Administrative days under subsection (A)(2) are reimbursed at the daily rate found on the Inpatient Behavioral Health Capped Fee-For-Service Schedule meeting the criteria of "Service Description – Psychiatric Stay," regardless of revenue code.
- C.** Prior authorization is required for administrative days.
- D.** A hospital shall submit a claim for administrative days separate from any claim for reimbursement for the inpatient stay otherwise reimbursable under the DRG payment methodology.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 22 A.A.R. 2187, effective October 1, 2016 (Supp. 16-4). Amended by final rulemaking at 25 A.A.R. 3111, effective October 1, 2019 (Supp. 19-4).

R9-22-712.76. DRG Reimbursement: Interim Claims

- A.** For inpatient stays with a length of stay greater than 29 days, a hospital may submit interim claims for each 30 day period during the inpatient stay.
- B.** Hospitals shall be reimbursed for interim claims at a per diem rate of \$500 per day.
- C.** Following discharge, the hospital shall void all interim claims. In such circumstances, the hospital shall submit a claim to the payer with whom the member is enrolled on the date of discharge, whether the Administration or a contractor, for the entire inpatient stay for which the final claim shall be reimbursed under the DRG payment methodology. Interim claims will be recouped.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.77. DRG Reimbursement: Admissions and Discharges on the Same Day

- A.** Except as provided for in subsection (B), for any claim for inpatient services with an admission date and discharge date that are the same calendar date, the contractor or the Administration shall process the claim as an outpatient claim and the hospital shall be reimbursed under R9-22-712.10 through R9-22-712.50.
- B.** Claims with an admission date and discharge date that are the same calendar date that also indicate that the member expired

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on the date of discharge shall be reimbursed under the DRG methodology.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.78. DRG Reimbursement: Readmissions

If a member is readmitted without prior authorization to the same hospital that the member was discharged from within 72 hours and the DRG code assigned to the claim for the prior admission has the same first three digits as the DRG code assigned to the claim for the readmission, then payment for the claim for the readmission will be disallowed only if the readmission could have been prevented by the hospital.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.79. DRG Reimbursement: Change of Ownership

The administration shall not change any of the components of the calculation of reimbursement for inpatient services using the DRG methodology based upon a change in the hospital's ownership except to the extent those components would change under the methodology had the hospital not changed ownership (e.g., updating the hospital's cost-to-charge ratio as of September 1 of each year under R9-22-712.68).

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

R9-22-712.80. DRG Reimbursement: New Hospitals

- A. DRG base payment for new hospitals. For any hospital that does not have a labor share or wage index published by CMS as described in subsection R9-22-712.62(B) because the hospital was not in operation, the DRG base rate described in subsection R9-22-712.62(B) shall be calculated as the statewide standardized amount after adjusting that amount for the labor-related share and the wage index published by CMS as described in subsection R9-22-712.62(B) that is appropriate to the location of the hospital published by CMS as described in subsection R9-22-712.62(B).
- B. Outlier calculations for new hospitals. For any hospital that does not have an operating cost-to-charge ratio listed in the impact file described in subsection R9-22-712.68(B) because the hospital was not in operation prior to the publication of the impact file, the statewide urban or rural default operating cost-to-charge ratio appropriate to the location of the hospital and the statewide capital cost-to-charge ratio shall be used to determine the unadjusted outlier add-on payment. The statewide urban or rural default operating cost-to-charge ratio and the statewide capital cost-to-charge ratio shall be based on the ratios published by CMS and updated by the Administration as described in subsection R9-22-712.68(C).
- C. In addition to the requirement of this Section, DRG reimbursement for new hospitals is determined under R9-22-712.60 through R9-22-712.79.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4).

R9-22-712.81. DRG Reimbursement: Updates

In addition to the other updates provided for in Sections R9-22-712.60 through R9-22-712.80, the Administration may update the

version of the APR-DRG classification system established by 3M Health Information Systems, adjust the statewide standardized amount in Section R9-22-712.62, the base payments in sections R9-22-712.63 and R9-22-712.64, the provider policy adjustor in section R9-22-712.65, service policy adjustors Section R9-22-712.66, and the fixed loss amounts and marginal cost percentages used to calculate the outlier threshold in Section R9-22-712.68 to the extent necessary to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available at least to the extent that such care and services are available to the general population in the geographic area. The Administration shall publish any proposed classification system on the agency's website at least 30 days prior to the effective date, to ensure a sufficient period for public comment, as required by 42 C.F.R. § 447.205. In addition, the public notice shall be available for inspection during normal business hours at 701 E. Jefferson, Phoenix, Arizona. The requirements of 42 CFR § 447.205 as of November 2, 2015 are incorporated by reference and do not include any later amendments.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 23 A.A.R. 2896, effective January 1, 2018 (Supp. 17-4).

R9-22-712.90. Reimbursement of Hospital-based Free-standing Emergency Departments

- A. "Hospital-based freestanding emergency department" (hospital-based FSED) means an outpatient treatment center, as defined in R9-10-101, that: (1) provides emergency room services under R9-10-1019, (2) is subject to the requirements of 42 CFR 489.24, and (3) shares an ownership interest with a hospital, regardless of whether the outpatient treatment center operates under a hospital's single group license as described in A.R.S. § 36-422.
- B. A hospital-based FSED shall register with the Administration separately from the hospital with which an ownership interest is shared and shall obtain a separate provider identification number. The Administration shall not charge a separate provider enrollment fee for registration of a hospital-based FSED. The Administration shall accept a hospital's compliance with the provider screening and enrollment requirements of 42 CFR Part 455 as compliance by the hospital-based FSED.
- C. For dates of service on and after March 1, 2017, and except as provided in subsection (D), services provided by a hospital-based FSED for evaluation and management CPT codes 99281 through 99285 shall be reimbursed at the following percentages of the amounts otherwise reimbursable under sections R9-22-712.20 through R9-22-712.30. All other covered codes shall be reimbursed in accordance with sections R9-22-712.20 through R9-22-712.30 without a percentage reduction.
 1. 60% for a level 1 emergency department visit as indicated by CPT 99281.
 2. 80% for a level 2 emergency department visit as indicated by CPT 99282.
 3. 90% for a level 3 emergency department visit as indicated by CPT 99283.
 4. 100% for a level 4 or 5 emergency department visit as indicated by CPT codes 99284 and 99285.
- D. A hospital-based FSED located in a city or town in a county with less than 500,000 residents, where the only hospital in the city or town operating an emergency department closed on or after January 1, 2015, shall be reimbursed under sections R9-22-712.20 through R9-22-712.35 using the adjustment in R9-22-712.35 associated with the nearest hospital with which the

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freestanding emergency department shares an ownership interest.

- E.** Services provided by an outpatient treatment center that provides emergency room services under R9-10-1019, but does not otherwise meet the criteria in subsection A, shall be reimbursed based on the non-hospital AHCCCS capped fee-for-service schedule under R9-22-710.
- F.** The Administration shall not reimburse a hospital for services provided at a hospital-based FSED if the member is admitted directly from a hospital-based FSED to a hospital with an ownership interest in the hospital-based FSED. As provided in R9-22-712.60(B), payments made for the inpatient stay using the DRG methodology shall be the sole reimbursement.

Historical Note

New Section made by final rulemaking at 23 A.A.R. 22, February 11, 2017 (Supp. 16-4).

R9-22-713. Overpayment and Recovery of Indebtedness

- A.** If a contractor or a subcontracting provider receives an overpayment from the Administration or otherwise becomes indebted to the Administration, the contractor or subcontracting provider shall immediately remit the amount of the indebtedness or overpayment to the Administration for deposit in the AHCCCS fund.
- B.** If the funds described in subsection (A) are not remitted, the Administration may recover the funds paid by the Administration to a contractor or subcontracting provider through:
1. A repayment agreement executed with the Administration;
 2. Withholding or offsetting against current or future payments to be paid to the contractor or subcontracting provider; or
 3. Enforcement of, or collection against, the performance bond, financial reserve, or other financial security under A.R.S. § 36-2903.

Historical Note

Adopted as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Adopted as a permanent rule effective May 16, 1983; text of adopted rule identical to the emergency (Supp. 83-3). Former Section R9-22-713 repealed, new Section R9-22-713 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-713 renumbered and amended as Section R9-22-714, former Section R9-22-709 renumbered and amended as Section R9-22-713 effective October 1, 1985 (Supp. 85-5). Amended by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 856, effective May 5, 2007 (Supp. 07-1).

R9-22-714. Payments to Providers

- A.** Provider agreement. The Administration or a contractor shall not reimburse a covered service provided to a member unless the provider has signed a provider agreement with the Administration that establishes the terms and conditions of participation and payment under A.R.S. § 36-2904.
- B.** Provider reimbursement. The Administration or a contractor shall reimburse a provider for a service furnished to a member only if:
1. The provider personally furnishes the service to a specific member. For purposes of this Section, services personally furnished by a provider include:
 - a. Services provided by medical residents or dental students in a teaching environment; or
 - b. Services provided by a licensed or certified assistant under the general supervision of a licensed practi-

tioner in accordance with 4 A.A.C. 24, 9 A.A.C. 16, 4 A.A.C. 43, or 4 A.A.C. 45;

2. The provider verifies that individuals who have provided services described in subsection (B)(1) have not been placed on the List of Excluded Individuals/Entities (LEIE) maintained by the United States Department of Health and Human Services Office of the Inspector General (OIG), located at OIG's web site;
 3. The service contributes directly to the diagnosis or treatment of the member; and
 4. The service ordinarily requires performance by the type of provider seeking reimbursement.
- C.** The Administration or a contractor may make a payment for covered services only:
1. To the provider;
 2. To anyone specified in a reassignment from the provider to a government agency or reassignment by a court order;
 3. To a business agent, if the agent's compensation for the service is:
 - a. Related to the cost of processing the billing;
 - b. Not related on a percentage or other basis to the amount that is billed or collected; and
 - c. Not dependent upon collection of the payment;
 4. To the employer of the provider, if the provider is required as a condition of employment to turn over the provider's fees to the employer;
 5. To the inpatient facility in which the service is provided, if the provider has a contract under which the inpatient facility submits the claim; or
 6. To a foundation, plan, or similar organization operating an organized health care delivery system, if the provider has a contract under which the foundation, plan or similar organization submits the claim.
- D.** The Administration or a contractor shall not make a payment to or through a factor, either directly or by power of attorney, for a covered service furnished to a member by a provider.
- E.** Reimbursement for a pathology service. Unless otherwise specified in a contract, the Administration or a contractor shall reimburse a pathologist for a pathology service furnished to a member only if the other requirements in this Section are met and the service is:
1. A surgical pathology service;
 2. A specific cytopathology, hematology, or blood banking pathology service that requires performance by a physician and is listed in the capped fee-for-service schedule;
 3. A clinical consultation service that:
 - a. Is requested by the member's attending physician or primary care physician,
 - b. Is related to a test result that is outside the clinically significant normal or expected range in view of the condition of the member,
 - c. Results in a written narrative report included in the member's medical record,
 - d. Requires the exercise of medical judgment by the consultant pathologist, and
 - e. Is listed in the capped fee-for-service schedule; or
 4. A clinical laboratory interpretative service that:
 - a. Is requested by the member's attending physician or primary care physician,
 - b. Results in a written narrative report included in the member's medical record,
 - c. Requires the exercise of medical judgment by the consultant pathologist, and
 - d. Is listed in the capped fee-for-service schedule.

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Historical Note

Adopted as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Adopted as a permanent rule effective May 16, 1983; text of adopted rule is similar to the emergency (Supp. 83-3). Repealed effective October 1, 1983 (Supp. 83-5). Former Section R9-22-713 renumbered and amended as Section R9-22-714 effective October 1, 1985 (Supp. 85-5). Section repealed; new Section made by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 9 A.A.R. 3800, effective October 4, 2003 (Supp. 03-3). Amended by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1).

Editor's Note: The following Section was amended under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the agency was not required to hold public hearings on the rules; and the Attorney General did not certify this rule. This Section was subsequently amended through the regular rulemaking process.

R9-22-715. Hospital Rate Negotiations

- A.** A contractor that negotiates with hospitals for inpatient or outpatient services shall reimburse hospitals for services rendered on or after March 1, 1993, as described in A.R.S. § 36-2903.01 and this Article, or at the negotiated rate that, in the aggregate, does not exceed reimbursement levels that would have been paid under A.R.S. § 36-2903.01, and this Article. This subsection does not apply to urban hospitals described under R9-22-718. Contractors may engage in rate negotiations with a hospital at any time during the contract period.
- B.** The Administration may negotiate or contract with a hospital on behalf of a contractor for discounted hospital rates and may require that the negotiated discounted rates be included in a subcontract between the contractor and hospital.

Historical Note

Adopted as an emergency effective February 23, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-1). Adopted as a permanent rule effective May 16, 1983; text of adopted rule identical to the emergency (Supp. 83-3). Repealed effective October 1, 1983 (Supp. 83-5). New Section R9-22-715 adopted effective October 1, 1985 (Supp. 85-5). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended effective January 14, 1997 (Supp. 97-1). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 3222, effective October 1, 2005 (Supp. 05-3). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3).

Editor's Note: The following Section was amended under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the agency was not required to hold public hearings on the rules; and the Attorney General did not certify this rule. This Section was subsequently amended through the regular rulemaking process.

R9-22-716. Repealed**Historical Note**

Adopted effective October 1, 1985 (Supp. 85-5). Amended under an exemption from the provisions of the Administrative Procedure Act, effective March 1, 1993 (Supp. 93-1). Amended effective January 14, 1997 (Supp. 97-1). Amended by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1). Section repealed by final rulemaking at 13 A.A.R. 662, effective April 7, 2007 (Supp. 07-1).

R9-22-717. Repealed**Historical Note**

Adopted effective July 30, 1993 (Supp. 93-3). Amended effective September 22, 1997 (Supp. 97-3). Section repealed by final rulemaking at 11 A.A.R. 3222, effective October 1, 2005 (Supp. 05-3).

Editor's Note: The following Section was originally adopted under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not reviewed by the Governor's Regulatory Review Council. The agency was required to submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and was required to hold a public hearing. It has since been amended under the regular rulemaking process.

R9-22-718. Urban Hospital Inpatient Reimbursement Program

- A.** Definitions. The following definitions apply to this Section:
1. "Contractor" has the same meaning as set forth in A.R.S. § 36-2901, and includes all contractors regardless of whether the GSA's served by the contractor includes urban or rural counties.
 2. "Noncontracted Hospital" means an urban hospital, including psychiatric hospitals, which does not have a contract under this Section with a contractor.
 3. "Urban Hospital" means a hospital that is not a rural hospital, as defined in R9-22-712.07, and that is physically located in Maricopa or Pima County.
- B.** General Provisions.
1. This Section applies to an urban hospital who receives payment for inpatient hospital services under A.R.S. §§ 36-2903.01 and 36-2904.
 2. AHCCCS shall operate an inpatient hospital reimbursement program under A.R.S. § 36-2905.01 and this Section.
 3. Residency of the member receiving inpatient AHCCCS covered services is not a factor in determining which hospitals are required to contract with which contractors.
 4. A contractor shall enter into a contract for reimbursement for inpatient AHCCCS covered services with one or more urban hospitals located in the same county as the contractor.
 5. A noncontracted urban hospital shall be reimbursed for inpatient services by a contractor at 95% of the amount calculated as defined in A.R.S. § 36-2903.01 and this Article, unless otherwise negotiated by both parties.
- C.** Contract Begin Date. A contract under this Article shall cover inpatient acute care hospital services for members with hospital admissions on and after October 1, 2003.
- D.** Outpatient urban hospital services. Outpatient urban hospital services, including observation days and emergency room treatments that do not result in an admission, shall be reimbursed either through an urban hospital contract negotiated between a contractor and an urban hospital, or the reimbursement rates set forth in A.R.S. § 36-2903.01. Outpatient ser-

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VICES in an urban hospital that result in an admission shall be paid as inpatient services in accordance with this Section.

E. Urban Hospital Contract.

1. Provisions of an urban hospital contracts. The urban hospital contract shall contain but is not limited to the following provisions:
 - a. Required provisions as described in the Request for Proposals (RFP);
 - b. Dispute settlement procedures. If the AHCCCS Grievance System prescribed in A.R.S. § 36-2903.01(B) and rule is not used, then arbitration shall be used;
 - c. Arbitration procedure. If arbitration is used, the urban hospital contract shall identify:
 - i. The parties' agreement on arbitrating claims arising from the contract,
 - ii. Whether arbitration is nonbinding or binding,
 - iii. Timeliness of arbitration,
 - iv. What contract provisions may be appealed,
 - v. What rules will govern arbitrations,
 - vi. The number of arbitrators that shall be used,
 - vii. How arbitrators shall be selected, and
 - viii. How arbitrators shall be compensated.
 - d. Timeliness of claims submission and payment;
 - e. Prior authorization;
 - f. Concurrent review;
 - g. Electronic submission of claims;
 - h. Claims review criteria;
 - i. Payment of discounts or penalties such as quick-pay and slow-pay provisions;
 - j. Payment of outliers;
 - k. Claim documentation specifications under A.R.S. § 36-2904.
 - l. Treatment and payment of emergency room services; and
 - m. Provisions for rate changes and adjustments.
 2. AHCCCS review and approval of urban hospital contracts:
 - a. AHCCCS may review, approve, or disapprove the hospital contract rates, terms, conditions, and amendments to the contract;
 - b. The AHCCCS evaluation of each urban hospital contract shall include but not be limited to the following areas:
 - i. Availability and accessibility of services to members,
 - ii. Related party interests,
 - iii. Inclusion of required terms pursuant to this Section, and
 - iv. Reasonableness of the rates.
- F. Quick-Pay/Slow-Pay.** A payment made by a contractor to a noncontracted hospital shall be subject to quick-pay discounts and slow-pay penalties under A.R.S. § 36-2904.

Historical Note

Adopted under an exemption from the provisions of the Administrative Procedure Act, effective January 29, 1997; pursuant to Laws 1996, Ch. 288, § 24 (Supp. 97-1). Amended by exempt rulemaking at 10 A.A.R. 500, effective February 1, 2004 (Supp. 04-1). Amended by exempt rulemaking at 13 A.A.R. 3190, effective October 1, 2007 (Supp. 07-3). Amended by final rulemaking at 20 A.A.R. 1956, September 6, 2014 (Supp. 14-3). Amended by final

rulemaking at 24 A.A.R. 1515, effective June 30, 2018 (Supp. 18-2).

R9-22-719. Contractor Performance Measure Outcomes

The Administration may retain a specified percentage of capitation reimbursement to distribute to contractors based on their performance measure outcomes under A.R.S. § 36-2904. The Administration shall notify contractors 60 days prior to a new contract year if this methodology is implemented. The Administration shall specify the details of the reimbursement methodology in contract.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 424, effective January 10, 2002 (Supp. 02-1).

R9-22-720. Reinsurance

- A.** Reinsurance is a stop-loss program provided by the Administration to a contractor for partial reimbursement of the cost of covered services for a member with an acute medical condition when the cost of covered services exceeds a pre-determined deductible level amount within a contract year. The Administration self-insures the reinsurance program through a reduction to capitation rates. The reinsurance program also includes a catastrophic reinsurance program for members diagnosed with specific medical conditions.
- B.** The Administration shall specify in contract guidelines for claims submission, processing, payment, and the types of care and services that are provided to a member whose care is covered by reinsurance.
- C.** When the Administration determines that a contractor does not follow the specified guidelines for care or services and the care or services could have been provided at a lower cost according to the guidelines, the Administration shall reimburse the contractor as if the care or services had been provided as specified in the guidelines.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3317, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 856, effective May 5, 2007 (Supp. 07-1).

R9-22-721. Behavioral Health Inpatient Facilities

"Behavioral health inpatient facility" means a health care institution, other than Arizona State Hospital, that meets the following requirements:

1. Provides continuous treatment to an individual experiencing a behavioral health issue that causes the individual to:
 - a. Have a limited or reduced ability to meet the individual's basic physical needs;
 - b. Suffer harm that significantly impairs the individual's judgment, reason, behavior, or capacity to recognize reality;
 - c. Be a danger to self;
 - d. Be a danger to others;
 - e. Be persistently or acutely disabled as defined in A.R.S. § 36-501; or
 - f. Be gravely disabled; and
2. Is one of the following facility types:
 - a. Psychiatric hospitals;
 - b. Mental health residential treatment centers;
 - c. Secure residential treatment centers with 17 or more beds;
 - d. Non-secure residential treatment centers with 1-16 beds;
 - e. Non-secure residential treatment centers with 17 or more beds;
 - f. Sub-acute facilities with 1-16 beds;

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- g. Sub-acute facilities with 17 or more beds.

Historical Note

New Section made by final rulemaking at 25 A.A.R. 3120, effective October 1, 2019 (Supp. 19-4).

R9-22-722.	Reserved
R9-22-723.	Reserved
R9-22-724.	Reserved
R9-22-725.	Reserved
R9-22-726.	Reserved
R9-22-727.	Reserved
R9-22-728.	Reserved
R9-22-729.	Reserved

Editor's Note: Amendments to Section R9-22-730 were filed as a final exempt rulemaking. AHCCCS provided an opportunity for public comment on the amended rules under Laws 2013, 1st Special Session, Ch. 10. A proposed exempt rulemaking was published in the Arizona Administrative Register at 21 A.A.R. 1041 (Supp. 15-3).

Editor's Note: Amendments to Section R9-22-730 were filed as a final exempt rulemaking. AHCCCS provided an opportunity for public comment on the amended rules under Laws 2013, 1st Special Session, Ch. 10. A proposed exempt rulemaking was published in the Arizona Administrative Register at 21 A.A.R. 491 (Supp. 15-2).

R9-22-730. Hospital Assessment Fund - Hospital Assessment

A. For purposes of this Section, the following terms are defined as provided below unless the context specifically requires another meaning:

1. "2019 Medicare Cost Report" means The Medicare Cost Report for the hospital fiscal year ending in calendar year 2019 as reported in the CMS Healthcare Provider Cost Reporting Information System (HCRIS) release dated October 9, 2020.
2. "2019 Uniform Accounting Report" means the Uniform Accounting Report submitted to the Arizona Department of Health Services as of December 10, 2020 for the hospital's fiscal year ending in calendar year 2019.
3. "Quarter" means the three month period beginning January 1, April 1, July 1, and October 1 of each year.
4. A "new hospital" means a licensed hospital that did not hold a license from the Arizona Department of Health Services prior to January 2, 2021.
5. "Outpatient Net Patient Revenues" means an amount, calculated using data in the hospital's 2019 Uniform Accounting Report, that is equal to the hospital's 2019 total net patient revenue multiplied by the ratio of the hospital's 2019 gross outpatient revenue to the hospital's 2019 total gross patient revenue.

B. Beginning January 1, 2014, for each Arizona licensed hospital not excluded under subsection (I) shall be subject to an assessment payable on a quarterly basis. The assessment shall be levied against the legal owner of each hospital as of the first day of the quarter, and except as otherwise required by subsections (D), (E) and (F). For the period beginning October 1, 2021, the assessment for each hospital shall be amount equal to the sum of: (1) the number of discharges reported on the hospital's 2019 Medicare Cost Report, excluding discharges reported on the Medicare Cost Report as "Other Long Term Care Discharges," multiplied by the following rates appropriate to the hospital's peer group; and (2) the amount of outpatient net

patient revenues multiplied by the following rate appropriate to the hospital's peer group:

1. \$748.50 per discharge and 1.3700% of outpatient net patient revenues for hospitals located in a county with a population less than 500,000 that are designated as type: hospital, subtype: short-term.
 2. \$748.50 per discharge and 0.5708% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: critical access hospital.
 3. \$187.25 per discharge and 0.5708% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: long term.
 4. \$187.25 per discharge and 0.5708% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: psychiatric, that reported 2,500 or more discharges on the 2019 Medicare Cost Report.
 5. \$598.75 per discharge and 1.4842% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short-term with 20% of total licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as reported in the hospital's 2019 Uniform Accounting Report.
 6. \$673.50 per discharge and 1.7125% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short-term with at least 10% but less than 20% of total licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as reported in the hospital's 2019 Uniform Accounting Report.
 7. \$149.75 per discharge and 0.4567% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: children's.
 8. \$748.50 per discharge and 2.2834% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short-term not included in another peer group.
- C. Peer groups for the four quarters beginning October 1 of each year are established based on hospital license type and subtype designated in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website January 2, 2021.
- D. Notwithstanding subsection (B), psychiatric discharges from a hospital that reported having a psychiatric sub-provider in the hospital's 2019 Medicare Cost Report, are assessed a rate of \$187.25 for each discharge from the psychiatric sub-provider as reported in the 2019 Medicare Cost Report. All discharges other than those reported as discharges from the psychiatric sub-provider are assessed at the rate required by subsection (B).
- E. Notwithstanding subsection (B), rehabilitative discharges from a hospital that reported having a rehabilitative sub-provider in the hospital's 2019 Medicare Cost Report, are assessed a rate of \$0 for each discharge from the rehabilitative sub-provider as reported in the 2019 Medicare Cost Report. All discharges other than those reported as discharges from the rehabilitative sub-provider are assessed at the rate required by subsection (B).
- F. Notwithstanding subsection (B), for any hospital that reported more than 23,000 discharges on the hospital's 2019 Medicare Cost Report, discharges in excess of 23,000 are assessed a rate of \$75.00 for each discharge in excess of 23,000. The initial 23,000 discharges are assessed at the rate required by subsection (B).
- G. Assessment notice. On or before the 15th day of the first month of the quarter or upon CMS approval, whichever is later, the Administration shall send to each hospital a notification that the Hospital Assessment Fund assessment invoice is

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available to be viewed on a secure website. The invoice shall include the hospital's peer group assignment and the assessment due for the quarter.

- H.** Assessment due date. The Hospital Assessment Fund assessment must be received by the Administration no later than:
1. The 15th day of the second month of the quarter or
 2. In the event CMS approves the assessment after the 15th day of the first month of the quarter, 30 days after notification by the Administration that the assessment invoice is available.
- I.** Excluded hospitals. The following hospitals are excluded from the assessment based on the hospital's 2019 Medicare Cost Report and Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for January 2, 2021:
1. Hospitals owned and operated by the state, the United States, or an Indian tribe.
 2. Hospitals designated as type: hospital, subtype: short-term that have a license number beginning "SH".
 3. Hospitals designated as type: hospital, subtype: psychiatric that reported fewer than 2,500 discharges on the 2019 Medicare Cost Report.
 4. Hospitals designated as type: hospital, subtype: rehabilitation.
 5. Hospitals designated as type: med-hospital, subtype: special hospitals.
 6. Hospitals designated as type: hospital, subtype: short-term located in a city with a population greater than one million, which on average have at least 15 percent of inpatient days for patients who reside outside of Arizona, and at least 50 percent of discharges as reported on the 2019 Medicare Cost Report are reimbursed by Medicare.
 7. Hospitals designated as type: hospital, subtype: short-term that have at least 25 percent Medicare swing beds as percentage of total Medicare days, per the 2019 Medicare Cost Report.
- J.** New hospitals. For hospitals that did not file a 2019 Medicare Cost Report because of the date the hospital began operations:
1. If the hospital was open on the January 2 preceding the October assessment start date, the hospital assessment will begin on October 1 following the date the hospital began operating.
 2. If the hospital began operating between January 3 and June 30, the assessment will begin on October 1 of the following calendar year.
 3. A hospital is not considered a new hospital based on a change in ownership.
 4. The assessment will be based on the discharges reported in the hospital's first Medicare Cost Report and Uniform Accounting Report, which includes 12 months-worth of data, except when any of the following apply;
 - a. If there is not a complete 12 months-worth of data available, the assessment will be based on the annualized number of discharges from the date hospital operations began through December 31 preceding the October assessment start date. The hospital shall self-report the discharge data and all other data requested by the Administration necessary to determine the appropriate assessment to the Administration no later than January preceding the assessment start date for the new hospitals. "Annualized" means divided by a ratio equal to the number of months of data divided by 12 months.
 - b. If more than 12 months of data is available, the assessment will be based on the most recent 12 months of self-reported data, as of December 31;
5. For purposes of calculating subpart 4, if a new hospital shares a Medicare Identification Number with an existing hospital, the assessment amount will be based on self-reported data from the new hospital instead of the Medicare Cost Report. The data shall include the number of discharges and all other data requested by the Administration necessary to determine the appropriate assessment.
6. For hospitals providing self-reported data, described in subpart 4 and 5:
- a. Psychiatric discharges will be annualized to determine if subsections (B)(4) or (I)(3) apply to the assessment amount.
 - b. Discharges will be annualized to determine if subsection (F) applies to the assessment amount.
- K.** Changes of ownership. The parties to a change of ownership shall promptly provide written notice to the Administration of a change of ownership and any agreement regarding the payment of the assessment. The assessed amount will continue at the same amount applied to the prior owner. Assessments are the responsibility of the owner of record as of the first day of the quarter; however, this rule is not intended to prohibit the parties to a change of ownership from entering into an agreement for a new owner to assume the assessment responsibility of the owner of record as of the first day of the prior quarter.
- L.** Hospital closures. Hospitals that close shall pay a proportion of the quarterly assessment equal to that portion of the quarter during which the hospital operated.
- M.** Required information for the inpatient assessment. For any hospital that has not filed a 2019 Medicare Cost report, or if the 2019 Medicare Cost report does not include the reliable information sufficient for the Administration to calculate the inpatient assessment, the Administration shall use data reported on the 2019 Uniform Accounting Report filed by the hospital in place of the 2019 Medicare Cost report to calculate the assessment. If the 2019 Uniform Accounting Report filed by the hospital does not include reliable information sufficient for the Administration to calculate the inpatient assessment amounts, the hospital shall provide the Administration with data specified by the Administration necessary in place of the 2019 Medicare Cost report to calculate the assessment.
- N.** Required information for the outpatient assessment. For any hospital that has not filed a 2019 Uniform Accounting Report, or if the 2019 Uniform Accounting Report does not reconcile to 2019 Audited Financial Statements, the Administration shall use the data reported on 2019 Audited Financial Statements to calculate the outpatient assessment. If the 2019 Audited Financial Statements do not include the reliable information sufficient for the Administration to calculate the outpatient assessment, the Administration shall use data reported on the 2019 Medicare Cost report. If the Medicare Cost report does not include reliable information sufficient for the Administration to calculate the outpatient assessment amounts, the hospital shall provide the Administration with data specified by the Administration necessary in place of the 2019 Medicare Cost report to calculate the outpatient assessment.
- O.** The Administration will review and update as necessary rates and peer groups periodically to ensure the assessment is sufficient to fund the state match obligation to cover the cost of the populations as specified in A.R.S. § 36-2901.08.
- P.** Enforcement. If a hospital does not comply with this Section, the director may suspend or revoke the hospital's provider agreement. If the hospital does not comply within 180 days after the hospital's provider agreement is suspended or

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revoked, the director shall notify the director of the Department of Health Services who shall suspend or revoke the hospital's license.

Historical Note

New Section R9-22-730 made by exempt rulemaking at 20 A.A.R. 281, effective January 15, 2014 (Supp. 14-1).

Amended by exempt rulemaking at 20 A.A.R. 1833, effective July 1, 2014 (Supp. 14-2). Amended by final exempt rulemaking at 21 A.A.R. 637, effective April 15, 2015 (Supp. 15-2). Amended by final exempt rulemaking at 21 A.A.R. 1486, effective July 16, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 22 A.A.R. 2050, effective July 14, 2016 (Supp. 16-4). Amended by final exempt rulemaking at 23 A.A.R. 1945, effective July 1, 2017 (Supp. 17-2). Amended by final exempt rulemaking at 24 A.A.R. 2229, effective July 10, 2018 (Supp. 18-3). Amended by final exempt rulemaking at 25 A.A.R. 1938, effective July 1, 2019 (Supp. 19-3). Amended by final exempt rulemaking at 26 A.A.R. 1702, effective July 1, 2020 (Supp. 20-3). Amended by final exempt rulemaking at 26 A.A.R. 2984, effective October 1, 2020 (Supp. 20-4). Amended by final exempt rulemaking at 27 A.A.R. 2370, effective October 1, 2021 (Supp. 21-3).

R9-22-731. Health Care Investment Fund - Hospital Assessment

- A.** For purposes of this Section, terms are the same as defined in R9-22-730 as provided below unless the context specifically requires another meaning.
- B.** Beginning October 1, 2020, for each Arizona licensed hospital not excluded under subsection (I) shall be subject to an assessment payable on a quarterly basis. The assessment shall be levied against the legal owner of each hospital as of the first day of the quarter, and except as otherwise required by subsections (D), (E) and (F). For the period beginning October 1, 2020, the assessment for each hospital shall be amount equal to the sum of: (1) the number of discharges reported on the hospital's 2018 Medicare Cost Report, excluding discharges reported on the Medicare Cost Report as "Other Long Term Care Discharges," multiplied by the following rates appropriate to the hospital's peer group; and (2) the amount of outpatient net patient revenues multiplied by the following rate appropriate to the hospital's peer group:
1. \$151.50 per discharge and 2.5886% of outpatient net patient revenues for hospitals located in a county with a population less than 500,000 that are designated as type: hospital, subtype: short-term.
 2. \$151.50 per discharge and 1.0786% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: critical access hospital.
 3. \$38.00 per discharge and 1.0786% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: long term.
 4. \$38.00 per discharge and 1.0786% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: psychiatric, that reported 2,500 or more discharges on the 2018 Medicare Cost Report.
 5. \$121.25 per discharge and 2.8043% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short-term with 20% of total licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as reported in the hospital's 2018 Uniform Accounting Report.
 6. \$136.50 per discharge and 3.2357% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short-term with at least 10% but less than 20% of total licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as reported in the hospital's 2018 Uniform Accounting Report.
 7. \$30.50 per discharge and 0.8629% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: children's.
 8. \$151.50 per discharge and 4.3143% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short-term not included in another peer group.
- C.** Peer groups for the four quarters beginning October 1 of each year are established based on hospital license type and subtype designated in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website January 2, 2020.
- D.** Notwithstanding subsection (B), psychiatric discharges from a hospital that reported having a psychiatric sub-provider in the hospital's 2018 Medicare Cost Report, are assessed a rate of \$38.00 for each discharge from the psychiatric sub-provider as reported in the 2018 Medicare Cost Report. All discharges other than those reported as discharges from the psychiatric sub-provider are assessed at the rate required by subsection (B).
- E.** Notwithstanding subsection (B), rehabilitative discharges from a hospital that reported having a rehabilitative sub-provider in the hospital's 2018 Medicare Cost Report, are assessed a rate of \$0 for each discharge from the rehabilitative sub-provider as reported in the 2018 Medicare Cost Report. All discharges other than those reported as discharges from the rehabilitative sub-provider are assessed at the rate required by subsection (B).
- F.** Notwithstanding subsection (B), for any hospital that reported more than 24,000 discharges on the hospital's 2018 Medicare Cost Report, discharges in excess of 24,000 are assessed a rate of \$15.25 for each discharge in excess of 24,000. The initial 24,000 discharges are assessed at the rate required by subsection (B).
- G.** Assessment notice. On or before the 20th day of the first month of the quarter or upon CMS approval, whichever is later, the Administration shall send to each hospital a notification that the assessment invoice is available to be viewed on a secure website. The invoice shall include the hospital's peer group assignment and the assessment due for the quarter.
- H.** Assessment due date. The assessment must be received by the Administration no later than the 20th day of the second month of the quarter.
- I.** Excluded hospitals. The following hospitals are excluded from the assessment based on the hospital's 2018 Medicare Cost Report and Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for January 2, 2020:
1. Hospitals owned and operated by the state, the United States, or an Indian tribe.
 2. Hospitals designated as type: hospital, subtype: short-term that have a license number beginning "SH".
 3. Hospitals designated as type: hospital, subtype: psychiatric that reported fewer than 2,500 discharges on the 2018 Medicare Cost Report.
 4. Hospitals designated as type: hospital, subtype; rehabilitation.
 5. Hospitals designated as type: med-hospital, subtype: special hospitals.
 6. Hospitals designated as type: hospital, subtype: short-term located in a city with a population greater than one

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- million, which on average have at least 15 percent of inpatient days for patients who reside outside of Arizona, and at least 50 percent of discharges as reported on the 2018 Medicare Cost Report are reimbursed by Medicare.
7. Hospitals designated as type: hospital, subtype: short-term that have at least 25 percent Medicare swing beds as percentage of total Medicare days, per the 2018 Medicare Cost Report.
 - J. New hospitals. For hospitals that did not file a 2018 Medicare Cost Report because of the date the hospital began operations:
 1. If the hospital was open on the January 2 preceding the October assessment start date, the hospital assessment will begin on October 1 following the date the hospital began operating.
 2. If the hospital began operating between January 3 and June 30, the assessment will begin on October 1 of the following calendar year.
 3. A hospital is not considered a new hospital based on a change in ownership.
 4. The assessment will be based on the discharges reported in the hospital's first Medicare Cost Report and Uniform Accounting Report, which includes 12 months-worth of data, except when any of the following apply:
 - a. If there is not a complete 12 months-worth of data available, the assessment will be based on the annualized number of discharges from the date hospital operations began through December 31 preceding the October assessment start date. The hospital shall self-report the discharge data and all other data requested by the Administration necessary to determine the appropriate assessment to the Administration no later than January preceding the assessment start date for the new hospitals. "Annualized" means divided by a ratio equal to the number of months of data divided by 12 months.
 - b. If more than 12 months of data is available, the assessment will be based on the most recent 12 months of self-reported data, as of December 31;
 5. For purposes of calculating subpart 4, if a new hospital shares a Medicare Identification Number with an existing hospital, the assessment amount will be based on self-reported data from the new hospital instead of the Medicare Cost Report. The data shall include the number of discharges and all other data requested by the Administration necessary to determine the appropriate assessment.
 6. For hospitals providing self-reported data, described in subpart 4 and 5:
 - a. Psychiatric discharges will be annualized to determine if subsections (B)(4) or (I)(3) apply to the assessment amount.
 - b. Discharges will be annualized to determine if subsection (F) applies to the assessment amount.
 - L. Changes of ownership. The parties to a change of ownership shall promptly provide written notice to the Administration of a change of ownership and any agreement regarding the payment of the assessment. The assessed amount will continue at the same amount applied to the prior owner. Assessments are the responsibility of the owner of record as of the first day of the quarter; however, this rule is not intended to prohibit the parties to a change of ownership from entering into an agreement for a new owner to assume the assessment responsibility of the owner of record as of the first day of the prior quarter.
 - M. Hospital closures. Hospitals that close shall pay a proportion of the quarterly assessment equal to that portion of the quarter during which the hospital operated.
 - N. Required information for the inpatient assessment. For any hospital that has not filed a 2018 Medicare Cost report, or if the 2018 Medicare Cost report does not include the reliable information sufficient for the Administration to calculate the inpatient assessment, the Administration shall use data reported on the 2018 Uniform Accounting Report filed by the hospital in place of the 2018 Medicare Cost report to calculate the assessment. If the 2018 Uniform Accounting Report filed by the hospital does not include reliable information sufficient for the Administration to calculate the inpatient assessment amounts, the hospital shall provide the Administration with data specified by the Administration necessary in place of the 2018 Medicare Cost report to calculate the assessment.
 - O. Required information for the outpatient assessment. For any hospital that has not filed a 2018 Uniform Accounting Report, or if the 2018 Uniform Accounting Report does not reconcile to 2018 Audited Financial Statements, the Administration shall use the data reported on 2018 Audited Financial Statements to calculate the outpatient assessment. If the 2018 Audited Financial Statements do not include the reliable information sufficient for the Administration to calculate the outpatient assessment, the Administration shall use data reported on the 2018 Medicare Cost report. If the Medicare Cost report does not include reliable information sufficient for the Administration to calculate the outpatient assessment amounts, the hospital shall provide the Administration with data specified by the Administration necessary in place of the 2018 Medicare Cost report to calculate the outpatient assessment.
 - P. Enforcement. If a hospital does not comply with this section, the director may suspend or revoke the hospital's provider agreement. If the hospital does not comply within 180 days after the hospital's provider agreement is suspended or revoked, the director shall notify the director of the Department of Health Services who shall suspend or revoke the hospital's license.

Historical Note

New Section made by final exempt rulemaking at 26 A.A.R. 2984, effective October 1, 2020 (Supp. 20-4).

ARTICLE 8. REPEALED

Article 8, consisting of Sections R9-22-801 through R9-22-804 and Exhibit A, repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004. The subject matter of Article 8 is now in 9 A.A.C. 34 (Supp. 04-1).

R9-22-801. Repealed**Historical Note**

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-801 adopted as an emergency adoption now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-801 repealed, new Section R9-22-801 adopted effective October 29, 1985 (Supp. 85-5). Amended subsections (C), (F), (H), (I), and (K) effective October 1, 1986 (Supp. 86-5). Change of heading only effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (H) effective May 30, 1989 (Supp. 89-2). Amended effective September 29, 1992 (Supp. 92-3). Section heading amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4). Amended effective December 13, 1993 (Supp. 93-4). Former Section R9-22-801 repealed, new Section R9-22-

36-2903.01. Additional powers and duties; report; definition

A. The director of the Arizona health care cost containment system administration may adopt rules that provide that the system may withhold or forfeit payments to be made to a noncontracting provider by the system if the noncontracting provider fails to comply with this article, the provider agreement or rules that are adopted pursuant to this article and that relate to the specific services rendered for which a claim for payment is made.

B. The director shall:

1. Prescribe uniform forms to be used by all contractors. The rules shall require a written and signed application by the applicant or an applicant's authorized representative, or, if the person is incompetent or incapacitated, a family member or a person acting responsibly for the applicant may obtain a signature or a reasonable facsimile and file the application as prescribed by the administration.

2. Enter into an interagency agreement with the department to establish a streamlined eligibility process to determine the eligibility of all persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). At the administration's option, the interagency agreement may allow the administration to determine the eligibility of certain persons, including those defined pursuant to section 36-2901, paragraph 6, subdivision (a).

3. Enter into an intergovernmental agreement with the department to:

(a) Establish an expedited eligibility and enrollment process for all persons who are hospitalized at the time of application.

(b) Establish performance measures and incentives for the department.

(c) Establish the process for management evaluation reviews that the administration shall perform to evaluate the eligibility determination functions performed by the department.

(d) Establish eligibility quality control reviews by the administration.

(e) Require the department to adopt rules, consistent with the rules adopted by the administration for a hearing process, that applicants or members may use for appeals of eligibility determinations or redeterminations.

(f) Establish the department's responsibility to place sufficient eligibility workers at federally qualified health centers to screen for eligibility and at hospital sites and level one trauma centers to ensure that persons seeking hospital services are screened on a timely basis for eligibility for the system, including a process to ensure that applications for the system can be accepted on a twenty-four hour basis, seven days a week.

(g) Withhold payments based on the allowable sanctions for errors in eligibility determinations or redeterminations or failure to meet performance measures required by the intergovernmental agreement.

(h) Recoup from the department all federal fiscal sanctions that result from the department's inaccurate eligibility determinations. The director may offset all or part of a sanction if the department submits a corrective action plan and a strategy to remedy the error.

4. By rule establish a procedure and time frames for the intake of grievances and requests for hearings, for the continuation of benefits and services during the appeal process and for a grievance process at the contractor level. Notwithstanding sections 41-1092.02, 41-1092.03 and 41-1092.05, the administration shall develop rules to establish the procedure and time frame for the informal resolution of grievances and appeals. A grievance that is not related to a claim for payment of system covered services shall be filed in writing with and received by the administration or the prepaid capitated provider or program contractor not later than sixty days after the date of the adverse action, decision or policy implementation being grieved. A grievance that is related to a claim for payment of system covered services must be filed in writing and received by the administration or the prepaid capitated provider or program contractor within twelve months after the date of service, within twelve months

after the date that eligibility is posted or within sixty days after the date of the denial of a timely claim submission, whichever is later. A grievance for the denial of a claim for reimbursement of services may contest the validity of any adverse action, decision, policy implementation or rule that related to or resulted in the full or partial denial of the claim. A policy implementation may be subject to a grievance procedure, but it may not be appealed for a hearing. The administration is not required to participate in a mandatory settlement conference if it is not a real party in interest. In any proceeding before the administration, including a grievance or hearing, persons may represent themselves or be represented by a duly authorized agent who is not charging a fee. A legal entity may be represented by an officer, partner or employee who is specifically authorized by the legal entity to represent it in the particular proceeding.

5. Apply for and accept federal funds available under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)) in support of the system. The application made by the director pursuant to this paragraph shall be designed to qualify for federal funding primarily on a prepaid capitated basis. Such funds may be used only for the support of persons defined as eligible pursuant to title XIX of the social security act or the approved section 1115 waiver.

6. At least thirty days before the implementation of a policy or a change to an existing policy relating to reimbursement, provide notice to interested parties. Parties interested in receiving notification of policy changes shall submit a written request for notification to the administration.

7. In addition to the cost sharing requirements specified in subsection D, paragraph 4 of this section:

(a) Charge monthly premiums up to the maximum amount allowed by federal law to all populations of eligible persons who may be charged.

(b) Implement this paragraph to the extent permitted under the federal deficit reduction act of 2005 and other federal laws, subject to the approval of federal waiver authority and to the extent that any changes in the cost sharing requirements under this paragraph would permit this state to receive any enhanced federal matching rate.

C. The director is authorized to apply for any federal funds available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state funds appropriated for the administration and operation of the system may be used as matching funds to secure federal funds pursuant to this subsection.

D. The director may adopt rules or procedures to do the following:

1. Authorize advance payments based on estimated liability to a contractor or a noncontracting provider after the contractor or noncontracting provider has submitted a claim for services and before the claim is ultimately resolved. The rules shall specify that any advance payment shall be conditioned on the execution before payment of a contract with the contractor or noncontracting provider that requires the administration to retain a specified percentage, which shall be at least twenty percent, of the claimed amount as security and that requires repayment to the administration if the administration makes any overpayment.

2. Defer liability, in whole or in part, of contractors for care provided to members who are hospitalized on the date of enrollment or under other circumstances. Payment shall be on a capped fee-for-service basis for services other than hospital services and at the rate established pursuant to subsection G of this section for hospital services or at the rate paid by the health plan, whichever is less.

3. Deputize, in writing, any qualified officer or employee in the administration to perform any act that the director by law is empowered to do or charged with the responsibility of doing, including the authority to issue final administrative decisions pursuant to section 41-1092.08.

4. Notwithstanding any other law, require persons eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 to be financially responsible for any cost sharing requirements established in a state plan or a section 1115 waiver and approved by the centers for medicare and

medicaid services. Cost sharing requirements may include copayments, coinsurance, deductibles, enrollment fees and monthly premiums for enrolled members, including households with children enrolled in the Arizona long-term care system.

E. The director shall adopt rules that further specify the medical care and hospital services that are covered by the system pursuant to section 36-2907.

F. In addition to the rules otherwise specified in this article, the director may adopt necessary rules pursuant to title 41, chapter 6 to carry out this article. Rules adopted by the director pursuant to this subsection shall consider the differences between rural and urban conditions on the delivery of hospitalization and medical care.

G. For inpatient hospital admissions and outpatient hospital services on and after March 1, 1993, the administration shall adopt rules for the reimbursement of hospitals according to the following procedures:

1. For inpatient hospital stays from March 1, 1993 through September 30, 2014, the administration shall use a prospective tiered per diem methodology, using hospital peer groups if analysis shows that cost differences can be attributed to independently definable features that hospitals within a peer group share. In peer grouping the administration may consider such factors as length of stay differences and labor market variations. If there are no cost differences, the administration shall implement a stop loss-stop gain or similar mechanism. Any stop loss-stop gain or similar mechanism shall ensure that the tiered per diem rates assigned to a hospital do not represent less than ninety percent of its 1990 base year costs or more than one hundred ten percent of its 1990 base year costs, adjusted by an audit factor, during the period of March 1, 1993 through September 30, 1994. The tiered per diem rates set for hospitals shall represent no less than eighty-seven and one-half percent or more than one hundred twelve and one-half percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1994 through September 30, 1995 and no less than eighty-five percent or more than one hundred fifteen percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1995 through September 30, 1996. For the periods after September 30, 1996 no stop loss-stop gain or similar mechanisms shall be in effect. An adjustment in the stop loss-stop gain percentage may be made to ensure that total payments do not increase as a result of this provision. If peer groups are used, the administration shall establish initial peer group designations for each hospital before implementation of the per diem system. The administration may also use a negotiated rate methodology. The tiered per diem methodology may include separate consideration for specialty hospitals that limit their provision of services to specific patient populations, such as rehabilitative patients or children. The initial per diem rates shall be based on hospital claims and encounter data for dates of service November 1, 1990 through October 31, 1991 and processed through May of 1992. The administration may also establish a separate reimbursement methodology for claims with extraordinarily high costs per day that exceed thresholds established by the administration.

2. For rates effective on October 1, 1994, and annually through September 30, 2011, the administration shall adjust tiered per diem payments for inpatient hospital care by the data resources incorporated market basket index for prospective payment system hospitals. For rates effective beginning on October 1, 1999, the administration shall adjust payments to reflect changes in length of stay for the maternity and nursery tiers.

3. Through June 30, 2004, for outpatient hospital services, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to the covered charges. Beginning on July 1, 2004 through June 30, 2005, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to covered charges. If the hospital increases its charges for outpatient services filed with the Arizona department of health services pursuant to chapter 4, article 3 of this title, by more than 4.7 percent for dates of service effective on or after July 1, 2004, the hospital specific cost-to-charge ratio will be reduced by the amount that it exceeds 4.7 percent. If charges exceed 4.7 percent, the effective date of the increased charges will be the effective date of the adjusted Arizona health care cost containment system cost-to-charge ratio. The administration shall develop the methodology for a capped fee-for-service schedule and a statewide cost-to-charge ratio. Any covered outpatient service not included in the capped fee-for-service schedule shall be reimbursed by applying the statewide cost-to-charge ratio that is based on the services not included in the capped fee-for-service schedule. Beginning on July 1, 2005, the administration shall reimburse clean claims with dates of service on or after July 1, 2005, based on the capped fee-for-service schedule or the statewide cost-to-charge

ratio established pursuant to this paragraph. The administration may make additional adjustments to the outpatient hospital rates established pursuant to this section based on other factors, including the number of beds in the hospital, specialty services available to patients and the geographic location of the hospital.

4. Except if submitted under an electronic claims submission system, a hospital bill is considered received for purposes of this paragraph on initial receipt of the legible, error-free claim form by the administration if the claim includes the following error-free documentation in legible form:

- (a) An admission face sheet.
- (b) An itemized statement.
- (c) An admission history and physical.
- (d) A discharge summary or an interim summary if the claim is split.
- (e) An emergency record, if admission was through the emergency room.
- (f) Operative reports, if applicable.
- (g) A labor and delivery room report, if applicable.

Payment received by a hospital from the administration pursuant to this subsection or from a contractor either by contract or pursuant to section 36-2904, subsection I is considered payment by the administration or the contractor of the administration's or contractor's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third-party payors or in situations covered by title 33, chapter 7, article 3.

5. For services rendered on and after October 1, 1997, the administration shall pay a hospital's rate established according to this section subject to the following:

- (a) If the hospital's bill is paid within thirty days of the date the bill was received, the administration shall pay ninety-nine percent of the rate.
- (b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate.
- (c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate plus a fee of one percent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

6. In developing the reimbursement methodology, if a review of the reports filed by a hospital pursuant to section 36-125.04 indicates that further investigation is considered necessary to verify the accuracy of the information in the reports, the administration may examine the hospital's records and accounts related to the reporting requirements of section 36-125.04. The administration shall bear the cost incurred in connection with this examination unless the administration finds that the records examined are significantly deficient or incorrect, in which case the administration may charge the cost of the investigation to the hospital examined.

7. Except for privileged medical information, the administration shall make available for public inspection the cost and charge data and the calculations used by the administration to determine payments under the tiered per diem system, provided that individual hospitals are not identified by name. The administration shall make the data and calculations available for public inspection during regular business hours and shall provide copies of the data and calculations to individuals requesting such copies within thirty days of receipt of a written request. The administration may charge a reasonable fee for the provision of the data or information.

8. The prospective tiered per diem payment methodology for inpatient hospital services shall include a mechanism for the prospective payment of inpatient hospital capital related costs. The capital payment shall

include hospital specific and statewide average amounts. For tiered per diem rates beginning on October 1, 1999, the capital related cost component is frozen at the blended rate of forty percent of the hospital specific capital cost and sixty percent of the statewide average capital cost in effect as of January 1, 1999 and as further adjusted by the calculation of tier rates for maternity and nursery as prescribed by law. Through September 30, 2011, the administration shall adjust the capital related cost component by the data resources incorporated market basket index for prospective payment system hospitals.

9. For graduate medical education programs:

(a) Beginning September 30, 1997, the administration shall establish a separate graduate medical education program to reimburse hospitals that had graduate medical education programs that were approved by the administration as of October 1, 1999. The administration shall separately account for monies for the graduate medical education program based on the total reimbursement for graduate medical education reimbursed to hospitals by the system in federal fiscal year 1995-1996 pursuant to the tiered per diem methodology specified in this section. The graduate medical education program reimbursement shall be adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Subject to legislative appropriation, on an annual basis, each qualified hospital shall receive a single payment from the graduate medical education program that is equal to the same percentage of graduate medical education reimbursement that was paid by the system in federal fiscal year 1995-1996. Any reimbursement for graduate medical education made by the administration shall not be subject to future settlements or appeals by the hospitals to the administration. The monies available under this subdivision shall not exceed the fiscal year 2005-2006 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement, except for monies distributed for expansions pursuant to subdivision (b) of this paragraph.

(b) The monies available for graduate medical education programs pursuant to this subdivision shall not exceed the fiscal year 2006-2007 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Graduate medical education programs eligible for such reimbursement are not precluded from receiving reimbursement for funding under subdivision (c) of this paragraph. Beginning July 1, 2006, the administration shall distribute any monies appropriated for graduate medical education above the amount prescribed in subdivision (a) of this paragraph in the following order or priority:

(i) For the direct costs to support the expansion of graduate medical education programs established before July 1, 2006 at hospitals that do not receive payments pursuant to subdivision (a) of this paragraph. These programs must be approved by the administration.

(ii) For the direct costs to support the expansion of graduate medical education programs established on or before October 1, 1999. These programs must be approved by the administration.

(c) The administration shall distribute to hospitals any monies appropriated for graduate medical education above the amount prescribed in subdivisions (a) and (b) of this paragraph for the following purposes:

(i) For the direct costs of graduate medical education programs established or expanded on or after July 1, 2006. These programs must be approved by the administration.

(ii) For a portion of additional indirect graduate medical education costs for programs that are located in a county with a population of less than five hundred thousand persons at the time the residency position was created or for a residency position that includes a rotation in a county with a population of less than five hundred thousand persons at the time the residency position was established. These programs must be approved by the administration.

(d) The administration shall develop, by rule, the formula by which the monies are distributed.

(e) Each graduate medical education program that receives funding pursuant to subdivision (b) or (c) of this paragraph shall identify and report to the administration the number of new residency positions created by the funding provided in this paragraph, including positions in rural areas. The program shall also report information related to the number of funded residency positions that resulted in physicians locating their practices in this state. The administration shall report to the joint legislative budget committee by February 1 of each year on the number of new residency positions as reported by the graduate medical education programs.

(f) Local, county and tribal governments and any university under the jurisdiction of the Arizona board of regents may provide monies in addition to any state general fund monies appropriated for graduate medical education in order to qualify for additional matching federal monies for providers, programs or positions in a specific locality and costs incurred pursuant to a specific contract between the administration and providers or other entities to provide graduate medical education services as an administrative activity. Payments by the administration pursuant to this subdivision may be limited to those providers designated by the funding entity and may be based on any methodology deemed appropriate by the administration, including replacing any payments that might otherwise have been paid pursuant to subdivision (a), (b) or (c) of this paragraph had sufficient state general fund monies or other monies been appropriated to fully fund those payments. These programs, positions, payment methodologies and administrative graduate medical education services must be approved by the administration and the centers for medicare and medicaid services. The administration shall report to the president of the senate, the speaker of the house of representatives and the director of the joint legislative budget committee on or before July 1 of each year on the amount of money contributed and number of residency positions funded by local, county and tribal governments, including the amount of federal matching monies used.

(g) Any funds appropriated but not allocated by the administration for subdivision (b) or (c) of this paragraph may be reallocated if funding for either subdivision is insufficient to cover appropriate graduate medical education costs.

10. Notwithstanding section 41-1005, subsection A, paragraph 9, the administration shall adopt rules pursuant to title 41, chapter 6 establishing the methodology for determining the prospective tiered per diem payments that are in effect through September 30, 2014.

11. For inpatient hospital services rendered on or after October 1, 2011, the prospective tiered per diem payment rates are permanently reset to the amounts payable for those services as of October 1, 2011 pursuant to this subsection.

12. The administration shall adopt a diagnosis-related group based hospital reimbursement methodology consistent with title XIX of the social security act for inpatient dates of service on and after October 1, 2014. The administration may make additional adjustments to the inpatient hospital rates established pursuant to this section for hospitals that are publicly operated or based on other factors, including the number of beds in the hospital, the specialty services available to patients, the geographic location and diagnosis-related group codes that are made publicly available by the hospital pursuant to section 36-437. The administration may also provide additional reimbursement for extraordinarily high cost cases that exceed a threshold above the standard payment. The administration may also establish a separate payment methodology for specific services or hospitals serving unique populations.

H. The director may adopt rules that specify enrollment procedures, including notice to contractors of enrollment. The rules may provide for varying time limits for enrollment in different situations. The administration shall specify in contract when a person who has been determined eligible will be enrolled with that contractor and the date on which the contractor will be financially responsible for health and medical services to the person.

I. The administration may make direct payments to hospitals for hospitalization and medical care provided to a member in accordance with this article and rules. The director may adopt rules to establish the procedures by which the administration shall pay hospitals pursuant to this subsection if a contractor fails to make timely payment to a hospital. Such payment shall be at a level determined pursuant to section 36-2904, subsection H

or I. The director may withhold payment due to a contractor in the amount of any payment made directly to a hospital by the administration on behalf of a contractor pursuant to this subsection.

J. The director shall establish a special unit within the administration for the purpose of monitoring the third-party payment collections required by contractors and noncontracting providers pursuant to section 36-2903, subsection B, paragraph 10 and subsection F and section 36-2915, subsection E. The director shall determine by rule:

1. The type of third-party payments to be monitored pursuant to this subsection.
2. The percentage of third-party payments that is collected by a contractor or noncontracting provider and that the contractor or noncontracting provider may keep and the percentage of such payments that the contractor or noncontracting provider may be required to pay to the administration. Contractors and noncontracting providers must pay to the administration one hundred percent of all third-party payments that are collected and that duplicate administration fee-for-service payments. A contractor that contracts with the administration pursuant to section 36-2904, subsection A may be entitled to retain a percentage of third-party payments if the payments collected and retained by a contractor are reflected in reduced capitation rates. A contractor may be required to pay the administration a percentage of third-party payments that are collected by a contractor and that are not reflected in reduced capitation rates.

K. The administration shall establish procedures to apply to the following if a provider that has a contract with a contractor or noncontracting provider seeks to collect from an individual or financially responsible relative or representative a claim that exceeds the amount that is reimbursed or should be reimbursed by the system:

1. On written notice from the administration or oral or written notice from a member that a claim for covered services may be in violation of this section, the provider that has a contract with a contractor or noncontracting provider shall investigate the inquiry and verify whether the person was eligible for services at the time that covered services were provided. If the claim was paid or should have been paid by the system, the provider that has a contract with a contractor or noncontracting provider shall not continue billing the member.

2. If the claim was paid or should have been paid by the system and the disputed claim has been referred for collection to a collection agency or referred to a credit reporting bureau, the provider that has a contract with a contractor or noncontracting provider shall:

- (a) Notify the collection agency and request that all attempts to collect this specific charge be terminated immediately.

- (b) Advise all credit reporting bureaus that the reported delinquency was in error and request that the affected credit report be corrected to remove any notation about this specific delinquency.

- (c) Notify the administration and the member that the request for payment was in error and that the collection agency and credit reporting bureaus have been notified.

3. If the administration determines that a provider that has a contract with a contractor or noncontracting provider has billed a member for charges that were paid or should have been paid by the administration, the administration shall send written notification by certified mail or other service with proof of delivery to the provider that has a contract with a contractor or noncontracting provider stating that this billing is in violation of federal and state law. If, twenty-one days or more after receiving the notification, a provider that has a contract with a contractor or noncontracting provider knowingly continues billing a member for charges that were paid or should have been paid by the system, the administration may assess a civil penalty in an amount equal to three times the amount of the billing and reduce payment to the provider that has a contract with a contractor or noncontracting provider accordingly. Receipt of delivery signed by the addressee or the addressee's employee is prima facie evidence of knowledge. Civil penalties collected pursuant to this subsection shall be deposited in the state general fund. Section 36-2918, subsections C, D and F, relating to the imposition, collection and enforcement of civil penalties, apply to civil penalties imposed pursuant to this paragraph.

L. The administration may conduct postpayment review of all claims paid by the administration and may recoup any monies erroneously paid. The director may adopt rules that specify procedures for conducting postpayment review. A contractor may conduct a postpayment review of all claims paid by the contractor and may recoup monies that are erroneously paid.

M. Subject to title 41, chapter 4, article 4, the director or the director's designee may employ and supervise personnel necessary to assist the director in performing the functions of the administration.

N. The administration may contract with contractors for obstetrical care who are eligible to provide services under title XIX of the social security act.

O. Notwithstanding any other law, on federal approval the administration may make disproportionate share payments to private hospitals, county operated hospitals, including hospitals owned or leased by a special health care district, and state operated institutions for mental disease beginning October 1, 1991 in accordance with federal law and subject to legislative appropriation. If at any time the administration receives written notification from federal authorities of any change or difference in the actual or estimated amount of federal funds available for disproportionate share payments from the amount reflected in the legislative appropriation for such purposes, the administration shall provide written notification of such change or difference to the president and the minority leader of the senate, the speaker and the minority leader of the house of representatives, the director of the joint legislative budget committee, the legislative committee of reference and any hospital trade association within this state, within three working days not including weekends after receipt of the notice of the change or difference. In calculating disproportionate share payments as prescribed in this section, the administration may use either a methodology based on claims and encounter data that is submitted to the administration from contractors or a methodology based on data that is reported to the administration by private hospitals and state operated institutions for mental disease. The selected methodology applies to all private hospitals and state operated institutions for mental disease qualifying for disproportionate share payments.

P. Disproportionate share payments made pursuant to subsection O of this section include amounts for disproportionate share hospitals designated by political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents. Subject to the approval of the centers for medicare and medicaid services, any amount of federal funding allotted to this state pursuant to section 1923(f) of the social security act and not otherwise spent under subsection O of this section shall be made available for distribution pursuant to this subsection. Political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents may designate hospitals eligible to receive disproportionate share payments in an amount up to the limit prescribed in section 1923(g) of the social security act if those political subdivisions, tribal governments or universities provide sufficient monies to qualify for the matching federal monies for the disproportionate share payments.

Q. Notwithstanding any law to the contrary, the administration may receive confidential adoption information to determine whether an adopted child should be terminated from the system.

R. The adoption agency or the adoption attorney shall notify the administration within thirty days after an eligible person receiving services has placed that person's child for adoption.

S. If the administration implements an electronic claims submission system, it may adopt procedures pursuant to subsection G of this section requiring documentation different than prescribed under subsection G, paragraph 4 of this section.

T. In addition to any requirements adopted pursuant to subsection D, paragraph 4 of this section, notwithstanding any other law, subject to approval by the centers for medicare and medicaid services, beginning July 1, 2011, members eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 shall pay the following:

1. A monthly premium of fifteen dollars, except that the total monthly premium for an entire household shall not exceed sixty dollars.

2. A copayment of five dollars for each physician office visit.
3. A copayment of ten dollars for each urgent care visit.
4. A copayment of thirty dollars for each emergency department visit.

U. Subject to the approval of the centers for medicare and medicaid services, political subdivisions of this state, tribal governments and any university under the jurisdiction of the Arizona board of regents may provide to the Arizona health care cost containment system administration monies in addition to any state general fund monies appropriated for critical access hospitals in order to qualify for additional federal monies. Any amount of federal monies received by this state pursuant to this subsection shall be distributed as supplemental payments to critical access hospitals.

V. For the purposes of this section, "disproportionate share payment" means a payment to a hospital that serves a disproportionate share of low-income patients as described by 42 United States Code section 1396r-4.

36-2906. Qualified plan health services contracts; proposals; administration

A. The administration shall:

1. Supervise the administrator.
2. Review the proposals.
3. Award contracts.

B. The director shall prepare and issue a request for proposal, including a proposed contract format, in each of the counties of this state, at least once every five years, to qualified group disability insurers, hospital and medical service corporations, health care services organizations and any other qualified public or private persons, including county-owned and operated health care facilities. The contracts shall specify the administrative requirements, the delivery of medically necessary services and the subcontracting requirements.

C. The director shall adopt rules regarding the request for proposal process that provide:

1. For definition of proposals in the following categories subject to the following conditions:

(a) Inpatient hospital services.

(b) Outpatient services, including emergency dental care, and early and periodic health screening and diagnostic services for children.

(c) Pharmacy services.

(d) Laboratory, x-ray and related diagnostic medical services and appliances.

2. Allowance for the adjustment of such categories by expansion, deletion, segregation or combination in order to secure the most financially advantageous proposals for the system.

3. An allowance for limitations on the number of high risk persons that must be included in any proposal.

4. For analysis of the proposals for each geographic service area as defined by the director to ensure the provision of health and medical services that are required to be provided throughout the geographic service area pursuant to section 36-2907.

5. For the submittal of proposals by a group disability insurer, a hospital and medical service corporation, a health care services organization or any other qualified public or private person intending to submit a proposal pursuant to this section. Each qualified proposal shall be entered with separate categories for the distinct groups of persons to be covered by the proposed contracts, as set forth in the request for proposal.

6. For the procurement of reinsurance for expenses incurred by any contractor or member or the system in providing services in excess of amounts specified by the director in any contract year. The director shall adopt rules to provide that the administrator may specify guidelines on a case by case basis for the types of care and services that may be provided to a person whose care is covered by reinsurance. The rules shall provide that if a contractor does not follow specified guidelines for care or services and if the care or services could be provided pursuant to the guidelines at a lower cost the contractor is entitled to reimbursement as if the care or services specified in the guidelines had been provided.

7. For the awarding of contracts to contractors with qualified proposals determined to be the most advantageous to the state for each of the counties in this state. A contract may be awarded that provides services only to persons defined as eligible pursuant to section 36-2901, paragraph 6, subdivision (b), (c), (d) or (e). The director may provide by rule a second round competitive proposal procedure for the director to request voluntary price

reduction of proposals from only those that have been tentatively selected for award, before the final award or rejection of proposals.

8. For the requirement that any proposal in a geographic service area provide for the full range of system covered services.

9. For the option of the administration to waive the requirement in any request for proposal or in any contract awarded pursuant to a request for proposal for a subcontract with a hospital for good cause in a county or area including but not limited to situations when such hospital is the only hospital in the health service area. In any situation where the subcontract requirement is waived, no hospital may refuse to treat members of the system admitted by primary care physicians or primary care practitioners with hospital privileges in that hospital. In the absence of a subcontract, the reimbursement level shall be at the levels specified in section 36-2904, subsection H or I.

D. Reinsurance may be obtained against expenses in excess of a specified amount on behalf of any individual for system covered emergency or inpatient services either through the purchase of a reinsurance policy or through a system self-insurance program as determined by the director. Reinsurance, subject to the approval of the director, may be obtained against expenses in excess of a specified amount on behalf of any individual for outpatient services either through the purchase of a reinsurance policy or through a system self-insurance program as determined by the director.

E. Notwithstanding the other provisions of this section, the administration may procure, provide or coordinate system covered services by interagency agreement with authorized agencies of this state or with a federal agency for distinct groups of eligible persons, including persons eligible for children's rehabilitative services through the department of economic security and persons eligible for comprehensive medical and dental program services through the department of child safety.

F. Contracts shall be awarded as otherwise provided by law, except that in no event may a contract be awarded to any respondent that will cause the system to lose any federal monies to which it is otherwise entitled.

G. After contracts are awarded pursuant to this section, the director may negotiate with any successful proposal respondent for the expansion or contraction of services or service areas if there are unnecessary gaps or duplications in services or service areas.

AHCCCS Non-Emergency Medical Transportation

[Contract language](#): Scope of Services

Transportation: These services include emergency and non-emergency medically necessary transportation. Emergency transportation, including transportation initiated by an emergency response system such as 911, may be provided by ground, air, or water ambulance to manage an AHCCCS member's emergency medical condition at an emergency scene and transport the member to the nearest appropriate medical facility. Non-emergency transportation shall be provided for members who are unable to provide or secure their own transportation for medically necessary services using the appropriate mode based on the needs of the member. Refer to AHCCCS Medical Policy Manual ([AMPM](#)) [Policy 310-BB](#). The Contractor shall ensure that members have coordinated, reliable, medically necessary transportation to ensure members arrive on-time for regularly scheduled appointments and are picked up upon completion of the entire scheduled treatment.

[Contract language](#): Appointment Availability, Transportation Timeliness, Monitoring, and Reporting

The Contractor shall actively monitor and track provider compliance with appointment availability, transportation timeliness, monitoring, and reporting standards as specified in AHCCCS Contractor Operations Manual (ACOM) Policy 417 [42 CFR 438.206(c)(1)].

The Contractor shall ensure that populations with ongoing medical needs, including but not limited to dialysis, radiation, and chemotherapy, have coordinated, reliable, medically necessary transportation to ensure members arrive on-time for regularly scheduled appointments and are picked up upon completion of the entire scheduled treatment.

The Contractor shall ensure members have timely access to medically necessary non-emergent transportation for routine appointments. Additionally, the Contractor shall have a process in place for members to request and receive medically necessary transportation for urgent appointments. The Contractor shall schedule transportation so that the member arrives on time for the appointment, but no sooner than one hour before the appointment; nor have to wait more than one hour after the conclusion of the treatment for transportation home; nor be picked up prior to the completion of treatment. The Contractor shall develop and implement performance auditing protocol to evaluate compliance with the standards above for all subcontracted transportation vendors/brokers and require corrective action if standards are not met.

<p>Contract language: Subcontracts (<i>NEMT Brokers are Administrative Services Subcontractors</i>)</p>	<p>The Contractor shall be held fully liable for the performance of all Contract requirements. Subject to limitations as specified in this Contract, any function required to be provided by the Contractor pursuant to this Contract may be subcontracted to a qualified individual or organization [42 CFR 438.6]. Notwithstanding any relationship(s) the Contractor may have with any subcontractor, the Contractor maintains ultimate responsibility for adhering to and otherwise fully complying with all terms and conditions of this Contract [42 CFR 438.230(b)(1); 42 CFR 438.3(k)].</p> <p>In order to determine adequate performance, the Contractor shall monitor the Administrative Services Subcontractor's performance on an ongoing basis and subject it to formal review at least annually or more frequently if requested by AHCCCS. As a result of the performance review, any deficiencies shall be communicated to the Administrative Services Subcontractor in order to establish a corrective action plan [42 CFR 438.230(b)]. The results of the performance review and the corrective action plan shall be communicated to AHCCCS upon completion as specified in ACOM Policy 438 and Section F, Attachment F3, Contractor Chart of Deliverables.</p>
<p>ACOM Policy 417, Appointment Availability, Transportation Timeliness, Monitoring, and Reporting</p>	<p>TRANSPORTATION TIMELINESS REVIEW</p> <p>For medically necessary non-emergent transportation, the Contractor shall ensure that a member arrives on time for an appointment, but no sooner than one hour before the appointment; nor have to wait more than one hour after the conclusion of the treatment for transportation home.</p> <p>The Contractor shall evaluate compliance with the above standards on a quarterly basis for all subcontracted transportation vendors/brokers and require corrective action if standards are not met.</p>
<p>ACOM Policy 417, Transportation Timeliness Deliverable format</p>	<p>Total Drop Offs, Timely Drop Offs, % of Timely Drop Offs Total Pickups, Timely Pickups, % of Timely Pickups</p>
<p>Deliverable Data</p>	<p>For Contract Year ending 2022, Quarter 1 (Oct-Dec 2021) and Quarter 2 (Jan-Mar 2022) data received on Timeliness of Transportation shows the following:</p> <ul style="list-style-type: none"> ● 92.50% of 638,948 total drop off trips were timely ● 98.05% of 570,725 total pickup trips were timely

	(This data is from more recent time periods than the data quoted in the meeting)
<p>Strategy to Resolve NEMT Concerns: AHCCCS NEMT Workgroup</p>	<p>AHCCCS created an Internal NEMT workgroup which meets every six weeks.</p> <p>This cross-divisional team includes staff from the Office of Inspector General, Office of General Counsel, Division of Community Advocacy and Intergovernmental Relations, Division of Member and Provider Services, Division of Health Care Management, Division of Fee For Service Management, and Office of the Director (Legislative Liaison).</p> <p>The Workgroup discusses concerns around NEMT services in general, as well as policy and other regulatory changes aimed at improving access to NEMT services. Recent examples include: helping to resolve transportation issues for members residing at the bottom of the Grand Canyon by implementing Equine and Helicopter NEMT options, and new policy language around coverage of public transportation for members.</p>
<p>Strategy to Resolve NEMT Concerns: MCO Oversight of NEMT Brokers</p>	<p>MCOs meet with NEMT Brokers on a regular basis to review performance, address any gaps in services, and resolve any escalated issues. Additional information reviewed in these meetings include call center statistics, member grievances, complaint resolution reports and timeliness reports.</p> <p>One recent example regarding MCO work to address gaps in services relates to increasing capacity for specialty transportation (including wheelchair vans). One such idea looked to increase payment rates for providers that service specialty transports. Another looked to give provider incentives to providers who accepted a minimum percentage of rides..</p>

Member Grievances and Quality of Care Concerns

Contract language: Member Complaint/Grievance requirements

At a minimum, the Contractor shall comply with the following Grievance and Appeal System Standards and incorporate these requirements into its policies and/or procedures:

The Contractor shall track and trend Grievance and Appeal System information as a source of information for quality improvement and in accordance with the AHCCCS Grievance and Appeal System Reporting Guide.

The Contractor shall address identified issues as expeditiously as the member's condition requires and shall resolve each grievance within 10 business days of receipt, absent extraordinary circumstances. However, no grievances shall exceed 90 days for resolution. Contractor decisions on member grievances cannot be appealed [42 CFR 438.408(a), 42 CFR 438.408(b)(1) and (3)].

Contract Language: Quality Management and Quality of Care requirements

The Contractor shall undergo annual, external independent reviews of the quality of, timeliness of, and access to services covered under the Contract [42 CFR 438.320, 42 CFR 438.350]. AHCCCS will utilize an External Quality Review Organization (EQRO) for purposes of independent review of its Contractors and related AHCCCS oversight. External quality reviews will be conducted by an EQRO [42 CFR 438.358]. Direct engagement at the Contractor level may occur, at the discretion or invitation of AHCCCS.

The Contractor shall establish and implement mechanisms to assess the quality and appropriateness of care provided to members, including members with special health care needs, [42 CFR 438.208(c)(4), 42 CFR 438.330(a)(1), 42 CFR 438.330(b)(4)].

The Contractor shall develop and implement policies and procedures that analyze quality of care issues through identifying the issue, initial assessment of the severity of the issue, and prioritization of action(s) needed to resolve immediate care needs when appropriate. The Contractor shall establish a process to ensure that all staff and providers are trained on how to refer suspected quality of care issues to quality management. This training shall be provided during new employee orientation (within 30 days of hire) and annually, thereafter.

	<p>The Contractor shall monitor contracted providers for compliance with Quality Management metrics, as well as member health and safety; Quality Management staff shall lead all monitoring and investigative efforts. The Contractor shall establish mechanisms to track and trend member and provider issues. The Contractor shall comply with requirements, as specified in Contract and AMPM Policy 960.</p>
<p>AMPM Policy 960, Quality of Care Concerns</p>	<p>The Contractor shall develop and implement policies and procedures to review, report, evaluate, and resolve Quality of Care (QOC) concerns and service concerns raised by members/Health Care Decision Makers (HCDM)s, contracted providers, and stakeholders. Concerns may be received from anywhere within the organization or externally from anywhere in the community including provider incident, accident, and death reports entered directly into the AHCCCS Quality Management (QM) Portal as specified in AMPM Policy 961. All concerns shall be addressed regardless of source (external or internal). QOC concerns involving both physical and behavioral health providers or services shall be addressed in the same manner.</p> <p>...</p> <p>The Contractor shall develop and implement a system to document, track, trend, and evaluate complaints and allegations received from members and providers or as directed by AHCCCS, inclusive of QOC concerns, quality of service, and immediate care needs.</p> <ol style="list-style-type: none"> a. The data from the tracking and trending system shall be analyzed and evaluated to identify and address any trends related to members, providers, the QOC process or services in the Contractor's service delivery system or provider network. The Contractor is responsible for incorporating trending of QOC concerns in determining systemic interventions for quality improvement, b. The Contractor shall ensure that tracking and trending information is submitted, reviewed, and considered for action by the Contractor's local QM Committee and local Medical Director, as Chairman of the QM Committee, c. If significant negative trends are noted, the Contractor should consider developing performance improvement activities focused on the topic area to improve the concern resolution process itself, and to make improvements that address other system issues raised during the resolution process, d. The Contractor shall ensure that tracking and trending information related to provider education, training, and staff credentialing is shared with the workforce development operation as specified in ACOM Policy 407, ...

<p>AHCCCS Review of Quality of Care (QOC) cases</p>	<p>The majority of the QOC investigative work is completed by the MCOs with oversight, monitoring, and auditing of cases completed by AHCCCS. QOCs can be submitted to either an MCO directly or to AHCCCS. If submitted directly to AHCCCS, staff review the concern, research the MCO that the member is enrolled with (for member-specific concerns) and/or the network status of the provider (for systemic provider-related concerns), and then forward all relevant information to the appropriate MCO(s) for review/investigation. A general outline of how concerns are reviewed can be found at the following location: https://www.azahcccs.gov/AHCCCS/Downloads/AHCCCS_IncidentFlowChart_200911.pdf</p> <p>MCOs document QOC information, including findings and corrective actions, in the AHCCCS Quality Management Portal. AHCCCS selects random samples of completed cases from each MCO and audits the case files (from initial triage through resolution). Additionally, AHCCCS runs data queries on selected procedure codes and assesses for correlating quality of care concern cases; if no case is found, a notification is sent to the MCO for follow up. AHCCCS also monitors timeliness of case review against timelines outlined in AMPM Policy 960; MCOs receive reports on any QOCs that are overdue or at risk of becoming overdue and provide feedback on case status, rationale for extended time frames, and/or corrective action plans for addressing noted issues. If any of the above-mentioned oversight activities show concerning trends or under-performance, findings may result in corrective action, ranging from directed technical assistance, increased monitoring, more detailed audits, Notice to Cure, and/or financial sanctions.</p>
<p>AHCCCS Access to Care Committee</p>	<p>AHCCCS has an Access to Care Committee which meets quarterly.</p> <p>This cross-divisional committee reviews individual and systemic Access to Care issues for AHCCCS members to inform Medicaid health care delivery decisions, as well as development of rates and reimbursement to ensure availability of AHCCCS-covered services.</p> <p>This Committee reviews member and/or provider complaints, grievances and/or Quality of Care concerns that impact the accessibility and availability of an adequate AHCCCS registered provider network across Arizona.</p>

Additional Relevant Requirements

Contract Language: Periodic Reporting Requirements

Under the terms and conditions of its CMS grant award, AHCCCS requires periodic reports, encounter data and other information from the Contractor. The submission of late, inaccurate, or otherwise incomplete reports shall constitute failure to report subject to the penalty provisions specified in Section D, Paragraph 74, Administrative Actions.

Standards applied for determining adequacy of required reports are as follows:

1. Timeliness: Reports or other required data shall be received on or before scheduled due dates.
2. Accuracy: Reports or other required data shall be prepared in strict conformity with appropriate authoritative sources and/or AHCCCS defined standards.
3. Completeness: All required information shall be fully disclosed in a manner that is both responsive and pertinent to report intent with no material omissions

Contract Language: Administrative Actions

Sanctions: In accordance with applicable Federal and State regulations, A.A.C. R9-28-606, [ACOM Policy 408](#), [ACOM Policy 440](#), Section 1932 of the Social Security Act or any implementing regulation, and the terms of this Contract, AHCCCS may impose sanctions for failure to comply with any provision of this Contract, including but not limited to: temporary management of the Contractor; monetary penalties; suspension of enrollment; withholding of payments; granting members the right to terminate enrollment without cause; suspension of new enrollments, suspension of payment for new enrollments, refusal to renew, or termination of the Contract, or any related subcontracts [45 CFR 74.48, 42 CFR Part 455, 42 CFR Part 438, Sections 1903 and 1932 of the Social Security Act]. See also Section E, Paragraph 45, Temporary Management/Operation of a Contractor and Paragraphs 47 through 50 regarding Termination of the Contract.

BOARD OF PHYSICAL THERAPY

Title 4, Chapter 24, Article 1



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - ONE-YEAR REVIEW REPORT

MEETING DATE: August 2, 2022

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: June 30, 2022

SUBJECT: BOARD OF PHYSICAL THERAPY
Title 4, Chapter 24, Article 1

Summary

This One-Year Review Report (1YRR) from the Board of Physical Therapy (Board) relates to rules in Title 4, Chapter 24, Article 1, regarding fees the Board charges for licenses, certificates and registrations. These rules were amended under an exemption provided by Laws 2021, Ch. 320, § 24 that was an emergency measure to expand the use of telehealth in meeting the health-care needs of Arizonans. The Board established the fee for an out-of-state health care provider to register to provide telehealth services in Arizona in a rulemaking that went into effect on June 29, 2021, and amended the Board's time frame table to include the new registration.

The Board submitted this 1YRR pursuant to A.R.S. § 41-1095.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes, the Board cites both general and specific statutory authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

Because Laws 2021, Chapter 320, Sec. 24 exempted the Board from complying with A.R.S. Title 41, Chapter 6, the Board did not prepare an economic, small business, and consumer impact statement when the rulemaking was done. In the 10 months since the rule went into effect, the Board has received 12 applications to register as an out-of-state provider of physical therapy telehealth.

Under R4-24-107(B), the 12 applicants paid \$100 each to register. This means that under A.R.S. § 32-2004, the Board deposited \$120 into the state's general fund and \$1,080 into the Board of Physical Therapy fund.

Stakeholders are identified as the Board and out-of-state providers of physical therapy telehealth applicants.

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The Board indicates that when the legislature enacted A.R.S. § 36-3606, the legislature determined the benefits from allowing registration of out-of-state providers of physical therapy services by telehealth outweigh the costs to the state and out-of-state providers paying a registration fee.

The only authority provided to the Board under A.R.S. § 36-3606 is to establish a one-time-only registration fee. For this one-time fee, the Board is required to evaluate the information submitted by the out-of-state provider, supervise compliance for as long as the out-of-state provider may choose to provide telehealth services to residents of Arizona, and receive an annual update from the out-of-state provider. Because this is the only authority provided to the Board, under A.R.S. § 36-3606 and because the legislature determined the cost of the fee is outweighed by the benefit of allowing out-of-state providers of physical therapy services by telehealth to register to provide the services in Arizona, the Board concludes the benefits of the rule outweigh the costs.

The time frames listed in Table 1 run against the Board. The time frames do not regulate out-of-state health care providers.

4. Has the agency received any written criticisms of the rules since the rule was adopted?

No, the Board has not received any written criticisms of the rules over the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

Yes, the Board indicates the rules are clear, concise and understandable.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

Yes, the Board indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Board indicates the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Board states the rules are enforced as written.

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

No, the Board indicates that the rules are not more stringent than corresponding federal law.

10. **Has the agency completed any additional process required by law?**

Not applicable. No additional process is required.

11. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

No, the rules do not require the issuance of a permit or license.

12. **Conclusion**

Council staff finds that the Board submitted an adequate report pursuant to A.R.S. § 41-1095. Council staff recommends approval of this report.



ARIZONA STATE BOARD OF PHYSICAL THERAPY
1740 W. Adams Street, Suite 2450 • Phoenix, AZ 85007 • (602) 2
ptboard.az.gov

April 22, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsins, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

**RE: Board of Physical Therapy
One-year-review Report required under A.R.S. § 41-1095
R4-24-107 and Table 1**

Dear Ms Sornsins:

Enclosed is the One-year-review Report of the Board of Physical Therapy for R4-24-107 and Table 1. The report is due under an extension by October 27, 2022.

The Board certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Judy Chepeus at 602-271-7365 or judy.chepeus@ptboard.az.gov.

Sincerely,

A handwritten signature in cursive script that reads "Judy Chepeus".

Judy Chepeus
Executive Director

ONE-YEAR-REVIEW REPORT
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 24. BOARD OF PHYSICAL THERAPY
Submitted for July 6, 2022

INTRODUCTION

The legislature enacted Laws 2021, Chapter 320, as an emergency measure to expand use of telehealth in meeting the health-care needs of Arizonans. The statute (A.R.S. § 36-3606) included a provision allowing a health care provider not licensed in this state to provide telehealth services to individuals in Arizona if the out-of-state health care provider registered with Arizona’s applicable regulatory board and paid a fee specified by the regulatory board. The Board established the fee for an out-of-state health care provider to register to provide telehealth services in Arizona in a rulemaking that went into effect on June 29, 2021. The Board also amended the Board’s time frame table to include the new registration.

As required under A.R.S. § 41-1095(A), this report focuses on the Board’s review of R4-24-107 and Table 1, the two provisions amended under the exemption provided by Laws 2021, Chapter 320, Sec. 24.

Statute that generally authorizes the agency to make rules: A.R.S. § 32-2003(A)(5)

1. Specific statute authorizing the rule: A.R.S. §§ 36-3606(A)(3) and 41-1073

2. Objective of the rule:
R4-24-107. Fees: The objective of this rule is to establish the fees the Board charges for the licenses, certificates, and registrations it issues.
Table 1. Time Frames (in days): The objective of this rule is to provide notice of the amount of time the Board requires to act of an application.

3. Is the rule effective in achieving its objective? Yes

4. Were there written criticisms of the rule, including written analyses questioning whether the rule is based on valid scientific or reliable principles or methods? No

- 5. Is the rule consistent with other rules and statutes? Yes
- 6. Is the rule enforced as written? Yes
- 7. Is the rule clear, concise, and understandable? Yes

8. Estimated economic, small business, and consumer impact of the rule:

Because Laws 2021, Chapter 320, Sec. 24, exempted the Board from complying with A.R.S. Title 41, Chapter 6, the Board did not prepare an economic, small business, and consumer impact statement when the rulemaking was done. In the 11 months since the rule went into effect, the Board has received 13 applications to register as an out-of-state provider of physical therapy telehealth. The Board has approved three of the registrations. The other applications were missing required information so under R4-24-209(B), the applicants were sent a deficiency notice. The Board is waiting for these applicants to complete their applications.

Under R4-24-107(B), the 13 applicants paid \$100 each to register. This means that under A.R.S. § 32-2004, the Board deposited \$130 into the state’s general fund and \$1,170 into the Board of Physical Therapy fund.

The Board acted within the time frames specified in Table 1 for all the applications.

- 9. Has the agency received any business competitiveness analyses of the rule? No
- 10. If applicable, whether the agency completed additional processes required by law: NA

11. A determination after analysis that the probable benefits of the rule outweigh within this state the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

When the legislature enacted A.R.S. § 36-3606, the legislature determined the benefits from allowing registration of out-of-state providers of physical therapy services by telehealth outweigh the costs to the state. The legislature established the paperwork cost when it specified the content of an application that must be submitted and established multiple compliance requirements at A.R.S. § 36-

3606(A)(2) through (A)(9), (B), and (C). The legislature also determined the benefit of allowing out-of-state providers of physical therapy services by telehealth outweighs the cost of out-of-state providers paying a registration fee.

The only authority provided to the Board under A.R.S. § 36-3606 is to establish a one-time-only registration fee. For this one-time fee, the Board is required to evaluate the information submitted by the out-of-state provider, supervise compliance for as long as the out-of-state provider may choose to provide telehealth services to residents of Arizona, and receive an annual update from the out-of-state provider.

The rule reviewed for this report complies with the minimal authority the legislature provided to the Board: R4-24-107 establishes the fee the Board charges for an out-of-state health care provider to register to provide telehealth services in Arizona. Because this is the only authority provided to the Board and because the legislature determined the cost of the fee is outweighed by the benefit of allowing out-of-state providers of physical therapy services by telehealth to register to provide the services in Arizona, the Board concludes the benefits of the rule outweigh the costs.

The time frames listed in Table 1 run against the Board. The time frames do not regulate out-of-state health care providers.

12. Is the rule more stringent than corresponding federal laws? No

13. For a rule that requires issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:

Neither R4-24-107 nor Table 1 requires issuance of a permit, license, or other authorization. The requirements for registration are established in statute. The rule simply specifies the fee required.

R4-24-107. Fees

- A.** Under the authority provided by A.R.S. §§ 32-2029 and 32-2030, the Board establishes and shall collect the following fees:
1. For a physical therapist:
 - a. Application for an original license if the applicant applies on or after September 1 in an even-numbered year and no later than August 31 in an odd-numbered year, \$260;
 - b. Application for an original license if the applicant applies on or after September 1 in an odd-numbered year and no later than August 31 in an even-numbered year, \$190;
 - c. Renewal of an active license, \$160;
 - d. Renewal of an inactive license, \$80;
 - e. Reinstatement of an administratively suspended license, \$100 plus the renewal fee; and
 - f. Duplicate license, \$10.
 2. For a physical therapist assistant:
 - a. Application for an original certificate if the applicant applies on or after September 1 in an even-numbered year and no later than August 31 in an odd-numbered year, \$160;
 - b. Application for an original certificate if the applicant applies on or after September 1 in an odd-numbered year and no later than August 31 in an even-numbered year, \$120;
 - c. Renewal of an active certificate, \$55;
 - d. Renewal of an inactive certificate, \$27.50;
 - e. Reinstatement of an administratively suspended certificate, \$50 plus the renewal fee; and
 - f. Duplicate certificate, \$10.
 3. For a business entity:
 - a. Application for an original registration, \$50;
 - b. Renewal, \$50;
 - c. Late fee, \$25; and
 - d. Duplicate registration, \$10.
- B.** Under the authority provided by A.R.S. § 36-3606(A)(3), the Board establishes and shall collect a registration fee from an out-of-state health care provider of telehealth services: \$100.
- C.** The fees specified in subsections (A) and (B) are nonrefundable unless A.R.S. § 41-1077 applies.

Table 1. Time Frames (in days)

Type of Applicant	Type of Approval	Statutory Authority	Overall Time Frame	Administrative Completeness Time Frame	Substantive Review Time Frame
Original License (R4-24-201) or Registration as an Out-of-state Health Care Provider of Telehealth Services (A.R.S. § 36-3606)	License Registration	A.R.S. §§ 32-2022; 32-2023; 36-3606	75	30	45
License or Certificate	License or	A.R.S. §	75	30	45

by Endorsement (R4-24-201; R4-24-207)	certificate by Endorsement	32-2026			
Physical Therapist Assistant Certificate (R4-24-207)	Certificate	A.R.S. §§ 32-2022; 32-2023	75	30	45
Foreign-educated (R4-24-203)	License	A.R.S. §§ 32-2022; 32-2025	75	45	30
Renewal of license or certificate (R4-24-208)	License or certificate	A.R.S. § 32-2027	30	15	15
Foreign-educated and Supervised Clinical Practice (R4-24-203, R4-24-204)	Interim Permit and Approval of Facility	A.R.S. § 32-2025	60	30	30
Reinstatement (R4-24-202)	Reinstatement of License or Certificate	A.R.S. § 32-2028	30	15	15
Initial Registration of a Business Entity	Registration	A.R.S. § 32-2030	30	15	15
Renewal of Registration of a Business Entity	Registration	A.R.S. § 32-2030(D)	15	7	8

32-2003. Board: powers and duties

A. The board shall:

1. Evaluate the qualifications of applicants for licensure and certification.
 2. Provide for national examinations for physical therapists and physical therapist assistants and adopt passing scores for these examinations.
 3. Issue licenses, permits and certificates to persons who meet the requirements of this chapter.
 4. Regulate the practice of physical therapy by interpreting and enforcing this chapter.
 5. Adopt and revise rules to enforce this chapter.
 6. Meet at least once each quarter in compliance with the open meeting requirements of title 38, chapter 3, article 3.1 and keep an official record of these meetings.
 7. Establish the mechanisms for assessing continuing professional competence of physical therapists to engage in the practice of physical therapy and the competence of physical therapist assistants to work in the field of physical therapy.
 8. At its first regular meeting after the start of each calendar year, elect officers from among its members and as necessary to accomplish board business.
 9. Provide for the timely orientation and training of new professional and public appointees to the board regarding board licensing and disciplinary procedures, this chapter, board rules and board procedures.
 10. Maintain a current list of all persons regulated under this chapter. This list shall include the person's name, current business and residential addresses, telephone numbers and license or certificate number.
 11. Subject to title 41, chapter 4, article 4, employ necessary personnel to carry out the administrative work of the board. Board personnel are eligible to receive compensation pursuant to section 38-611.
 12. Enter into contracts for services necessary for adequate enforcement of this chapter.
 13. Report final disciplinary action taken against a licensee or a certificate holder to a national disciplinary database recognized by the board.
 14. Publish, at least annually, final disciplinary actions taken against a licensee or a certificate holder.
 15. Publish, at least annually, board rulings, opinions and interpretations of statutes or rules in order to guide persons regulated pursuant to this chapter.
 16. Not later than December 31 of each year, submit a written report of its actions and proceedings to the governor.
 17. Establish and collect fees.
 18. Provide information to the public regarding the board, its processes and consumer rights.
- B. The board may establish a committee or committees to assist it in carrying out its duties for a time prescribed by the board. The board may require a committee appointed pursuant to this subsection to make regular reports to the board.

36-3606. Interstate telehealth services; registration; requirements; venue; exceptions

A. A health care provider who is not licensed in this state may provide telehealth services to a person located in this state if the health care provider complies with all of the following:

1. Registers with this state's applicable health care provider regulatory board or agency that licenses comparable health care providers in this state on an application prescribed by the board or agency that contains all of the following:

(a) The health care provider's name.

(b) Proof of the health care provider's professional licensure, including all United States jurisdictions in which the provider is licensed and the license numbers. Verification of licensure in another state shall be made through information obtained from the applicable regulatory board's website.

(c) The health care provider's address, email address and telephone number, including information if the provider needs to be contacted urgently.

(d) Evidence of professional liability insurance coverage.

(e) Designation of a duly appointed statutory agent for service of process in this state.

2. Before prescribing a controlled substance to a patient in this state, registers with the controlled substances prescription monitoring program established pursuant to chapter 28 of this title.

3. Pays the registration fee as determined by the applicable health care provider regulatory board or agency.

4. Holds a current, valid and unrestricted license to practice in another state that is substantially similar to a license issued in this state to a comparable health care provider and is not subject to any past or pending disciplinary proceedings in any jurisdiction. The health care provider shall notify the applicable health care provider regulatory board or agency within five days after any restriction is placed on the health care provider's license or any disciplinary action is initiated or imposed. The health care provider regulatory board or agency registering the health care provider may use the national practitioner databank to verify the information submitted pursuant to this paragraph.

5. Acts in full compliance with all applicable laws and rules of this state, including scope of practice, laws and rules governing prescribing, dispensing and administering prescription drugs and devices, telehealth requirements and the best practice guidelines adopted by the telehealth advisory committee on telehealth best practices established by section 36-3607.

6. Complies with all existing requirements of this state and any other state in which the health care provider is licensed regarding maintaining professional liability insurance, including coverage for telehealth services provided in this state.

7. Consents to this state's jurisdiction for any disciplinary action or legal proceeding related to the health care provider's acts or omissions under this article.

8. Follows this state's standards of care for that particular licensed health profession.

9. Annually updates the health care provider's registration for accuracy and submits to the applicable health care provider regulatory board or agency a report with the number of patients the provider served in this state and the total number and type of encounters in this state for the preceding year.

B. A health care provider who is registered pursuant to this section may not:

1. Open an office in this state, except as part of a multistate provider group that includes at least one health care provider who is licensed in this state through the applicable health care provider regulatory board or agency.

2. Provide in-person health care services to persons located in this state without first obtaining a license through the applicable health care provider regulatory board or agency.

C. A health care provider who fails to comply with the applicable laws and rules of this state is subject to investigation and both nondisciplinary and disciplinary action by the applicable health care provider regulatory board or agency in this state. For the purposes of disciplinary action by the applicable health care provider regulatory board or agency in this state, all statutory authority regarding investigating, rehabilitating and educating health care providers may be used. If a health care provider fails to comply with the applicable laws and rules of this state, the applicable health care provider regulatory board or agency in this state may revoke or prohibit the health care provider's privileges in this state, report the action to the national practitioner database and refer the matter to the licensing authority in the state or states where the health care provider possesses a professional license. In any matter or proceeding arising from such a referral, the applicable health care provider regulatory board or agency in this state may share any related disciplinary and investigative information in its possession with another state licensing board.

D. The venue for any civil or criminal action arising from a violation of this section is the patient's county of residence in this state.

E. A health care provider who is not licensed to provide health care services in this state but who holds an active license to provide health care services in another jurisdiction and who provides telehealth services to a person located in this state is not subject to the registration requirements of this section if either of the following applies:

1. The services are provided under one of the following circumstances:

(a) In response to an emergency medication condition.

(b) In consultation with a health care provider who is licensed in this state and who has the ultimate authority over the patient's diagnosis and treatment.

(c) To provide after-care specifically related to a medical procedure that was delivered in person in another state.

(d) To a person who is a resident of another state and the telehealth provider is the primary care provider or behavioral health provider located in the person's state of residence.

2. The health care provider provides fewer than ten telehealth encounters in a calendar year.

41-1073. [Time frames; exception](#)

A. No later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time frame during which the agency will either grant or deny each type of license that it issues. Agencies shall submit their overall time frame rules to the governor's regulatory review council pursuant to the schedule developed by the council. The council shall schedule each agency's rules so that final overall time frame rules are in place no later than December 31, 1998. The rule regarding the overall time frame for each type of license shall state separately the administrative completeness review time frame and the substantive review time frame.

B. If a statutory licensing time frame already exists for an agency but the statutory time frame does not specify separate time frames for the administrative completeness review and the substantive review, by rule the agency shall establish separate time frames for the administrative completeness review and the substantive review, which together shall not exceed the statutory overall time frame. An agency may establish different time frames for initial licenses, renewal licenses and revisions to existing licenses.

C. The submission by the department of environmental quality of a revised permit to the United States environmental protection agency in response to an objection by that agency shall be given the same effect as a notice granting or denying a permit application for licensing time frame purposes. For the purposes of this subsection, "permit" means a permit required by title 49, chapter 2, article 3.1 or section 49-426.

D. In establishing time frames, agencies shall consider all of the following:

1. The complexity of the licensing subject matter.
2. The resources of the agency granting or denying the license.
3. The economic impact of delay on the regulated community.
4. The impact of the licensing decision on public health and safety.
5. The possible use of volunteers with expertise in the subject matter area.
6. The possible increased use of general licenses for similar types of licensed businesses or facilities.
7. The possible increased cooperation between the agency and the regulated community.
8. Increased agency flexibility in structuring the licensing process and personnel.

E. This article does not apply to licenses issued either:

1. Pursuant to tribal state gaming compacts.
2. Within seven days after receipt of initial application.
3. By a lottery method.



ARIZONA STATE BOARD OF PHYSICAL THERAPY
1740 W. Adams Street, Suite 2450 • Phoenix, AZ 85007 • (602) 274 – 0236
ptboard.az.gov

July 29, 2022

VIA EMAIL: elizabeth.griffiths@azdoa.gov

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

**RE: Board of Physical Therapy
Explanation of Interstate Telehealth Provider Registration Fee**

Dear Ms Sornsin:

During the study session on July 26, 2022 the \$100 fee charged by the Board of Physical Therapy for an Interstate Telehealth Provider Registration was questioned as the least restrictive measure. Pursuant to A.R.S. § 36-3606(A)(3), the Board of Physical Therapy established a \$100 registration fee at its May 25, 2021 meeting. The Board considered the following prior to voting on the registration fee:

- A.R.S. § 36-3606 grants to an interstate telehealth provider the same telehealth privileges as an Arizona licensed physical therapist or certified physical therapist assistant.
- Documentation associated with interstate telehealth registration must be processed/reviewed manually by staff.
- Education of interstate telehealth registrants is provided by staff regarding the specifics of the registration process and required documentation as well as ongoing support associated with practice across state lines.
- Yearly updates in accordance with A.R.S. § 36-3606 must be provided by interstate telehealth registrants and processed/reviewed by staff. Yearly time frames are based on the anniversary of the original issue date and no further fee is charged, thus, date tracking is incumbent on staff to ensure compliance. The yearly timeframes and anniversary expirations differ from the biannual cycle of all other licenses and certifications issued by the Board of Physical Therapy.
- Software to receive interstate telehealth registrations electronically requires the development of comprehensive system requirements in light of divergent processing timeframes and software logic. Board of Physical Therapy staff is instrumental in the

development, testing, and monitoring of these systems to ensure compliance with statute and ongoing system functionality.

- Verification of interstate telehealth provider registration status must be available to any external inquiring body.
- All investigative and regulatory duties must be performed in the event a complaint is received for an interstate telehealth registrant, as well as informing any/all states where that registrant holds a license.

Registration processing, ongoing practitioner support, yearly update review, complaint processing and regulatory oversight, consistent with the Board's mission of public protection, must be provided by the Board and staff for every interstate telehealth provider practicing physical therapy in the state of Arizona. This is all completed, for the interstate telehealth provider for a one-time fee of \$100.

Please contact me with any questions at 602-271-7365 or judy.chepeus@ptboard.az.gov.

Thank you for your consideration,

A handwritten signature in cursive script that reads "Judy Chepeus".

Judy Chepeus
Executive Director

G-1

DEPARTMENT OF TRANSPORTATION

Title 17, Chapter 4, Article 3

Expire: R17-4-313

**GOVERNOR'S REGULATORY REVIEW COUNCIL
NOTICE OF INTENT TO EXPIRE RULES**

1. Agency name: Department of Transportation
2. Title and its heading: 17, Transportation
3. Chapter and its heading: 4, Department of Transportation – Title, Registration, and Driver Licenses
4. Article and its heading: 3, Vehicle Registration

Pursuant to A.R.S. § 41-1052(M), the Department of Transportation provides to the Governor's Regulatory Review Council a notice of its intent to expire the following rules:

R17-4-313. Public Safety Fee

Pursuant to A.R.S. § 41-1052(M), the Department of Transportation seeks to expire the rules listed above for the following reasons:

This rule is no longer necessary since the legislative authority for collection of the fee ended beginning from and after June 30, 2021. Laws 2019, Chapter 268, amended A.R.S. § 28-2007 by adding the end date of the fee collection, and Laws 2021, Chapter 413, further clarified the end date with a provision for applicable refunds.



John S. Halikowski, Director

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

final rulemaking at 8 A.A.R. 4227, effective November 15, 2002 (Supp. 02-3).

R17-4-311. Special Organization Plate List

As required under A.R.S. § 28-2404(D), the Division provides the following list of special organization license plates authorized by the state license plate commission and available for issue to qualified applicants:

1. Arizona Historical Society,
2. Firefighter,
3. Fraternal Order of Police,
4. Legion of Valor,
5. University of Phoenix, and
6. Wildlife Conservation.

Historical Note

Former Rule, General Order 24. Former Section R17-4-08 renumbered without change as Section R17-4-311 (Supp. 87-2). Transferred to R17-1-311 (Supp. 92-4). New Section made by exempt rulemaking at 7 A.A.R. 5251, effective November 2, 2001 (Supp. 01-4). Amended by exempt rulemaking at 8 A.A.R. 4007, effective November 1, 2002 (Supp. 02-3). Amended by exempt rulemaking at 13 A.A.R. 1894, effective June 1, 2007 (Supp. 07-2).

R17-4-312. Off-highway Vehicle User Indicia

- A.** For lawful Arizona off-highway operation, the owner or operator of a qualifying all-terrain vehicle, off-highway vehicle, or off-road recreational motor vehicle shall apply to the Department for an off-highway vehicle user indicia as prescribed under A.R.S. § 28-1177. The owner or operator shall submit to the Division:
1. The off-highway vehicle user indicia application provided by the Division, and
 2. The fee prescribed under subsection (C).
- B.** The owner or operator shall indicate, on the application submitted to the Division under subsection (A), one of the following categories of intended vehicle usage:
1. Exclusively off-highway;
 2. Primarily off-highway, occasionally on-highway; or
 3. Primarily on-highway, occasionally off-highway.
- C.** The fee for each off-highway vehicle user indicia issued or renewed by the Department under A.R.S. § 28-1177 is \$25.
- D.** The off-highway vehicle user indicia, issued by the Division under subsection (A), shall have the same basic design as the license plate tab issued by the Division for other types of vehicles and shall contain the letters OHV.
- E.** The applicant shall display the off-highway vehicle user indicia in the upper left corner of the license plate issued by the Division under A.R.S. Title 28, Chapter 7, Articles 11 through 15.

Historical Note

Former Rule, General Order 39. Former Section R17-4-13 renumbered without change as Section R17-4-312 (Supp. 87-2). Transferred to R17-1-312 (Supp. 92-4). New Section made by final rulemaking at 16 A.A.R. 1132, effective August 7, 2010 (Supp. 10-2).

R17-4-313. Public Safety Fee

- A.** Pursuant to A.R.S. § 28-2007 and until July 1, 2021, at the time of the initial or renewal registration of a vehicle, the owner or lessee shall pay a public safety fee as determined in subsection (B).
1. An owner or lessee who registers a vehicle for more than one year shall be assessed a fee for each registration year

except for any registration year that begins on or after July 1, 2021.

2. The fee will be assessed for the initial registration and upon each transfer of ownership of a permanent trailer.
 3. The fee will be assessed for each vehicle in a fleet.
 4. The fee will be assessed on a vehicle that is a part of the International Registration Plan.
 5. The fee will be assessed upon each transfer of any vehicle subject to registration by the new owner.
- B.** The Department determines the annual amount for the public safety fee based upon the following:
1. The following vehicle owner or lessee shall pay a fee of \$0:
 - a. An Arizona resident who is a member of the U.S. armed forces, including a National Guard or reserve unit, who is deployed in support of a worldwide contingency operation of the U.S. armed forces;
 - b. An educational, charitable, and religious association or institution not used or held for profit;
 - c. A government entity, which includes foreign government, a consul or any other official representative of a foreign government, the United States, a state or political subdivision of a state, or an Indian tribal government;
 - d. A nonresident military member;
 - e. A public health services officer;
 - f. A Supplemental Security Income recipient;
 - g. A survivor of a fallen first responder or a fallen military member;
 - h. A U.S. Department of Veterans Affairs grant recipient who qualifies for an exemption from the vehicle license tax pursuant to A.R.S. § 28-5802;
 - i. A veteran who is certified by the U.S. Department of Veterans Affairs to be 100% with a disability and drawing applicable compensation; or
 - j. A widow or widower who qualifies for an exemption of taxation of property pursuant to A.R.S. § 42-1111.
 2. The owner or lessee of the following shall pay a reduced fee of \$5:
 - a. A registered street legal golf cart, or
 - b. A registered street legal off-highway vehicle that is eligible for the reduced vehicle license tax pursuant to A.R.S. § 28-5801.
 3. The owner or lessee of a vehicle that is part of the International Registration Plan shall pay an apportioned fee based on the International Registration Plan.
 4. All other vehicle owners or lessees shall pay a fee of \$32.
- C.** If a vehicle is owned by more than one owner or lessee prescribed under subsections (B)(1)(d), (e), (f), (g), or (j), the fee of \$0 applies only to the qualified person and the fee as determined in subsection (B)(4) is applied proportionally to any additional owner or lessee.
- D.** If an owner or lessee prescribed under subsections (B)(1)(f), (g), (h), (i), or (j) owns or leases more than one vehicle, the owner or lessee shall pay the fee as determined in subsection (B)(4) for each additional vehicle.
- E.** If an owner or lessee prescribed under subsection (B)(1)(a) owns or leases more than two vehicles, the owner or lessee shall pay the fee as determined in subsection (B)(4) for each additional vehicle.
- F.** The public safety fee shall be specified and available on the Department's website at www.azdot.gov and detailed on the registration renewal notice for the vehicle.
- G.** The fee is non-transferable.

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

H. The fee is nonrefundable, except the Department will issue a credit or refund for any public safety fee paid for any registration year that begins on or after July 1, 2021.

Historical Note

Former Rule, General Order 27. Former Section R17-4-10 renumbered without change as Section R17-4-313 (Supp. 87-2). Transferred to R17-1-313 (Supp. 92-4). Amended by exempt rulemaking at 24 A.A.R. 3512, effective December 1, 2018 (Supp. 18-4). Amended by exempt rulemaking at 25 A.A.R. 104, effective December 21, 2018 (Supp. 19-2). Section repealed; new Section made by exempt rulemaking at 25 A.A.R. 2261, with an effective date of August 19, 2019 (Supp. 19-3).

R17-4-314. Transferred**Historical Note**

Former Rule, General Order 69. Former Section R17-4-27 renumbered without change as Section R17-4-314 (Supp. 87-2). Transferred to R17-1-314 (Supp. 92-4).

R17-4-315. Transferred**Historical Note**

Former Rule, General Order 61. Former Section R17-4-23 renumbered without change as Section R17-4-315 (Supp. 87-2). Transferred to R17-1-315 (Supp. 92-4).

R17-4-316. Transferred**Historical Note**

Former Rule, General Order 57. Former Section R17-4-20 renumbered without change as Section R17-4-316 (Supp. 87-2). Transferred to R17-1-316 (Supp. 92-4).

R17-4-317. Transferred**Historical Note**

Former Rule, General Order 36. Former Section R17-4-12 renumbered without change as Section R17-4-317 (Supp. 87-2). Transferred to R17-1-317 (Supp. 92-4).

R17-4-318. Transferred**Historical Note**

Former Rule, General Order 7. Former Section R17-4-04 renumbered without change as Section R17-4-318 (Supp. 87-2). Transferred to R17-1-318 (Supp. 92-4).

R17-4-319. Transferred**Historical Note**

Former Rule, General Order 44. Former Section R17-4-14 renumbered without change as Section R17-4-319 (Supp. 87-2). Transferred to R17-1-319 (Supp. 92-4).

R17-4-320. Transferred**Historical Note**

Former Rule, General Order 54 (Amended). Former Section R17-4-18 renumbered without change as Section R17-4-320 (Supp. 87-2). Transferred to R17-1-320 (Supp. 92-4).

R17-4-321. Transferred**Historical Note**

Former Rule, General Order 21. Former Section R17-4-07 renumbered without change as Section R17-4-321 (Supp. 87-2). Transferred to R17-1-321 (Supp. 92-4).

R17-4-322. Transferred**Historical Note**

Former Rule, General Order 3. Former Section R17-4-02 renumbered without change as Section R17-4-322 (Supp. 87-2). Transferred to R17-1-322 (Supp. 92-4).

R17-4-323. Transferred**Historical Note**

Former Rule, General Order 2A. Former Section R17-4-01 renumbered without change as Section R17-4-323 (Supp. 87-2). Transferred to R17-1-323 (Supp. 92-4).

R17-4-324. Transferred**Historical Note**

Transferred to R17-1-301 (Supp. 92-4).

R17-4-325. Transferred**Historical Note**

Transferred to R17-1-301 (Supp. 92-4).

R17-4-326. Transferred**Historical Note**

Transferred to R17-1-301 (Supp. 92-4).

R17-4-327. Transferred**Historical Note**

Transferred to R17-1-301 (Supp. 92-4).

R17-4-328. Transferred**Historical Note**

Transferred to R17-1-301 (Supp. 92-4).

R17-4-329. Transferred**Historical Note**

Transferred to R17-1-301 (Supp. 92-4).

R17-4-330. Transferred**Historical Note**

Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-67 renumbered without change as Section R17-4-330 (Supp. 87-2). Transferred to R17-1-330 (Supp. 92-4).

R17-4-331. Transferred**Historical Note**

Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-68 renumbered without change as Section R17-4-331 (Supp. 87-2). Transferred to R17-1-331 (Supp. 92-4).

R17-4-332. Transferred**Historical Note**

Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-69 renumbered without change as Section R17-4-332 (Supp. 87-2). Transferred to R17-1-332 (Supp. 92-4).

R17-4-333. Transferred**Historical Note**

Adopted effective March 1, 1984 (Supp. 84-1). Former Section R17-4-71 renumbered without change as Section R17-4-333 (Supp. 87-2). Amended effective December 30, 1987 (Supp. 87-4). Transferred to R17-1-333 (Supp. 92-4).

H

CONSIDERATION AND DISCUSSION OF ONE-YEAR EXTENSION REQUEST FOR THE FIVE-YEAR REVIEW REPORT ON 18 A.A.C. 15 FROM THE WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA



July 20, 2022

Nicole Sornsin
GRRC Chair
Governor's Regulatory Review Council
100 N. 15th Ave. Suite 305
Phoenix, AZ 85007

Subject: Five Year Rule Review Extension Request

Dear Chairwoman Sornsin:

The Five-Year Review Report by the Water Infrastructure Finance Authority (WIFA) of Arizona for A.A.C. Title 18, Chapter 15 is due to be submitted to the Governor's Regulatory Review Council by August 31, 2022. Pursuant to A.R.S. § 41-1056(F) and A.A.C. R1-6-303(B), WIFA respectfully requests a one-year extension with a new due date of August 31, 2023.

This legislative session five bills passed that made material changes to WIFA's statutes. With these statutory changes that become effective September 24, 2022, significant review, revision, and addition to WIFA's rules will be necessary. The bills are listed here for reference:

- HB2057 - water supply development fund; revisions
- HB2556 - water infrastructure finance; sunset repeal
- SB1067 - (NOW: cities; water infrastructure finance authority)
- SB1740 - water infrastructure financing; supply; augmentation
- SB1197 - irrigation districts; service area; WIFA

While the changes in the bills vary in magnitude, the most significant come with Senate Bill 1740. The Bill removes WIFA from the Arizona Finance Authority's (AFA's) governance and makes major changes to the existing Water Supply Development Revolving Fund. The Bill also adds two new programs to WIFA; the Long-Term Water Augmentation Fund and the Water Conservation Grant Fund. These are critically important initiatives for the future of the State of Arizona and we are honored to be trusted with this work. Extending the timeline of the Five-Year Review Report will allow for these laws to come into effect on September 24th 2022 and provide the time necessary to update existing rules and identify new rules required for these new programs.

Thank you for your consideration. Please contact me at (602) 364-1314 or ddialessi@azwifa.gov if you have any questions or would like more information.

Sincerely,

Daniel A. Dialessi, CFA
Executive Director

CC: Anakaren Lemus
Paralegal Project Specialist
Governor's Regulatory Review Council
anakaren.lemus@azdoa.gov